

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 070-03098
DUKE COGEMA STONE & WEBSTER	)	
	)	
Mixed Oxide Fuel Fabrication Facility	)	
(Construction Authorization Request)	)	

NRC STAFF'S RESPONSE TO SUPPLEMENTAL FILINGS  
ON THE ISSUE OF STANDING

INTRODUCTION

On July 30, 2001, Blue Ridge Environmental Defense League (BREDL),<sup>1</sup> Donald J. Moniak, Georgians Against Nuclear Energy (GANE), and Environmentalists, Inc. (EI) submitted amended hearing petitions pertaining to the issue of whether legal standing to participate in this proceeding has been established. By an unpublished "Order (Granting in Part Motion for Extension of Time)," dated July 3, 2001 (July 3 Order), the Presiding Officer established July 30 as the deadline for submitting amended petitions on the question of standing, and set August 10 as the date for answering the amended petitions. See July 3 Order, at 5, and 8. In his unpublished "Memorandum and Order" dated July 17, 2001 (July 17 Order), the Presiding Officer reiterated these deadlines. See July 17 Order, at 7.

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<sup>1</sup>Donald J. Moniak had initially requested a hearing on behalf of himself and on behalf of BREDL, and sought to establish his individual standing, as well as BREDL's organizational and representational standing. See his May 17, 2001 hearing petition (Moniak/BREDL May Petition) (unnumbered), at ¶¶ 1, 6, and n.9. This hearing petition was signed by Mr. Moniak, who identified himself in the signature line as both a "Private Citizen," and a "Community Organizer" acting for BREDL.

For the reasons discussed below, the Staff concludes that GANE and EI have established their representational (but not their organizational) standing. The Staff continues to conclude that Mr. Moniak has established his individual standing, but that BREDL has established neither its organizational nor its representational standing.

#### BACKGROUND

The Nuclear Regulatory Commission (NRC or the Commission) published a “Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application for Authority to Construct a Mixed Oxide Fuel Fabrication Facility” (Notice) in the *Federal Register*. See 66 *Fed. Reg.* at 19,994-96 (April 18, 2001). In May of 2001, in response to the Notice, the above-named petitioners (and Edna Foster, who apparently is not pursuing her request for a hearing) made their initial requests for hearing on the construction authorization request (CAR), dated February 28, 2001, submitted by Duke Cogema Stone & Webster (DCS), regarding a proposed mixed oxide fuel fabrication facility (MOX Facility) at the U.S. Department of Energy’s (DOE’s) Savannah River Site (SRS) in South Carolina. DCS is a contractor selected by the DOE to design the proposed facility, apply for the requisite NRC approvals, and to thereafter build and operate the proposed MOX Facility, if granted the necessary NRC authority. The hearing petitioners seek to challenge the adequacy of the CAR, and other related DCS documents referenced in the Notice, which are now under technical review by the NRC.

On June 14, 2001, the Commission referred the petitioners’ hearing requests to the Atomic Safety and Licensing Board Panel for appointment of a presiding officer to consider the requests, and issued an order containing a proposed schedule for the CAR proceeding and other guidance for the conduct of the proceeding. See CLI-01-13, “Order Referring Petitions For Intervention and Requests For Hearing to Atomic Safety and Licensing Board Panel,” 53 NRC \_\_ (June 14 Order). With respect to when rulings on standing are to be made, the June 14 Order indicated that such rulings should be made together with decisions on the admissibility of contentions, and within 130

days after a presiding officer is appointed. See June 14 Order, at 9. The June 14 Order establishes a goal of completing the full CAR proceeding (*i.e.*, assuming the requisite rulings are made that one or more of the petitioners have standing and that one or more admissible contentions have been submitted) by March of 2003, referencing the underlying U.S./Russian Federal Plutonium Disposition Agreement regarding the reduction of weapons-grade plutonium inventories as a reason for completing this proceeding in a timely and efficient manner. See June 14 Order, at 7-8.

On June 25, 2001, the Staff filed its answer to the petitioners' initial hearing requests, and addressed therein the requirements for establishing standing to participate in NRC adjudicatory proceedings. See "NRC Staff's Answer to Hearing Requests of Donald Moniak, Blue Ridge Environmental Defense League, Georgians Against Nuclear Energy, Environmentalists, Inc., and Edna Foster" (June 25 Answer). The Staff concluded there that Mr. Moniak had established his individual standing (see June 25 Answer, at 13-23); that BREDL had established neither its organizational nor its representational standing (*id.*, at 23-28); that GANE had not established its organizational standing, but had conditionally established its representational standing contingent upon its submitting an adequate supplemental affidavit from Susan Bloomfield (*id.*, at 28-39); and that EI had not established its organizational standing, but should be given the opportunity to establish its representational standing by submitting affidavits of EI members it had referenced in its hearing petition. *Id.*, at 39-42.

