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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ADJUDICATED

In the Matter of)	Docket No.	50-400-LA
)		
CAROLINA POWER & LIGHT)		
)		
(Shearon Harris Nuclear Power Plant)		

NRC STAFF'S ANSWER TO ORANGE COUNTY'S
REQUEST FOR HEARING AND PETITION TO INTERVENE

INTRODUCTION

Pursuant to a "Memorandum and Order (Initial Prehearing Order)," issued on February 24, 1999, by the Atomic Safety and Licensing Board (Board) designated in the above-captioned proceeding and 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to a request for a hearing and petition for leave to intervene filed by the Board of Commissioners of Orange County, North Carolina (Petitioner). "Orange County's Request for Hearing and Petition to Intervene," February 12, 1999 (Petition). As set forth below, the Petitioner has established standing to intervene in this proceeding and has identified at least one appropriate aspect. The Petitioner, however, must still submit at least one admissible contention. See 10 C.F.R. § 2.714(b).

BACKGROUND

On December 23, 1998, Carolina Power & Light Company (Licensee) requested a license amendment pursuant to 10 C.F.R. § 50.90 for the Shearon Harris Nuclear Power Plant (Harris). Letter to United States Nuclear Regulatory Commission from James Scarola,

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Vice President, Harris Nuclear Plant, Carolina Power & Light Co., December 23, 1998. On January 13, 1999, the NRC published *Carolina Power & Light; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing* (Notice). 64 Fed. Reg. 2237 (1999). The Notice provided that the proposed amendment would support a modification to Harris to increase the spent fuel storage capacity by adding rack modules to two spent fuel pools (SFP) (pools "C" and "D"). *Id.* at 2238. The proposed amendment would also support the placement of those pools into service. *Id.*

On February 12, 1999, the Petitioner filed its Petition. The Petitioner also attached and incorporated by reference into its Petition "Orange County's Comments in Opposition to No Significant Hazards Determination and Conditional Request for a Stay of Effectiveness," (Comments).¹ Petition at 3. On February 24, 1999, the Board was designated to preside over this proceeding. 64 Fed. Reg. 10165 (1999). On the same day, the Board issued its Memorandum and Order. As discussed below, the Petitioner has established standing to intervene in this proceeding. The Petitioner, however, must still submit at least one admissible contention in order for its Petition to be granted. *See* 10 C.F.R. § 2.714(b).

¹ In its Comments, the Petitioner requested that the Staff stay the effectiveness of its final no significant hazards consideration determination finding for ten days. Comments at 11. The Petitioner also requested that the Staff respond to its request for a stay at least ten days before issuing the license amendment. *Id.* Because challenges to the Staff's no significant hazards consideration determination are not permitted, the Petitioner's request is outside the scope of this proceeding and should not be considered by the Board. *See* 10 C.F.R. § 50.58(b)(6). The Staff will consider the Petitioner's request and take appropriate action.

DISCUSSION

A. Legal Requirements for Standing

Pursuant to 10 C.F.R. § 2.714(a)(2) a petition for leave to intervene, *inter alia*, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] 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 set forth in [§ 2.714(d)(1)]." 10 C.F.R. § 2.714(a)(2). Section 2.714(d)(1) provides that, in ruling on a petition for leave to intervene or a request for hearing, the presiding officer or Licensing Board is to consider:

- (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Finally, a petition for leave to intervene must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." 10 C.F.R. § 2.714(a). See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). An "aspect" is broader than a "contention" but narrower than a general reference to the NRC's operating statutes. *Consumers Power Co.* (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 278 (1978). A Board lacks jurisdiction to consider an intervention petition in which the aspect of the proposed intervention is not within the scope of the proceeding. *Philadelphia Electric Co.* (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 273, 277 (1986).

In determining whether a petitioner has established the requisite interest, the Commission applies contemporaneous judicial concepts of standing. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, slip op. at 3 (March 2, 1999); *Portland General Elec. Co.* (Pebble Springs Nuclear Power Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976) In order to establish standing, a petitioner must (1) allege a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision. *Yankee Atomic*, CLI-98-21, 48 NRC at 195. "These three criteria are commonly referred to, respectively, as 'injury in fact,' causality, and redressability." *Id.* A petitioner seeking to intervene in a license amendment proceeding must assert an "injury in fact" associated with the challenged license amendment, not simply a general objection to the facility. *Zion*, CLI-99-04 at 4. The "injury in fact" must also arguably lie within the "zone of interests" protected by the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA). *Yankee Atomic*, CLI-98-21 at 195-96.

