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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
DUQUESNE LIGHT COMPANY, et al.) Docket No. 50-412 OL
(Beaver Valley Power Station,)
Unit 2))

APPLICANTS' ANSWER TO
PETITION OF WILLIAM A. LOCHSTET

On July 31, 1983, William A. Lochstet filed an untimely petition for leave to intervene and request for hearing in this proceeding. Applicants oppose Mr. Lochstet's petition. The petition is untimely and it fails to establish any legally sufficient justification for intervention in this proceeding.

I. Mr. Lochstet's Petition Does Not Meet
The Tests For Untimely Intervention And
Intervention Should Accordingly Be Denied.

The Commission's notice of opportunity for hearing in this proceeding was published on June 1, 1983 (48 Fed. Reg. 24488). The notice clearly indicated that petitions to intervene and requests for hearing must be filed on or before July 1. Notwithstanding this clear notice, Mr. Lochstet failed to serve his petition until July 31, 1983. The petition is accordingly untimely.

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An untimely intervention petition may only be entertained based on a balancing by the Licensing Board of the factors set forth in 10 C.F.R. § 2.714(a). As plainly stated in the Notice of Opportunity for Hearing, an untimely petition can only be accepted if the Board determines "that the petition has made a substantial showing of good cause" for failure to file on time. 48 Fed. Reg. 24489. It is well established that the determination of whether to allow an untimely petition is to be made on the basis of a consideration of both (a) the substantiality of the justification offered for the late filing and (2) the five factors specifically enumerated in 10 C.F.R. § 2.714(a).^{1/} See, e.g., Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431 6 N.R.C. 460, 462 (1977); Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273 (1975); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 N.R.C. 612, 615 (1977). "Further, in circumstances where no good excuse is tendered for tardiness, the petitioner's demonstration on the other factors must be particularly strong." Duke Power Co., supra.

^{1/} The four factors are as follows:

- (1) good cause, if any, for failure to file on time;
- (2) availability of other means whereby the petitioner's interest will be protected;
- (3) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;
- (4) the extent to which petitioner's interest will be represented by existing parties; and
- (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Mr. Lochstet offers no justification for the belatedness of his petition. Mr. Lochstet is experienced with NRC procedures^{2/} and must be aware of the agency's rules. He candidly indicates that he missed the filing date through "lack of knowledge" and admits that this lack of knowledge "is my responsibility, and not sufficient reason to accept a nontimely filing."^{3/}

Mr. Lochstet makes no showing, let alone a strong showing, that the other factors enumerated in 10 C.F.R. § 2.714(a) compel allowance of his petition.^{4/}

II. Mr. Lochstet Has Failed To Establish
Interests Sufficient To Justify Standing
As Of Right.

Applicants also oppose Mr. Lochstet's petition because Mr. Lochstet has not established that he has an interest sufficient to entitle him to intervene. Mr. Lochstet acknowledges that he

^{2/} Mr. Lochstet, for example, had sought to intervene in the other NRC licensing proceedings. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1447-1452 (1982). The Limerick licensing board noted that he has "been an informed observer and participant in NRC proceedings." Id.

^{3/} Lochstet Petition, p. 1.

^{4/} Indeed, Mr. Lochstet's only suggestion which remotely bears on the other factors is that he believes that his presence in the proceeding would be beneficial because "two heads are better than one." Lochstet Petition, p. 2. Conceivably, this statement bears on the question whether Mr. Lochstet's participation could reasonably be expected to assist in developing a sound record. However, it is too feeble a straw to justify belated intervention. Any untimely intervenor could claim as much. Moreover, a licensing board has already ruled on the same issue in a recent proceeding in which Mr. Lochstet sought discretionary intervention. In denying his request for discretionary intervention, the board determined that Mr. Lochstet could not reasonably be expected to assist in developing a sound record. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1447 (1982).

lives in State College, Pennsylvania. This is about 130 miles from the Beaver Valley facility. A petitioner living more than 50 miles from a plant does not have an interest sufficient for standing. See, e.g., Philadelphia Electric Co., supra, 15 N.R.C. 1433; The Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 N.R.C. 75, 78-79 (1981); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418 (1977).

