UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 06/28/07

COMMISSIONERS

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In the Matter of	)	
CONSUMERS ENERGY COMPANY, NUCLEAR MANAGEMENT COMPANY, LLC, ENTERGY NUCLEAR PALISADES, LLC, AND ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-255-LT
(Palisades Nuclear Power Plant)	)	

CLI-07-22

MEMORANDUM AND ORDER

On May 7, 2007, Michigan Environmental Council and the Public Interest Research Group in Michigan ("Petitioners") filed a Petition for Reconsideration of CLI-07-18, a decision denying their joint petition to intervene in this license transfer proceeding. We based the denial in CLI-07-18 on our findings that Petitioners lacked both representational and organizational standing.

Regarding representational standing, we concluded that Petitioners had submitted no evidence that any of their members had requested representation by either organization. We also concluded that their general references to members' proximity to the Palisades facility were too imprecise to meet our requirements for proximity-based standing.[1]

Regarding organizational standing, we ruled that Petitioners inappropriately sought to

[1] CLI-07-18, 65 NRC at ___-___, slip op. at 8-10 (April 26, 2007).

play the role of "private attorney general" -- a role not contemplated under Section 189a of the Atomic Energy Act -- which grants a hearing right to only those petitioners with an "interest" in the proceeding.[2] We also concluded that neither Petitioner had shown any risk of "discrete institutional injury *to itself*, other than the general environmental and policy interests of the sort we repeatedly have found insufficient for organizational standing."[3]

At the outset, we note that the Petition for Reconsideration exceeds the ten-page limit specified in our regulations.[4] But rather than forcing Petitioners to re-file their petition, or denying it, we reject the petition on its merits. The reconsideration petition does not satisfy our rigorous regulatory standard that "[a] petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid."[5] Petitioners seeking reconsideration of a Commission order must demonstrate that the Commission has committed "clear" error, must do so by raising new arguments, and must not previously have been able to make those arguments.[6]

A. Representational Standing

In an effort to establish representational standing based on the proximity of their members to the Palisades facility, Petitioners have attached to their Petition for Reconsideration two affidavits from their top administrators asserting that some of their members live "within the

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[2] 42 U.S.C. § 2239(a).

[3] *Id.*, 65 NRC at ___-___, slip op. at 10-12.

[4] 10 C.F.R. § 2.323(e), incorporated by reference into 10 C.F.R. § 2.341(d), incorporated by reference into 10 C.F.R. § 2.345(a)(2). The last of these regulations governs petitions for reconsideration of final orders such as CLI-07-18.

[5] 10 C.F.R. § 2.345(b). *See also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006).

[6] *Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-__, 65 NRC __ (June _, 2007).

service territories of Consumers Energy,"[7] or "in close proximity" to the Palisades facility,[8] or "within the same zip code as the location of the Palisades nuclear plant facilities."[9] These general assertions of proximity are, in several respects, insufficient to establish proximity-based standing.

In making these assertions, Petitioners do not allege any error in CLI-07-18 that "could not have been reasonably anticipated" (as required under 10 C.F.R. § 2.345(b)). Nor do they claim that CLI-07-18 is "invalid" (also required under that same section), given the record on which it was based. Instead, they seek to supplement the record to correct the deficiencies of their Petition to Intervene. This eleventh-hour attempt is improper because it violates "our prohibition against raising new arguments in a motion for reconsideration."[10] It is not acceptable in NRC practice for a petitioner to claim standing based on vague assertions, and when that fails, to attempt to repair the defective pleading with fresh details offered for the first time in a petition for reconsideration.

Also, Petitioners' latest assertions here are not supported by affidavits or other forms of authorization by the members who purportedly live close to Palisades, empowering either Petitioner to represent their interests. We have explained this "authorization" requirement in our case law -- most recently in CLI-07-18 itself.[11] This longstanding requirement precludes Petitioners from persuasively claiming either that they "could not have . . . reasonably

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[7] Affidavit of Dr. Michael P. Shriberg at 3 (May 7, 2007) (regarding Public Interest Research Group in Michigan), attached as Exhibit C to Petition for Reconsideration.

[8] Affidavit of Linda Pollack at 3 (May 7, 2007) (regarding Michigan Environmental Council), attached as Exhibit B to Petition for Reconsideration.

[9] Shriberg Affidavit at 3. *See also* Pollack Affidavit at 3.

[10] *Diablo Canyon*, CLI-06-27, 64 NRC at 402.

[11] CLI-07-18, 65 NRC at __, slip op. at 8-9, and cited authority.

anticipated"[12] the need to submit evidence of authorization, or that CLI-07-18 erred in citing this omission as a reason why Petitioners had not shown proximity-based standing.