An organization may establish standing either by demonstrating an injury to its organizational interests or through one or more of its individual members who have demonstrated standing. *See Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). The interests of members which a group seeks to represent and which confer standing upon the group must be "germane to its purpose." *Private Fuel Storage, L.L.C.*, (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30-31(1998), *citing Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). An organization must also demonstrate that at least one of its members has authorized it to represent the member's interest. *Id.*

In addition to establishing standing, a petitioner must supplement its request for a hearing and petition for leave to intervene with a list of contentions which the petitioner seeks to have litigated in the hearing. 10 C.F.R. § 2.714(b)(1).

B. The Petitioner Has Established Standing to Intervene

According to the Petition, Orange County is a political subdivision of the State of North Carolina charged with protecting the citizens of the County through its police powers.² Petition at 2-3. The Petitioner asserts that the County lies within the "50-mile Emergency Planning Zone" around Harris and part of the County lies within 15 miles of the plant. *Id.* at 3. The Petitioner also claims that "the proposed license amendment threatens the County's interest in protecting the health and welfare of its citizens and the integrity of the environment." *Id.* The Petitioner is concerned that if the proposed license amendment were granted, there would be an increased risk of an accident in the spent fuel pool which could cause a significant radiological release to the environment. *Id.* This concern, according to the Petitioner, falls within the zone of interests to be protected by the AEA and NEPA. *See id.* at 4. Based on the information provided in the Petition, the Staff agrees that the Petitioner has alleged sufficient facts to establish an injury in fact that is fairly traceable to the challenged action and may be redressed by a favorable decision.

² The Staff assumes that the Petitioner is seeking organizational standing. Although the Petitioner states it is seeking standing on behalf of its citizens, the Petitioner does not attempt to address the criteria for representational standing discussed above. *See* Petition at 2.

C. The Petitioner Has Identified At Least One Appropriate Aspect

As stated above, 10 C.F.R. § 2.714(a) requires that the Petition set forth the specific aspect of the subject matter of the proceeding as to which the Petitioner wishes to intervene. A Board lacks jurisdiction to consider an intervention petition in which the aspect of the proposed intervention is not within the scope of the proceeding. *Limerick*, LBP-86-9, 23 NRC at 277.

With respect to aspects, the Petitioner states that it seeks to address:

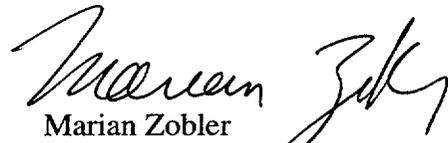
the safety and environmental risks posed by the proposed cooling and electrical backup system for the spent fuel pools, the use of coolant piping for which quality assurance documentation is no longer available, the use of administrative measures to compensate for the additional heat load placed on the CCW cooling system, the partial leakage of the spent fuel pool and the importation, transfer and handling of a large additional quantity of spent nuclear power plant fuel to the Shearon Harris site.

Petition at 4. Based on the scope of this proceeding, as set forth in the Notice, it appears that the Petitioner has identified at least one appropriate aspect. The Staff notes, however, that one aspect listed above is outside the scope of this proceeding. The aspect regarding the importation and handling of spent fuel at Harris is outside the scope of this proceeding. The Harris facility is licensed to receive and possess fuel from the Brunswick Steam Electric Plant, Units 1 and 2, and the H.B. Robinson Steam Electric Plant, Unit 2. The approval of the proposed amendment does not affect that section of the license. Thus, this aspect is outside the scope of the proceeding.

CONCLUSION

For the reasons set forth above, the Petitioner has established standing to intervene in this proceeding and has identified at least one appropriate aspect. Pursuant to 10 C.F.R. § 2.714(b), the Petitioner must submit at least one admissible contention in order for its Petition to be granted.

Respectfully submitted,


Marian Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of March, 1999

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OFFICE OF THE
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ADJUDICATIONS

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO ORANGE COUNTY'S REQUEST FOR HEARING AND PETITION TO INTERVENE" in the above captioned proceeding have been served on the following by electronic mail with conforming copies deposited in the Nuclear Regulatory Commission's internal mail system, or as indicated by an asterisk, by e-mail with conforming copies deposited in the United States mail, first class, or as indicated by a double asterisk by deposit in the NRC's internal mail system this 4th day of March, 1999.

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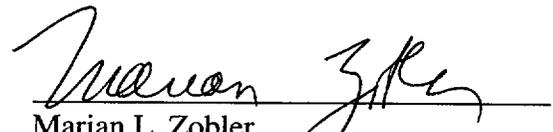
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