At page ten of the June 25 Answer, n.15, on the question of whether any presumptions of standing could properly be applied in this proceeding, the Staff provided a preliminary accident impact analysis applicable to the proposed MOX Facility. The Staff continues to take the position that the proposed licensing action here does not obviously involve "an increased potential for

offsite consequences,"<sup>2</sup> so that standing cannot be based simply upon frequent contacts in the general area of the proposed MOX Facility. However, the Staff has re-examined the available accident data pertaining to the proposed MOX Facility, and the following paragraph should be regarded as replacing in its entirety the above-referenced footnote 15 contained in the June 25 Answer:

At this time, the Staff calculates that an explosion at an operating MOX fuel fabrication facility would produce an estimated 2.7 millirem dose at the SRS site boundary. Such an explosion would be the type of major potential accident listed in CAR Table 5.5-26. This 2.7 millirem estimated dose assumes that two banks of HEPA filters remain fully functional throughout the event, which reduces potential doses by a factor of 10,000. Preliminary analyses indicate that this dose would be reduced to approximately 0.7 millirem at a distance of 20 miles from the site of the proposed MOX Facility. Currently available information on the specific accident scenarios is not sufficient to determine if the principal systems, structures and components of the proposed MOX Facility's design, including HEPA filters, are adequate to protect against the radiological effects of these types of major accidents. For example, should an explosion of the type referenced above occur in the absence of fully functional HEPA filters, the Staff presently estimates that the dose to the 20-mile receptor could approach the 5 to 25 rem range. As part of the ongoing technical review of the CAR, more detailed information has been requested from DCS to allow the Staff to perform more refined accident analyses. In the absence of such information, the statements above must still be regarded as preliminary.

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<sup>2</sup> *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999) (citation omitted).

DISCUSSION

A. Supplemental Filings Submitted by Don Moniak and BREDL

The following five documents<sup>3</sup> on the issue of standing were submitted by or on behalf of Mr. Moniak and BREDL on July 30, 2001: (1) “Blue Ridge Environmental Defense League and Donald Moniak Additional Filings on Standing” (Mr. Moniak’s Additional Filing); (2) “Affidavit of Donald J. Moniak” (Mr. Moniak’s July 30 Affidavit); (3) an affidavit of BREDL’s Executive Director, Janet Zeller, titled “Affidavit of Blue Ridge Environmental Defense League” (Ms. Zeller’s July 30 Affidavit); (4) “Affidavit of Dr. Frank Carl” (Dr. Carl’s July 30 Affidavit); and (5) a set of 13 affidavits signed by other BREDL members.<sup>4</sup> These five documents are discussed below.

These filings raise an initial issue of whether the basis of BREDL’s request for representational standing should now be limited to the interests of Mr. Moniak, or whether BREDL may now additionally rely on the interests of other members as well. Mr. Moniak was the sole representative BREDL chose to identify in its initial request for hearing. The July 3 Order may be read as limiting rights to file amended petitions to those petitioners -- and members of petitioner organizations -- who made timely hearing requests or were otherwise identified pursuant to the Notice’s terms. See July 3 Order, at 5, and 8. The July 17 Order states that amended petitions addressing “any shortcomings relating to standing shall be filed” by July 30, implying that corrections would be limited to those groups and individuals already identified on the record.

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<sup>3</sup> A sixth document, an unsigned “Affidavit of Edward A. Giusto,” along with an explanatory certificate of service, was submitted by Mr. Moniak on July 30 on behalf of EI. This affidavit is addressed in Section C.4, *infra*, as part of the discussion of EI’s amended filing on standing.

<sup>4</sup> The set of 13 numbered affidavits of BREDL members are packaged in the following order: Catherine Mitchell; Betty Yuhás; Constance Kolpitcke; Francis Johnson; Thomas Drake, Sr.; Edward Johnson; Phyllis St. Clair; Danielle Fournier; George Mitchell; Judy Drake; Charles Pietzman; Nina Layton; and Susan Bulloch.