III. Mr. Lochstet Has Failed To Establish
Representational Standing As Of Right.

Mr. Lochstet, apparently recognizing insufficient interest to establish standing on his own behalf, intimates in his petition that Beaver Valley Unit 2 may "adversely affect" his two children whom he states are 12 and 14 years old and reside in a suburb of Pittsburgh 27 miles from the plant for the 9-½ month school year. So far as Applicants can determine, licensing boards have considered claims of standing based on representational interests of children in two proceedings. In both instances standing to intervene was denied. See, e.g., Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 N.R.C. 473, 474-75 n.1 (1978); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1921 (1977). Applicants believe that Mr. Lochstet's allegations of representational standing on behalf of his children are manifestly insufficient here. First,

other parties, and especially the State (which is concerned for all of its citizens), appear at least as well-equipped as Mr. Lochstet to represent the interests of residents of the Pittsburgh area. Second, Mr. Lochstet has failed to detail the circumstances placing his children in Pittsburgh for 9-½ months per year, evidently for school. For example, the children's sojourn may be temporary in nature and may lapse before Beaver Valley commences operation. In that case, the interest of the children is too attenuated, speculative and remote to confer standing on Mr. Lochstet.^{5/} Moreover, from all that appears, the children may be in the custody of their mother who would be the more appropriate party to represent their interests in this proceeding.^{6/}

IV. Mr. Lochstet Has Not Met The Tests
For Discretionary Intervention.

Mr. Lochstet has not sought, and is not entitled to seek, discretionary intervention. The most important of the factors in a discretionary intervention case is whether the petitioner will make a valuable contribution to the making of a sound record.

^{5/} Compare Tennessee Valley Authority, supra, 5 N.R.C. at 1421-22 n. 4.

^{6/} If Mr. Lochstet lacks custody of the children, he would only have standing to represent them if their mother (who presumably does have custody) "has interests which may conflict" with their interests. See Developmental Disabilities Advocacy v. Melton, 689 F.2d 281, 285 (1st Cir. 1982). There is no evidence indicating any conflict here. Indeed, it is far from clear that Mr. Lochstet is intent on pursuing the interests of his children as opposed to his own views on nuclear power.

Philadelphia Electric Co., supra, 15 N.R.C. 1435; The Cleveland Electric Illuminating Co., supra, 14 N.R.C. 179; Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-363, 4 N.R.C. 631, 633 (1976). The burden is on the intervenor to establish that he will make a valuable contribution. The Cleveland Electric Illuminating Co., supra, 14 N.R.C. at 179; Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 745 (1978). Mr. Lochstet's petition fails to give any indication suggesting that his intervention will result in a valuable contribution to the making of a sound record. As noted, Mr. Lochstet has recently been denied discretionary intervention for this reason in another proceeding. Philadelphia Electric Company, supra.

Applicants also note that Mr. Lochstet's petition has failed, in contravention of 10 C.F.R. § 2.714(a)(2), to set forth the specific aspect or aspects of the subject matter of the proceeding under review as to which he seeks to intervene. Moreover, the petition fails to state with reasonable specificity at least one contention suitable for litigation, in contravention to 10 C.F.R. § 2.714(b). See Philadelphia Electric Co., supra, 15 N.R.C. 1437; Babcock & Wilcox (Application for Consideration of Facility Export License), CLI-77-18, 5 N.R.C. 1332, 1348 (1977). Although these latter defects might be remediable by amendment, Applicants believe that they serve as further evidence of Mr. Lochstet's attenuated

interest in this proceeding and the unlikelihood that his participation will significantly contribute to a sound record.

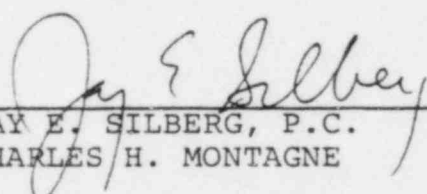
V. Conclusion.

For the reasons stated above, Applicants believe that Mr. Lochstet's untimely petition to intervene should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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DATED: August 12, 1983

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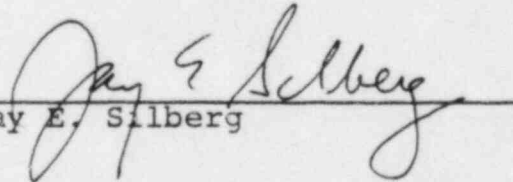
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer to Petition of William A. Lochstet" were served by deposit in the United States Mail, first class, postage prepaid, this 12th day of August, 1983, to all those on the attached Service List.


Jay E. Silberg

DATED: August 12, 1983

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Unit 2))	

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