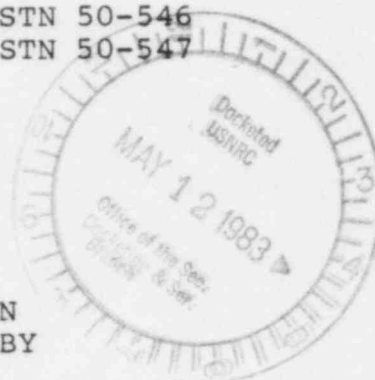


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PUBLIC SERVICE COMPANY)
OF INDIANA, INC.)
WABASH VALLEY POWER)
ASSOCIATION, INC.)
(Marble Hill Nuclear)
Generating Station,)
Units 1 & 2)

Docket Nos. STN 50-546
STN 50-547



APPLICANTS' ANSWER TO PETITION
FOR LEAVE TO INTERVENE FILED BY
VALLEY WATCH, INC.

1. Public Service Company of Indiana, Inc. and Wabash Valley Power Association, Inc. ("Applicants") were served on April 27, 1982, with the petition for leave to intervene of Valley Watch, Inc. ("Petitioner").

2. Although Petitioner outlines general areas of concern, it fails to establish a sufficient interest in this proceeding to establish its standing as either a matter of right or discretion. Petitioner does not address the nature of its right under the Atomic Energy Act of 1954, as amended, to be made a party to this proceeding, the nature and extent of its property, financial, or other interest in this proceeding, or the possible effect of any order that may be entered in this proceeding on its interest.

3. Section 189 of the Atomic Energy Act of 1954, as amended, states that "the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding." 42 U.S.C. § 2239 (1976).

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The Commission's regulations implementing section 189 of the Act require that the petition for leave to intervene "set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section". 10 C.F.R. § 2.714(a)(2) (1982). The factors in paragraph (d) are as follows:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d) (1982).

4. The Commission has established that to determine whether a petitioner for intervention in a domestic licensing proceeding has alleged an interest that may be affected by the proceeding, contemporaneous judicial concepts of standing should be used. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CL1-76-27, 4 NRC 610, 613-14 (1976). Thus, to establish standing to intervene as a matter of right, a petitioner

must satisfy two tests: the "injury in fact" test and the "zone of interest" test. The injury in fact test is satisfied if a petitioner alleges some injury that has occurred or will probably result from the proceeding. To meet the zone of interest test, a petitioner must allege an interest arguably within the zone of interest to be protected or regulated by the statute in question. Id. at 613; Virginia Electric & Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 101 (1976). See Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970); Sierra Club v. Morton, 405 U.S. 727 (1972); Warth v. Seldin, 422 U.S. 490 (1975); Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 637-38 (1975).

5. Petitioner herein has failed to articulate with particularity any cognizable interest in this proceeding and how any such interest might be affected by the results of this proceeding. Basically, Petitioner has alleged neither injury that has resulted or will probably result from this proceeding, nor an interest within the zone of interest to be protected or regulated by the statutes in question.

6. According to Petitioner, its interest in this proceeding is established by the fact that "most of [its]

members live in cities and towns along the Ohio River, many of them in the Madison-Louisville stretch near the proposed site." Petitioner, however, acknowledges that a large portion of its members reside in Evansville. Petitioner further alleges that its "members have interests at stake in this proceeding due to their proximity to the site" and the potential effects of the Marble Hill facility on the quality of the members' drinking water, the quality of their lives, and the health of themselves and their families. Finally, Petitioner asserts that its members have an economic interest in this proceeding because they are ratepayers of the Applicants.

7. Although Petitioner alleges that some of its members reside in close proximity to the plant, Petitioner fails to identify such members and to articulate with particularity those member's interest in this proceeding. As an organization seeking to intervene on behalf of its members, Petitioner is required to identify individual members and their individual interests that may be affected by the outcome of the proceeding. Omaha Public Power District (Fort Calhoun Station, Unit No. 1), CLI-72-24, 5 AEC 9 (1972); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976). Petitioner also is required to demonstrate that

the individuals whose interests are potentially affected have authorized the Petitioner to represent them. Barnwell, 3 NRC at 422-23. Petitioner satisfied none of these requirements in its petition of April 19, 1983.