July 17 Order, at 7. On the other hand, as stated by BREDL and Mr. Moniak, the July 3 Order<sup>5</sup> may also fairly be read as simply giving the initial petitioners “the option of submitting additional filings pertaining to standing by July 30.” Mr. Moniak’s Additional Filing, at 1. Moreover, neither the June 14 Order, nor the July 3 Order, nor the July 17 Order specifically limits any petitioner organization to reliance only on the interests of members initially identified. The Staff thus views this latter reading of the orders as being the sounder one, and proceeds to specifically address the supplemental standing documents submitted by or on behalf of Mr. Moniak and BREDL.

1. Mr. Moniak’s Additional Filing

Mr. Moniak’s Additional Filing is divided into eight sections (designated as S1 through S8). As a whole, this filing adds nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding BREDL and Mr. Moniak. The Staff will thus not specifically address each of the sections. As discussed below, BREDL and Mr. Moniak continue to raise issues which are outside the scope of this proceeding; these issues are therefore not relevant to questions of standing here.<sup>6</sup>

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<sup>5</sup> On this point, Mr. Moniak and BREDL do not cite the July 17 Order, but they do generally reference the Commission’s June 14 Order. See Mr. Moniak’s Additional Filing, at 1. The June 14 Order included a proposed schedule in Section III. B, stating as guidance there that 45 days from when a presiding officer is appointed, petitioners are to submit “any additional filings on standing.” June 14 Order, at 9. As the quoted language was only guidance, the Staff does not view it as having the same force as the relevant portions of the subsequent July 3 and July 17 Orders. Moreover, the June 14 Order does not shed light on the question of how the July 3 Order and the July 17 Order should be construed on this point.

<sup>6</sup> For example, Section S6 contains various complaints about actions taken by the DOE. Insofar as the NRC is referenced there, BREDL and Mr. Moniak state (without providing any citation) that the NRC “was legislatively mandated to license” the MOX Facility. Mr. Moniak’s Additional Filing, Section S6(b), at 3. This is incorrect. Congress in 1998 specified that the NRC had jurisdiction to consider whether or not to authorize the construction and operation of a MOX fuel facility. See Section 202(5) of the Energy Reorganization Act of 1974 (as amended in 1998). Similarly irrelevant for standing purposes here is the BREDL/Moniak discussion about how the MOX Facility project is tied to the potential use of MOX fuel in Duke Power reactors by a contract DCS has with the DOE, and how the potential future shipment of MOX fuel to the reactors will require designing and licensing a proper container. See Mr. Moniak’s Additional Filing, Section (continued...)

Section S7 focuses on the issue of nuclear non-proliferation, but the discussion there only serves to emphasize that this issue is within the domain of the DOE and the Executive Branch of the United States government, involving as it does such broad topics as our nation's relationship to the Russian Federation. The NRC has no role to play in such foreign policy areas, or in whether the use of MOX fuel containing weapons-grade plutonium "provides the best opportunity for U.S. leadership in working with Russia to implement similar options for reducing Russia's excess plutonium in parallel." Mr. Moniak's Additional Filing, Section S7(c), at 7 (citation omitted). The proper venue for BREDL and Mr. Moniak to pursue "the goal of nuclear nonproliferation" (*id.*, at Section S7(d)), is through participation in the political process, rather than through participation in an NRC licensing proceeding.

In Section S8, BREDL and Mr. Moniak maintain that any future use of MOX fuel in the commercial reactors at Duke Power's Catawba and McGuire plants -- and the related need to ship MOX fuel from the SRS site to these plants -- are topics within the scope of this CAR proceeding, and that BREDL has standing since many of its members live or work sufficiently close to these plants, or are in such proximity to transportation routes over which MOX fuel would allegedly be shipped, that their health and safety interests are thereby threatened. See Mr. Moniak's Additional Filing, at 7-10.<sup>7</sup> The Staff has previously discussed why the proximity of BREDL members to Duke Power's Catawba and McGuire plants, and to potential MOX fuel transportation routes, are

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<sup>6</sup>(...continued)

S8(a), at 7. Moreover, the statement there that DCS's authority to construct the MOX Facility "is entirely contingent upon its contract with DOE as the financial assurance agency" (*id.*) is not correct. DCS's legal authority to construct the MOX Facility is contingent upon whether the NRC gives DCS the necessary approval pursuant to the 10 C.F.R. Part 70 requirements.

