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Dated: July 12, 1985

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of BOSTON EDISON COMPANY (Pilgrim Nuclear Power Station, Unit 1)	Docket No. 50-293 License Amendment - 0.95 K-eff

OLA

LICENSEE'S ANSWER TO JOHN F. DOHERTY'S REQUEST FOR A HEARING AND PETITION FOR LEAVE TO INTERVENE

On May 21, 1985 the Commission published in the Federal Register a notice of an opportunity for hearing with respect to an amendment to the Operating License of Pilgrim Nuclear Power Station, Unit 1 (Pilgrim) held by Boston Edison Company (Edison or Licensee). 50 Fed. Reg. 20971. The amendment would, in the words of the notice:

> "change the Technical Specifications by raising the K-effective limit of the fuel storage pool from 0.90 to 0.95 for normal conditions. The K-effective of the pool is presently limited to 0.95 for abnormal conditions and this would not be changed. The K-effective limit of 0.95 would then apply to both normal and abnormal conditions in conformance with NRC's current practice."

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(Also proposed is a Tech. Spec. change regarding the maximum K-inf value, but that is not included within the scope of the Doherty petition. See Petition at 4.)

The notice provided for the filing of requests for hearing or petitions for leave to intervene by June 21, 1985. Eight days after that date, Mr. John F. Doherty ("Petitioner") filed a "Request for Hearing and Petition for Leave to Intervene" ("Petition"). The Petition alleges three "interests" as bases for standing to intervene. First, it alleges that the Petitioner resides 43 miles from Pilgrim. Second, it alleges that the Petitioner "consumes food products grown in the Pilgrim Plant's viscinity" [sic] referring to "cranberry" and "consumes fish caught in Massachusetts Bay, in which Applicants' nuclear reactor routinely releases radioactive or non radioactive effluents." Third, the Petitioner is alleged to be a "rate payer" of Edison. Petition at 1-2.

Both because the Petition is untimely and barren of any assertion (much less demonstration) of good cause for late filing and because the Petitioner lacks the requisite interest, Edison says that the Petition should be denied.

Timeliness

The notice required the petition to be filed by June 21, 1985, allowing a full 30 days. It goes on to provide, in conformance with the governing regulation (10 C.F.R.

§ 2.714) that:

> "Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. . . ."

50 Fed. Reg. at 20970.

The present petition was not filed by June 21, 1985; it was, rather, by admission of the Petitioner not even deposited in the mail until June 29, 1985. Petition at 1, 5. It is therefore manifestly untimely.

The Petitioner has not made a substantial showing of good cause for entertaining a late petition; indeed, the Petitioner does not even attempt to make any showing at all. Therefore the Petition "will not be entertained" and, particularly where, as here, the Petitioner bears an even heavier burden of demonstrating timeliness because there is no requirement of a hearing in an amendment case (see Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1180-81 (1983); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977)), the Petition should be denied as untimely.

Standing

Even assuming the Petition were timely, or that good cause had been demonstrated, the Petition should

nevertheless be denied because the Petitioner has not demonstrated the requisite personal interest in this amendment.

To satisfy the standing requirements for intervention in an NRC adjudicatory proceeding one must allege an injury in fact to himself that has occurred, or will probably result, assuming the contemplated licensing action goes forward and an interest that is within the zone of interests protected by the Atomic Energy Act. E.g., Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 613-14 (1976); Puget Sound Power & Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 & 2), ALAB-700, 16 NRC 1329 (1982). We stress that, in the case of an amendment to an operating license, the injury must relate to the amendment itself, not to the aggregate of licensed (including previously licensed) plant activities. The amendment in this case, moreover, is technical at best, refers only to activities that may be taken under "normal" conditions, and merely brings the Pilgrim facility's Tech. Spec.'s into conformity with the industry standard that has been generally approved for all facilities. See 50 Fed. Reg. 20971; NUREG-0800 ("Standard Review Plan") at 9.1.2-4; ANS-57.2, ANSI N210-1976 ("Design Objectives for Light Water Reactor Spent Fuel Storage Facilities at Nuclear Power Stations"). Because the probability of any injury in fact to anyone from so minor an amendment is remote, a pleading

attempting standing on this basis requires particular specificity.

We discuss in reverse order the interests alleged by the Petitioner.

