

10/27/78

G

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
HOUSTON LIGHTING & POWER COMPANY)
(Allens Creek Nuclear Generating)
Station, Unit 1))

Docket No. 50-466

ANSWER OF THE NRC STAFF IN OPPOSITION TO
INTERVENTION PETITION OF DAVID MARKE

The NRC Staff opposes the petition for leave to intervene filed by David Marke on October 10, 1978.

I. STANDING AS A MATTER OF RIGHT

Mr. Marke alleges that he represents an organization known as the Austin Citizens for Economical Energy (ACEE), "an independent body of citizens both of Austin and the surrounding geographic and demographic areas." The petition fails, however, to show that either Mr. Marke or the organization has standing to intervene in this proceeding.

The Commission's Rules of Practice, 10 CFR §2.714(b), require that petitioners state their interest in the proceeding and how that interest may be affected by the results of the proceeding. Intervention as a matter of right in Commission proceedings is governed by judicial

concepts of standing which require that the petitioner demonstrate a personal interest in the outcome of the proceeding and that the interest is at least arguably within the "zone of interests" protected by the statute invoked. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614. An organization has standing to intervene if it can show that the organization or its members have such an interest. Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976).

Where standing is based on the interests of members, the organization must identify individual members, describe specifically how their interests will be affected by the proposed action, and show that the members have authorized the organization to act on their behalf. ALAB-328, supra, 3 NRC at 420; Public Service Electric & Gas Company (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487, 488-89 (1973); Duquesne Light Company et al. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 at n. 2 (1973). In addition, one claiming to represent an organization must make clear that he has been authorized by that organization to represent it, since a petitioner in an NRC proceeding normally may assert only his interests, not those of third parties. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2) ALAB-413, 5 NRC 1418, 1421 (1977); Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station) LBP-75-60, 2 NRC 687, 690 (1975).

These requirements are all designed to assure that parties to Commission proceedings have real interests at stake. The petition does not meet these requirements. It does not specify who the members of ACEE are or how they would be affected by the Allens Creek facility. Further, the petition does not show that Mr. Marke is authorized to represent the organization.

Mr. Marke also fails to show that he personally has standing to intervene in this case. His allegation of danger to his person and property due to a transportation accident is remote and speculative. See Exxon Nuclear Company Inc. (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519-20 (1977).^{1/}

The petitioner also fails to specify how a facility approximately 200 miles away from his home and business concerns will affect his health and safety, "the food chain from which the petitioner must derive his sustenance," or the "water supply upon which the petitioner is dependant." Petition at page 3. Nor does he specify how he would be economically harmed by the plant. In any event, as Mr. Marke acknowledges, economic

^{1/} In that case, a petitioner who lived over a hundred miles from the proposed reprocessing facility had alleged that "it is likely that spent fuel rods will be shipped from the south over the rails of the Land N railroad which are very near to her home and rental property, and that, if an accident occurred in that vicinity, it could cause her bodily harm, loss of life or loss of income." Id. at 519. The Board denied the petition on the basis that the allegations were "entirely speculative in nature, being predicated on the tenuous assumptions that the spent fuel will be shipped by the named carrier and that an accident might occur in the area proximate either to her residence or to her rental property." Id. at 520.

interests alone are generally not sufficient to confer standing in Commission proceedings.^{2/} See, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612 and 617 (1976); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977). See also, Chairman Rosenthal's opinion in Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-212, 2 NRC 631, 640 (1975).

In sum, neither Mr. Marke nor the organization he claims to represent have demonstrated standing to intervene in this proceeding as a matter of right.

II. DISCRETIONARY INTERVENTION

Mr. Marke has also failed to demonstrate that either he or ACEE should be admitted as a party to this proceeding as a matter of discretion. In determining whether to permit intervention on that basis, the most important factor to be considered is whether the petitioner can be expected to make a valuable

^{2/} Mr. Marke makes the curious argument that standing can be based on "economics" in this case because the applicant changed its application for economic reasons. Petition at page 4. This argument is clearly without merit; standing to participate is unrelated to factors which might motivate an applicant to change its application.

contribution to the decisionmaking process. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612 and 617 (1976); Virginia Electric Power Co. (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631 (1976); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977).

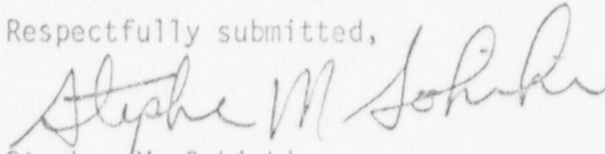
It is not enough to allege, as Mr. Marke does, that he has some expertise in the nuclear and energy area. Rather, he must demonstrate that through his expertise he will be able to make a valuable contribution to this proceeding. Specifically, he must identify with particularity the issues on which he is prepared to contribute and the contribution he expects to make. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978). Mr. Marke has failed to meet these prerequisites and therefore his request for leave to intervene as a matter of discretion should be denied.