Further, Petitioners' new assertions of proximity are still too general, and Petitioners ignore CLI-07-18's discussion about the need to *specify* the distance between a licensed facility and a petitioner's (or its member's) home, work or activities. In CLI-07-18, we *expressly* indicated that the first two proffered justifications for proximity-based standing described above (concerning "service territory" and "in close proximity") were too vague to pass muster. Specifically, we rejected as insufficient Petitioners' assertion that some of their members "liv[ed] within Consumers' service territory"[13] and their claim that members "live work, or engage in recreation adjacent and near the . . . facilities."[14] And regarding the latter, we also cited two NRC decisions rejecting proximity-based standing arguments based on claims of domiciles "close" to transportation routes for nuclear materials, and activities in "close proximity" to a regulated facility.[15] So again, our precedent on this issue and our discussion in CLI-07-18 preclude Petitioners from meeting the reconsideration standard that their argument address an error in CLI-07-18 that "could not have been reasonably anticipated."[16]

Likewise, we reject Petitioners' third "standing" claim based on their members' domiciles lying within the same zip code as the Palisades facility. This is far too imprecise a basis on which to grant proximity-based standing. We would be unwise to establish a "same zip code" test for standing, given that the sizes of zip-code areas vary greatly throughout the country.

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[12] 10 C.F.R. § 2.345(b).

[13] *Id.*, 65 NRC at __, slip op. at 10.

[14] *Id.*, 65 NRC at __, slip op. at 10.

[15] *Id.*, 65 NRC at __, slip op. at 10 n.27.

[16] 10 C.F.R. § 2.345(b).

B. Organizational Standing

We indicated in CLI-07-18 that a petitioner's claim of standing (including organizational standing) must include a demonstration of actual or threatened injury.[17] Petitioners have still not made this demonstration.

Petitioners claim injury stemming from Consumers Energy's alleged failure to contribute to the federal government's Nuclear Waste Fund, the Palisades decommissioning fund and the Big Rock Point decommissioning fund several hundred million dollars that Consumers Energy had collected from Michigan ratepayers. They also assert that they are injured by the fact that those "funds were unsecured on [Consumers Energy's] books."[18]

We see three problems with these claims of injury. Initially, as we explained in CLI-07-18, issues involving the Big Rock Point ISFSI license transfer fall outside the scope of this proceeding.[19] The Big Rock Point ISFSI proceeding was the subject of a separate notice in the *Federal Register*[20] and has been addressed in a separate, now-closed adjudication.[21]

Further, Petitioners' claims of injury stem from the purported financial transgressions of the *current* owner, Consumers Energy. Yet, the relevant fiscal issues in a license transfer case concern the financial qualifications and assurances of the *future* owner, Entergy. Consequently, this license transfer proceeding is simply the wrong forum in which to proffer Petitioners' arguments. To the extent they believe Consumers Energy has violated any of our

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[17] CLI-07-18, 65 NRC at __, slip op. at 7.

[18] Petition for Reconsideration at 7-9.

[19] 65 NRC at ___, slip op. at 6-7.

[20] 72 Fed. Reg. 4302 (Jan. 30, 2007).

[21] *See Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-19, 65 NRC ___ (April 26, 2007), *reconsid'n denied*, CLI-07-__, 65 NRC __ (June 28, 2007). Petitioners in the present proceeding did not file a Petition to Intervene in the *Big Rock Point ISFSI* adjudication.

financial-qualification or financial-assurance regulations, they may file an enforcement petition under 10 C.F.R. § 2.206.

Finally, Petitioners have given us no reason to question our prior ruling that they:

> seek to play the role of a "private attorney general" -- a role that AEA Section 189 -- which grants a hearing right to those with an "interest" in the proceeding -- does not contemplate. Neither . . . [p]etitioner has shown any risk of "discrete institutional injury *to itself*, other than the general environmental and policy interests of the sort we repeatedly have found insufficient for organizational standing."[22]

In sum, we see no reason to change our ruling in CLI-07-18 that Petitioners have failed to demonstrate either representational or organizational standing to intervene in this proceeding. We therefore *deny* their Petition for Reconsideration.

Separately, on May 22, 2007, we received Van Buren County's and Covert Township's Notice of Withdrawal. Their withdrawal, when combined with today's denial of the Petition for Reconsideration, removes the last actual or potential intervenors from this adjudication. Given this development, we *dismiss* this adjudicatory proceeding.

IT IS SO ORDERED.

For the Commission

/RA/

_____
Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of June, 2007.

[22] CLI-07-18, 65 NRC at __, slip op. at 11-12 (footnotes omitted; emphasis in original).