<sup>7</sup> Therein, BREDL and Mr. Moniak reference the contractual relationship between the DOE and DCS, under which DCS is to design and seek the licensing of the proposed MOX Facility, design a MOX fuel storage and shipping container, and to oversee other MOX-related actions. See Mr. Moniak's Additional Filing, at 7. See *also id.*, Section S6(c)(i-iii), at 4. This discussion fails to articulate how these contractual matters constitute the identification of a protected interest within the scope of this proceeding.

insufficient bases on which to support claims of standing in this proceeding. See June 25 Answer, at 25 (regarding proximity to plants); and at 15-16, and 24-25 (regarding proximity to potential MOX fuel transportation routes). BREDL and Mr. Moniak do not address the Staff's previous discussion on these points, and have not otherwise shown that the relevant conclusions on standing reached by the Staff in its June 25 Answer are erroneous.

Accordingly, the Board should find that Mr. Moniak's Additional Filing adds nothing of significance to the record regarding issues of standing.

2. Mr. Moniak's July 30 Affidavit

This affidavit adds nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding Mr. Moniak's standing as an individual. The Staff will not address those parts of the affidavit's sections which essentially repeat statements made by Mr. Moniak in the Moniak/BREDL May Petition.

As a further basis for his individual standing, Mr. Moniak states that he engages in recreational activities at the following places in the Savannah River area : (1) Aiken State Park, located 20 miles to the northeast of the proposed MOX Facility site, which he visits "on at least a monthly basis;" (2) Silver Bluff Sanctuary, located 9-10 miles southwest of the proposed MOX Facility site, which he visits "on a weekly to biweekly basis;" (3) the Savannah River north of, and south of, U.S. Highway 301, where he canoes "once or twice a year;" and (4) Hitchcock Woods, located 18 miles north of the proposed MOX Facility site, which he visits "at least three days a week." Mr. Moniak's July 30 Affidavit, at ¶¶ 2 (a) (i-iv).<sup>8</sup> The identification of these sporadic or periodic travels and visits adds nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding Mr. Moniak's standing as an

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<sup>8</sup> Mr. Moniak also states that both "6-8 times a year," and "about once every two months," he travels on the portion of State Highway 125 which passes through the SRS and comes within 3.5 miles of the proposed MOX Facility site. Mr. Moniak's July 30 Affidavit, at ¶ 2 (e).

individual. The Staff continues to view Mr. Moniak's residence -- which he may be presumed to occupy more or less constantly -- as the key factor establishing the requisite health and safety interest necessary to support his individual standing, when combined with his consumption of vegetables grown on his residential property (see June 25 Answer, at 16-17, ¶ 3), and the alleged risk that a major accident at the proposed MOX Facility could contaminate his residential property. *Id.*, at 19, ¶ 6. Moreover, as noted by the Staff in its June 25 Answer, the Commission has stated that in cases where the proposed licensing action does not obviously involve "an increased potential for offsite consequences," standing cannot be based simply upon frequent contacts in the general area of a licensed site. *Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2)*, CLI-99-4, 49 NRC 185, 191 (1999) (citation omitted).

As a further basis for his individual standing, Mr. Moniak also states that he visits Savannah, Georgia; Tybee Island, Georgia; and/or Hilton Head, South Carolina "at least 6-8 times a year," and adds (without citing any support for the statement) that "Hilton Head derives its drinking water from the Savannah River." Mr. Moniak's July 30 Affidavit, at ¶ 2 (d). In addition to the sporadic nature of these visits, these locations are all much further away from the site of the proposed MOX Facility than are the local areas referenced above (for example, Hilton Head is about 93 miles from the site of the proposed MOX Facility). These visits thus add nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding Mr. Moniak's standing as an individual.

Accordingly, the Board should find that Mr. Moniak's July 30 Affidavit adds nothing of significance to the record regarding issues of standing.

3. Ms. Zeller's July 30 Affidavit

This affidavit, when read in conjunction with Mr. Moniak's July 30 Affidavit, raises an initial question of who should be regarded as BREDL's representative at this point in the proceeding. Ms. Zeller identifies herself as BREDL's "Executive Director," and states that BREDL "has an

organizational interest in the proposed construction” of the MOX Facility. Ms. Zeller’s July 30 Affidavit, at ¶ 1. Mr. Moniak identifies himself as the “representative of BREDL,” but authorizes BREDL to represent his interests in this proceeding, and states that “if BREDL is granted equal or greater standing as a group,” he will “withdraw as an individual and allow BREDL to represent” his interests here. Mr. Moniak’s July 30 Affidavit, at ¶ 1. If the Board finds that Mr. Moniak has standing as an individual, or that BREDL has representational standing based on cognizable interests identified by Mr. Moniak, the Staff would have no objection to Mr. Moniak’s withdrawal and replacement by another BREDL representative. However, the Staff would object to any dual representation on BREDL’s behalf. If BREDL is found to be eligible to participate further in this proceeding, it should be required to specify who their legal representative will be (*i.e.*, either Mr. Moniak, Ms. Zeller, or counsel of BREDL’s choosing).