8. Although Petitioner voices general health and safety concerns of its members, these interests are not sufficiently particularized to afford a basis for judicial standing. See Pebble Springs, 4 NRC at 614. Such interests will continue to be merely "generalized grievances," undifferentiated from those of any other citizen, Edlow International Co. (Agent for the Government of India), CL1-76-6, 3 NRC 563, 576 (1976), until Petitioner has identified some members who reside in such close proximity to the plant to establish the requisite interest necessary for standing as a matter of right. Compare Watts Bar, 5 NRC at 1421 n.4 with Diaryland Power Cooperative (LaCross Boiling Water Reactor), ALAB-497, 8 NRC 312, 313 (1978). See generally Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 223-24 (1974). Petitioner, therefore, has failed to demonstrate that harm to Petitioner or its members would or could flow from a

result unfavorable to its position. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

9. Petitioner also claims that it has standing because some of its members are ratepayers of Applicants. It is well settled, however, that a petitioner's status as a ratepayer will not confer standing in a licensing proceeding. Pebble Springs, 4 NRC at 614; The Detroit Edison Co. (Greenwood Energy Center, Units 2 and 2), ALAB-376, 5 NRC 426, 428 (1977). The Commission's decision in Pebble Springs is dispositive of whether status as a ratepayer is a sufficient interest on which to grant intervention:

With respect to the "zone of interest" requirement, these ratepayers Petitioners seek a complete economic analysis of nuclear power as part of the licensing proceeding in order to avoid even the possibility of increased future electric rates. While this "interest" is understandable, it does not come within the "zone of interest" protected by the Atomic Energy Act.

4 NRC at 614 (footnote omitted). See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1147 (1977). Moreover, Petitioner's interest as a ratepayer is not within the zone of interest protected by the National Environmental Policy Act of 1969 ("NEPA"). Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 (1976);

Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 475 (1978). For any alleged economic harm to a ratepayer petitioner to be within those interests protected by NEPA, the harm must be environmentally related, i.e., the economic injury will be caused by the impact of the federal action upon the environment. Watts Bar, 5 NRC at 1421. Petitioner, therefore, has failed to allege an interest protected or regulated by the Atomic Energy Act or NEPA.

10. The Commission has determined that petitioners may be granted standing to intervene as a matter of discretion. Pebble Springs, 4 NRC at 616. The Commission in Pebble Springs summarized the factors to be considered in determining whether to grant discretionary intervention:

(a) Weighing in favor of allowing intervention--

(1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention--

(4) The availability of other means whereby petitioner's interest will be protected.

(5) The extent to which the petitioner's interest will be represented by existing parties.

(6) the extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Id. The Commission went on to state that discretionary intervention would be more readily available to a petitioner who has "significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them." Id. at 617; Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1151 n.14 ("the pivotal factor in determining whether to grant discretionary intervention will be that of the ability of the petitioner to make a valuable contribution to the development of a sound record").

11. Petitioner herein has failed to establish its "significant ability to contribute on substantial issues of law or fact which will not otherwise be properly

raised or presented." Moreover, Petitioner has neither set forth these matters "with suitable specificity to allow evaluation" nor "demonstrate[d] their importance or immediacy." Petitioner has alleged no special expertise in the areas about which it is concerned.

12. Applicants reserve their right to object to the contentions that Petitioner seeks to have litigated in this proceeding until after Petitioner's standing has been determined.

13. For the foregoing reasons, Applicants request that the petition for leave to intervene filed by Valley Watch, Inc. be denied.

Respectfully submitted,

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May 12, 1983

UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 1983, served copies of the foregoing document, entitled "Applicant's Answer to Petition for Leave to Intervene Filed by Valley Watch, Inc.," by hand delivering and by mailing first class, postage prepaid and properly addressed, copies thereof to the following:

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