1. Rate Payer of Edison

It is settled that, except possibly in an antitrust NRC proceeding, being a ratepayer of the applicant/licensee utility does not confer standing to intervene in NRC adjudicatory proceedings. E.g., Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 614 (1976); Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-397, 5 NRC 1143, 1147, reconsid. denied, ALAB-402, 5 NRC 1182 (1977); TVA (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-21 (1977), affirmed LBP-77-36, 5 NRC 1292, 1294 (1977).

2. Consumption of Fish and Cranberries

We are aware of no decision that confers standing on the basis of an allegation that the petitioner consumes fish taken from the body of water wherein the facility at issue discharges liquid effluent. This is not surprising. Fish from Massachusetts Bay are shipped throughout the country, indeed, perhaps the world. In addition, fish swim the ocean. A fish containing radionuclides ingested in Massachusetts Bay may well be off the coast of North Carolina a month or two later; does this give the North Carolinian who eats fish standing to intervene with respect

to Pilgrim? To permit the fact that one ingests fish from a body of water into which an ocean site power plant discharges is to grant universal standing in every NRC licensing proceeding.

The proposition is no different with respect to cranberries. The cranberry production for Plymouth County is marketed nationally under a national brand name.

Furthermore, the amendment contemplated does not for the first time permit effluent releases either to Massachusetts Bay or via the offgas stack from Pilgrim. The Petitioner's putative standing may not be defended on the basis of liquid or gaseous effluents per se, but only to any incremental effluent that would be attributable to the proposed amendment. Given the nature of the proposed amendment it is difficult to hypothesize such a connection, and the Petition does not demonstrate one. Thus no "injury in fact" has been shown with respect to this aspect of the Petitioner's alleged interest.

3. Residence 43 Miles from Pilgrim

"Close proximity" simpliciter has been held sufficient to establish the requisite interest. E.g., ALAB-522, supra at 56. The question is: what is "close proximity?" Clearly Appeal Boards have stated that 30-40 miles is sufficient. E.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 190, reconsid. denied, ALAB-110, 6 AEC 247, affirmed, CLI-73-12,

6 AEC 241 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AE C 371, 372, n.6 (1973). An Appeal Board has held that fifty miles is "not so great [a distance] as necessarily to have precluded a finding of standing based upon residence." TVA (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 at n. 4 (1977). But ALAB-413 does not say that residence within 50 miles alone is sufficient. At 43 miles, the Petitioner resides at the "outer edge" of "proximity-standing" in every sense of the word. "The further a person lives from a plant the weaker the claim to adjudicatory standing and the more similar that person's objections to the interests of all citizens. Those general interests need not be protected in litigation. They can be pursued in rulemaking proceedings before administrative agencies and in lobbying before Congress." Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 179 (1981).

The petition reveals on its face that the Petitioner is raising no objection that is not identical (never mind similar) to that of all residents 43 miles or less from Pilgrim.

When assessing the relationship of proximity and interest, moreover, it is important that it is not a construction permit or operating license that is sought by the pending application. A construction permit or operating

license application implicates the full panoply of potential impacts from the facility. Per contra, the application in this matter seeks only an amendment that would authorize a K-eff in the spent fuel pool of up to 0.95 during normal conditions; no change is proposed to the Tech. Spec. insofar as they authorize a K-eff of between 0.90 and 0.95 under "abnormal" conditions. It is difficult to imagine a proposed amendment with less potential for any offsite effect much less particular effects at a remote distance. The Licensee submits that in such circumstances a greater showing of interest must be made than would be the case if this were an operating license or construction permit proceeding, and no such particularized showing has been made here. Such a view has drawn at least the "interest" of one Licensing Board. TVA (Browns Ferry Nuclear Plant, Units 1, 2 & 3), LBP-81-40, 14 NRC 828, 831 (1981), reversed on other grounds, ALAB-664, 15 NRC 1, Appeal Board decision vacated and declared to have no precedential weight, CLI-82-28, 16 NRC 880 (1982).

Finally the Petitioner has yet to state "one good contention." as required by the regulations. 10 CFR § 2.714(b). Thus, even assuming that he has deemed to have established standing, intervention should be withheld pending his compliance with the "one good contention" rule.

CONCLUSION

For all of the foregoing reasons, the Petition should be denied.

By its attorneys,

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CERTIFICATE OF SERVICE

I, R. K. Gad III, hereby certify that on July 12, 1985 I made service of the within Answer by mailing copies thereof postage prepaid to

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