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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before Administrative Judges:

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Peter B. Bloch, Chairman  
Mr. Gustave A. Linenberger, Jr.  
Dr. Jerry Harbour

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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SERVED JUL 22 1985

In the Matter of  
BOSTON EDISON COMPANY  
(Pilgrim Nuclear Power Station)

Docket No. 50-293-OLA

ASLBP No. 85-510-01 LA

July 19, 1985

MEMORANDUM AND ORDER

MEMORANDUM  
(Petition to Intervene)

On June 21, 1985, Mr. John F. Doherty ("Petitioner") filed a "Request for Hearing and Petition for Leave to Intervene" ("Petition"). However, the Petition was filed eight days after the last date for filing provided for in the notice that was published in the Federal Register.<sup>1</sup> Petitioner should have been aware of the need for timely filings because that need was explained in the Federal Register notice.<sup>2</sup>

<sup>1</sup> 50 Fed. Reg. 20971 (May 21, 1985). The 30 day notice period is binding pursuant to 10 CFR § 2.714.

<sup>2</sup> 50 Fed. Reg. at 20970.

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The procedural regulations require that we dismiss the petition because Mr. Doherty has not shown good cause for his late filing.<sup>3</sup> So we shall dismiss the petition.

Additionally, we note with approval the discussion of standing contained in "Licensee's Answer to John F. Doherty's Request for a Hearing and Petition For Leave to Intervene," July 12, 1985.<sup>4</sup> Petitioner has not stated a valid ground for intervention.

There is clear precedent that status as a ratepayer of the utility that owns a nuclear plant does not confer standing to intervene.<sup>5</sup> There is no precedent supporting standing based on the consumption of fish or cranberries (or other edibles), and such a claim is too sweeping as a basis for standing because it could be made by a vast army of consumers that might buy these products anywhere around the world.<sup>6</sup>

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<sup>3</sup> Non-timely filings may be entertained only upon a balancing of factors set forth in 10 CFR §2.714(a)(1).

<sup>4</sup> The NRC Staff Response to John F. Doherty's Petition for Leave to Intervene, July 19, 1985, did not address Applicants' argument concerning the relationship between the specific amendment being requested and the distance required for standing. See Staff Response at 11-13.

<sup>5</sup> E.g. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 614 (1976).

<sup>6</sup> Standing requires a showing of injury from the challenged action and that the injury is within the zone of interests protected by the statutes governing the proceeding. See, e.g., Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-615.

Furthermore, the fish-and-cranberry ground for standing shares a deficiency we also find in the claim for standing based on residence 43 miles from Pilgrim. Boston Edison Company is not applying for a construction license or an operating license for the Pilgrim Nuclear Power Station. If it were doing so, residence 43 miles from the plant might provide grounds for standing because there are scenarios under which effects might be felt at that distance from the plant.<sup>7</sup> However, Pilgrim already is licensed to operate. The license includes permission to operate the fuel pool. Under abnormal conditions, Boston Edison Company is already permitted to operate its fuel pool with a K-effective of 0.95. Hence, the only increased risk of which Petitioner complains is that the maximum permissible K-effective of the pool would be changed from 0.90 to 0.95 under normal operating conditions.<sup>8</sup>

This case concerns a request for a license amendment and it is not controlled by the same standing considerations that govern standing when an operating license is sought. Whatever the risk to the surrounding community from a reactor and its associated fuel pool, the risk from the

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<sup>7</sup> See TVA (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 at n. 4 (1977) (standing based on the distance of a residence could be granted for a residence 50 miles from a plant) and Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 179 (1981) (the strength of a claim for standing based on the location of a residence diminishes with the distance of the residence from the plant).

<sup>8</sup> Petition at 2.

fuel pool alone is less and the distance of residence from the pool for which standing would be appropriate would, accordingly, be less. Consequently, we do not consider residence 43 miles from this plant to be adequate for standing. We need not decide how close residence might be before standing would be established.

In making this ruling, we note that we know of no scenario under which radiation attributable to the fuel pool would affect a residence 43 miles distant from the fuel pool; and petitioner has not informed us of any such scenario. Even were there a risk of an accident that would disperse the contents of the fuel pool to such a great distance, we know of no way that permitting an increase of k-effective during normal operations of the plant (to an upper limit already approved for abnormal operation) would increase the risk to Petitioner from such an incident. Nor has Petitioner suggested any such scenario to us in support of his questionable claim to have standing.

Consequently, we conclude that the Petition must be denied both for lateness and for lack of standing.

#### O R D E R

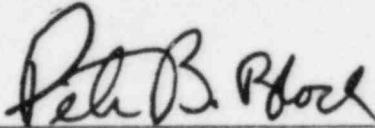
For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 19th day of July 1985

#### ORDERED:

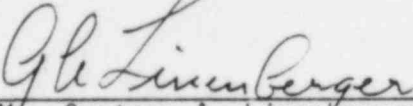
That the Request for Hearing and Petition for Leave to Intervene, filed by John F. Doherty on June 21, 1985, is dismissed.

Pursuant to 10 CFR § 2.760 of the Commission's Rules of Practice, this decision will constitute the final decision of the Commission thirty (30) days from the date of its issuance, unless an appeal is taken in accordance with 10 CFR § 2.762 or the Commission directs otherwise. See also 10 CFR §§ 2.785 and 2.786.

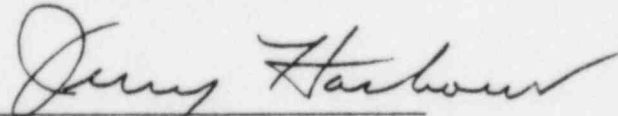
FOR THE  
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE



Mr. Gustave A. Linenberger, Jr.  
ADMINISTRATIVE JUDGE



Dr. Jerry Harbour  
ADMINISTRATIVE JUDGE

Bethesda, Maryland