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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'83 DEC 16 A10:02

Before the Atomic Safety and Licensing Board

In the Matter of)
)
Mississippi Power & Light Company) Docket No. 50-416
) ASLBP No. 84-497-04 LA
(Grand Gulf Nuclear Station,)
Unit 1)

LICENSEE'S ANSWER TO "PETITION TO INTERVENE
AND REQUEST FOR HEARING" BY KEN LAWRENCE
AND JACKSONIANS UNITED FOR LIVABLE ENERGY
POLICIES REGARDING AMENDMENT NO. 10

Preliminary Statement

On September 23, 1983, the Nuclear Regulatory Commission ("NRC" or "Commission") issued Amendment No. 10 to Facility Operating License No. NPF-13 for the Grand Gulf Nuclear Station ("Grand Gulf"), Unit 1. The amendment was granted in response to letters from Mississippi Power & Light ("Licensee"),^{1/} dated June 14 and 23, 1983, and August 1, 1983, which responded in turn to a letter from the NRC dated October 20, 1982, requesting Licensee to prepare and submit license amendment requests, as necessary, to correct administrative and technical deficiencies in the Technical Specifications for Grand Gulf, Unit 1.

^{1/} Mississippi Power & Light Company operates the Grand Gulf facility on behalf of itself and its co-licensees,
(Footnote Continued)

On October 26, 1983, the NRC gave formal notice by publication in the Federal Register that it had issued an amendment granting changes to the Technical Specifications for Grand Gulf, Unit 1.^{2/} The NRC stated that it had made the requisite "no significant hazards consideration" for the amendment, applying the standards of 10 C.F.R. §50.92.^{3/} The NRC's notice also offered an opportunity for a hearing with respect to the issuance of the amendment to "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding," subject to the requirements of 10 C.F.R. §2.714.^{4/} Finally, the NRC stated that because it had made a final determination that the amendment involved "no significant hazards consideration," any hearing, if requested, would not stay the effectiveness of the amendment.^{5/}

Amendment No. 10 grants requested changes to the Technical Specifications relating to Tables 3.3.3-1 and

(Footnote Continued)

Middle South Energy, Inc. and South Mississippi Electric Power Association.

2/ Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances), 48 Fed. Reg. 49608, 49609 (October 26, 1983).

3/ Id. at 49608.

4/ Id. at 49608-09.

5/ Id. at 49609.

4.3.3.1-1, Bases Figure 3/4 3-1 (High Pressure Core Spray Operability) and Table 3.6.4-1 (RHR Jockey Pumps). The Amendment also grants one-time exceptions to Specifications 4.4.2.1.2.b, 4.4.2.2.1.b and Table 3.3.3-1 (ADS Trip System) and 4.1.3.1.4.a (Scram Discharge Volume).

In the accompanying Safety Evaluation, the NRC Staff concluded that the issuance of Amendment No. 10 does not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of an accident of a type different from any evaluated previously; or
- (3) Involve a significant reduction in a margin of safety.^{6/}

The Staff therefore concluded that issuance of Amendment No. 10 was acceptable on the basis of technical and safety considerations, and did not involve a significant hazards consideration. See 10 C.F.R. §50.92.

On November 17, 1983, a petition to intervene and request for hearing was filed by "petitioner Ken Lawrence on behalf of Jacksonians United for Livable Energy Policies ["JULEP"]".^{7/} The petition does not purport to address the

^{6/} Safety Evaluation, Amendment No. 10 to NPF-13, Grand Gulf Nuclear Station, Unit 1 at 5-6, 8, 9 (September 23, 1983).

^{7/} Petition to Intervene and Request for Hearing at 1. On December 9, 1983, Licensee's Washington, D.C. counsel first learned that the petition had been filed and that
(Footnote Continued)

Commission's requirements for intervention in 10 C.F.R. §2.714. The petition merely states that Mr. Lawrence and JULEP have "been concerned about Grand Gulf throughout its existence."^{8/} As such, expressing only an abstract concern with the Grand Gulf facility, neither JULEP nor Mr. Lawrence has demonstrated standing to intervene and request a hearing with regard to the issuance of Amendment No. 10. Further, the petition fails to identify any "aspect" of the proceeding in which petitioner wishes to intervene. Licensee therefore opposes the petition and requests that it be denied.