III. CONCLUSION

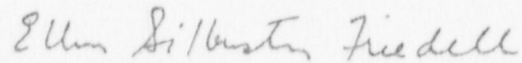
For all of the above reasons, the NRC Staff opposes Mr. Marke's petition in its present form. In addition, we note that he has not yet stated

his contentions. ^{3/}

Respectfully submitted,



Stephen M. Sohinki
Counsel for NRC Staff



Ellen Silberstein Friedell
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of October, 1978

^{3/} Under 10 CFR §2.714, however, Mr. Marke may amend his petition until 15 days prior to the special prehearing conference.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
HOUSTON LIGHTING & POWER COMPANY)	Docket No. 50-466
)	
(Allens Creek Nuclear Generating)	
Station, Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER OF THE NRC STAFF IN OPPOSITION TO INTERVENTION PETITION OF DAVID MARKE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of October, 1978:

Sheldon J. Wolfe, Esq., Chairman *
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. E. Leonard Cheatum
Route 3, Box 350A
Watkinsville, Georgia 30677

Mr. Glenn O. Bright*
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

R. Gordon Gooch, Esq.
Baker & Botts
1701 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

J. Gregory Copeland, Esq.
Baker & Botts
One Shell Plaza
Houston, Texas 77002

Robert Lowenstein, Esq.
Lowenstein, Reis, Newman & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D. C. 20037

Richard Lowerre, Esq.
Asst. Attorney General for the
State of Texas
P. O. Box 12548
Capitol Station
Austin, Texas 78711

Hon. Jerry Sliva, Mayor
City of Wallis, Texas 77485

Hon. John R. Mikeska
Austin County Judge
P. O. Box 310
Bellville, Texas 77418

Atomic Safety and Licensing
Appeal Board*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Wayne Rentfro
P.O. Box 1335
Rosenberg, Texas 77471

Mr. John F. Doherty
Armadillo Coalition of Texas,
Houston Chapter
4438 1/2 Leeland Avenue
Houston, Texas 77023

T. Paul Robbins
600 W. 28th #102
Austin, Texas 78705

Mr. D. Michael McCaughan
Member
The Environmental Task Force
3131 Timmons Ln. Apt. 254
Houston, Texas 77027

Mr. John R. Shreffler
5014 Braeburn
Bellaire, Texas 77401

Ms. Shirley Caldwell
14501 Lillja
Houston, Texas 77060

Mr. Robert S. Framson
4822 Waynesboro Drive
Houston, Texas 77035

Carro Hinderstein
8739 Link Terrace
Houston, Texas 77025

Ms. Ann Wharton
1424 Kipling
Houston, Texas 77006

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

James Scott, Jr., Esq.
Texas Public Interest
Research Group, Inc.
Box 237 UC
University of Houston
Houston, Texas 77004

Mr. Emanuel Baskir
5711 Warm Springs Road
Houston, Texas 77035

Mrs. R. M. Bevis
7706 Brykerwoods
Houston, Texas 77055

Mr. F. H. Potthoff, III
1814 Pine Village
Houston, Texas 77080

Brenda A. McCorkle
6140 Darnell
Houston, Texas 77074

Steven Gilbert, Esq.
Van Slyke & Gilbert
Attorneys at Law
500 Morton Street
Richmond, Texas 77469

Mr. Jean-Claude De Bremaecker
2128 Addison
Houston, Texas 77030

Mr. Brent Miller
4811 Tamarisk Lane
Bellaire, Texas 77401

Mr. Allen D. Clark
5602 Rutherglenn
Houston, Texas 77096

D. Marrack
420 Mulberry Lane
Bellaire, Texas 77401

Dr. Joe C. Yelderman
Box 303
Needville, Texas 77461

Ms. Kathryn Hooker
1424 Kipling
Houston, Texas 77006

Ms. Patricia L. Day
2432 Nottingham
Houston, Texas 77005

Mr. David Marke
3940 Warehouse Row
Suite C
Austin, Texas 78704

Ms. Madeline Bass Framson
4822 Waynesboro Drive
Houston, Texas 77035

Charles L. Michulka
Attorney at Law
P.O. Box 882
Stafford, TX 77477

Gregory Kainer
11118 Wickwood
Houston, TX 77024

Ms. Lois H. Anderson
Mr. John V. Anderson
3626 Broadmead
Houston, Texas 77025

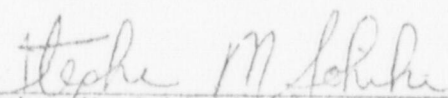
Mr. Lee Loe
1844 Kipling
Houston, Texas 77098

Mr. John Renaud, Jr.
4110 Yoakum Street
Apt. 15
Houston, Texas 77006

Mr. George Broze
1823-A Marshall Street
Houston, Texas

National Lawyers Guild
Houston Chapter
4803 Montrose Blvd.
Suite 11
Houston, TX 77006

Edgar Crane
13507 Kingsride
Houston, TX 77079


Stephen M. Sohinki
Counsel for NRC Staff