Argument

(Footnote Continued)

the presiding Atomic Safety and Licensing Board ("Licensing Board") had been appointed. Counsel advised Judge Grossman's office that Licensee's counsel had not been served and that Licensee would be filing a timely response. Counsel has today received the Staff's response to JULEP's petition, which concludes that the petition should be denied. See NRC Staff Response to Request by Jacksonians United for Livable Energy Policies for Adjudicatory Hearing on Amendment No. 10 (December 7, 1983) ("NRC Staff Response").

^{8/} Id. Although unclear, it appears that both JULEP and Mr. Lawrence individually, as its representative, are seeking intervenor status. As discussed below, however, neither JULEP nor Mr. Lawrence has demonstrated compliance with the Commission's requirements for intervention. An organization and its representative should not, in any event, be afforded intervenor status as separate parties. See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1438, 1440 (1982).

Under the Commission's Rules of Practice, a petition to intervene in a licensing proceeding may be granted only if the requirements of 10 C.F.R. §2.714 have been satisfied. Specifically, the NRC's regulations require under 10 C.F.R. §§2.714(a)(2) and (d) that the petitioner state his precise interest in the proceeding and explain how that interest may be affected by the outcome of the proceeding. These prerequisites are set forth below:

(a)(2) The petition shall 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, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

(d) The Commission, the presiding officer or the atomic safety and licensing board designated to rule on petitions to intervene and/or requests for hearing shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

(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.

The instant petition fails to set forth with any particularity petitioner JULEP's interests in the proceeding, or those of its members, in terms of these

requirements. Likewise, the petition simply refers to petitioner Lawrence's past opposition to the licensing of Grand Gulf and his discussion with the NRC Staff regarding the issuance of Amendment No. 10.^{9/} The petition then goes on to take issue with the Staff's legal determination under 10 C.F.R. §50.92 as to whether the issuance of the requested changes in the Technical Specifications for Grand Gulf involves any significant hazards consideration. Such general statements of concern do not establish the requisite identifiable interest in the proceeding or articulate how that interest would be affected by any particular outcome in the proceeding.

The decisions of the Commission and its adjudicatory boards clearly require that the requisite "personal interest" of a petitioner for intervention be specified.^{10/} In general terms, the Commission has adopted the test for standing utilized by the United States Supreme Court in requiring a demonstration of "injury in fact" as a basis for

^{9/} The Staff's Safety Evaluation notes at pages 3-4 that the views of Mr. Lawrence were considered by the Staff in preparing their report. See also NRC Staff Response at 3 n.3.

^{10/} As noted, the Commission's Rules of Practice require that a petition explicitly address the criteria specified under 10 C.F.R. §2.714(a)(2). A petition which fails to do so, like the instant petition, is deficient on its face. Florida Power and Light Company (Turkey Point Plant, Units 3 and 4), CLI-81-31, 14 NRC 959 (1981); Consumers Power Company (Big Rock Point Plant), CLI-81-32, 14 NRC 962 (1981).

establishing the requisite personal interest. Thus, the Commission has held that an assertion of "injury in fact" to the petitioner himself, and not a generalized grievance shared by a large class of public, is necessary for standing. See, e.g., Westinghouse Electric Corporation (Export of LEU to the Philippines), CLI-81-18, 14 NRC 301, 302-03 (1981); Westinghouse Electric Corporation (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980); Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980); In Re Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC 525, 530-31 (1977); Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976).

Adopting these principles, the Appeal Board has construed Section 2.714 to limit intervention to those who have particularized a specific injury and have not merely sought to vindicate what they regard as the general public interest. Thus, the Appeal Board stated in Sheffield that, to permit intervention, "it must appear from the petition both (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding; and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the 'zone of interests' protected or regulated by the statute or

statutes which are being enforced."^{11/} Accordingly, regardless of his intention to represent petitioner JULEP, Mr. Lawrence has failed to establish his individual standing. He has failed to assert any "injury in fact" that might result from the issuance of Amendment No. 10 and has also failed to assert any interest within the "zone of interests" protected or regulated under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011, et seq.

As regards JULEP, it is well settled that "organizations . . . are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which [an organization] may possess is wholly derivative in character." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).^{12/} In other words, an organizational

^{11/} Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740 (1978). See also Puget Sound Power and Light Company (Skagit/Hanford Nuclear Power Project, Units 1 and 2), ALAB-700, 16 NRC 1329, 1333 (1982); Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976). The same principles of standing govern intervention in amendment proceedings. See Consumers Power Company (Palisades Nuclear Power Facility), ALAB-670, 15 NRC 493, 495 n.3 (1982).

^{12/} See also Commonwealth Edison Company (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 16 NRC 183, 185 (1982); Limerick, *supra*, at 1437; Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 205 (1982); Texas Utilities Generating Company (Comanche Peak Steam Electric
(Footnote Continued)

petitioner must establish that at least one of its members has legal standing to intervene in the proceeding under the rules applicable to individual petitioners. As to JULEP, therefore, the petition is necessarily deficient because Mr. Lawrence himself lacks standing.^{13/}

Additionally, petitioner has failed to designate "the specific aspect or aspects of the subject matter of the proceeding" for which petitioner seeks intervention. The petition is simply a generalized statement of petitioner's safety concerns. As the Licensing Board stated in the Midland proceeding, the requirements for properly designating such "aspects" are unclear but likely "narrower than a general reference to our operating statutes."^{14/} Further, as the Licensing Board stated in the Three Mile Island proceeding, any subject matter alleged as an aspect must be "within the scope of the proceeding as set forth in the notice of hearing."^{15/} None of the matters discussed in the

(Footnote Continued)

Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1978); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979).

^{13/} Moreover, the individual purporting to represent an organizational petitioner must show authority to do so. E.g., Enrico Fermi, *supra*, LBP-79-1, 9 NRC at 77. Mr. Lawrence has failed to demonstrate such authorization by JULEP.

^{14/} Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

^{15/} Metropolitan Edison Company (Three Mile Island Nuclear
(Footnote Continued)

petition constitutes a litigable "aspect" of Amendment No. 10.^{16/}

Conclusion

For the reasons discussed more fully above, petitioners JULEP and Lawrence have failed to satisfy the Commission's requirements for standing. Petitioners have also failed to identify those "aspects" of the proceeding they wish to pursue. Accordingly, the petition should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

Troy B. Conner, Jr. / RMR

Troy B. Conner, Jr.
Robert M. Rader
Counsel for the Applicant

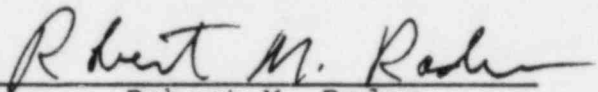
December 14, 1983

(Footnote Continued)

Station, Unit 1), Docket No. 50-289 (Restart), "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference" (September 21, 1979) (slip op. at 6).

- ^{16/} For example, at page 2 the petition alleges tornado damage, fire damage, and violations of security procedures. Also, no litigable issue is created by the Staff's finding under 10 C.F.R. §50.92 that no significant hazards consideration exists. That finding simply determined that public notice and an opportunity for a hearing could be given after the amendment had been granted and is irrelevant to the validity of the amendment itself.

Ken Lawrence
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Robert M. Rader

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NUCLEAR REGULATORY COMMISSION

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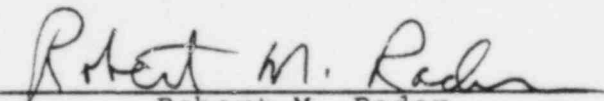
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Applicant in the captioned matter. In accordance with §2.713, 10 C.F.R. Part 2, the following information is provided:

Name	-	Robert M. Rader
Address	-	Conner & Wetterhahn, P.C. Suite 1050 1747 Pennsylvania Avenue, N.W. Washington, D.C. 20006
Telephone Number	-	202/833-3500
Admission	-	Supreme Court of the United States United States Court of Appeals District of Columbia Circuit
Name of Party	-	Mississippi Power & Light Company

Notice is further given pursuant to §2.708, 10 C.F.R. Part 2, that service upon the Applicant should be made upon the undersigned.


Robert M. Rader

Dated at Washington, D.C.,
this 14th day of December, 1983.