Insofar as Ms. Zeller seeks to establish BREDL’s organizational standing, her July 30 affidavit fails to do so. As shown below, her affidavit discusses issues which are outside the scope of this proceeding (and are thus irrelevant to the question of whether BREDL has organizational standing in this CAR proceeding),<sup>9</sup> or asserts the types of generalized grievances which are insufficient to confer organizational standing in NRC proceedings.

Ms. Zeller first states that BREDL was organized in March 1984, in response to the DOE’s siting search for a high-level nuclear waste repository in the eastern United States; that in 1987, Congress suspended the Crystalline Repository Project, the rationale being that the nation needed

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<sup>9</sup> For example, the fact that BREDL in 1994 may have been found to have organizational standing by a federal court has no bearing here, absent some showing as to the relevance of that case. See Ms. Zeller’s July 30 Affidavit, at ¶ 2 (d), *citing* the case of *South Carolina ex rel. vs. the US Department of Energy*, Civil Action No. 3-94-2419-0. No indication is given whether this case resulted in a published legal opinion which would constitute a precedent for the Board to consider in this CAR proceeding. Similarly, the location of various BREDL offices is not shown to be relevant to whether BREDL has organizational standing here. See Ms. Zeller’s July 30 Affidavit, at ¶ 2 (e). Likewise, the fact that BREDL may have hired staff members, or otherwise made substantial resource commitments in working to oppose the proposed MOX Facility (*id.*, at ¶ 2 (g)), has no bearing on whether BREDL has organizational standing.

only one 70,000 metric-ton repository; that on July 25, 2001 at an NRC meeting, the NRC's Director of the Division of Fuel Cycle Safety and Safeguards stated that sooner or later there is going to have to be another high-level nuclear waste repository in addition to the one planned for Yucca Mountain; and Ms. Zeller concludes this portion of her affidavit by stating that there were four semi-finalist repository sites in the BREDL service area (two in North Carolina and two in Virginia), and that these sites have not been eliminated from consideration. See Ms. Zeller's July 30 Affidavit, at ¶ 2 (a). Issues regarding high-level nuclear waste repositories were not part of the Notice initiating this CAR proceeding, and are thus outside the scope of this proceeding.<sup>10</sup>

In ¶ 2 (b), Ms. Zeller states that the CAR and subsequent documents submitted by DCS did not address waste disposition for the proposed MOX Facility; that since 1985 BREDL has critiqued low-level and high-level radioactive waste projects; that because the resolution of waste management and disposition questions are uncertain, BREDL has over the past 16 years commented on both the Barnwell facility and a proposed low-level radioactive waste facility in North Carolina; and that BREDL has an historic and well-documented interest in potential waste disposition from both the proposed MOX Facility and from reactor fuel use. See Ms. Zeller's July 30 Affidavit, at ¶ 2 (b). Ms. Zeller adds that since 1984, BREDL has worked on nuclear materials transportation issues; that in 1987 BREDL hosted a major conference drawing participants from 23 states; and that BREDL has a "concern about the corridor community impacts of nuclear materials transportation" related to the proposed MOX Facility. *Id.*, at ¶ 2 (c). Ms. Zeller concludes her argument for organizational standing by stating that BREDL has a "compelling interest" in the issues of nuclear non-proliferation, nuclear waste management and disposition, nuclear materials transportation, public health protection, environmental democracy, and

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<sup>10</sup> Ms. Zeller also references the potential future use of MOX fuel at the McGuire and Catawba nuclear plants (see Ms. Zeller's July 30 Affidavit, at ¶ 2 (f)), an issue similarly outside the scope of this proceeding for the reasons discussed in the June 25 Answer, at 25, ¶ B.2.

environmental justice, and that BREDL's work in these areas for more than 17 years "is testament to our interests." *Id.*, at ¶ 2 (h).

As the Staff has previously discussed in this proceeding (see June 25 Answer, at 7-8, and 23-24), an organization petitioning for a hearing in its own right must establish its standing by showing that it has or will suffer an injury in fact to some organizational interest that is within the zone of interests of the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA). A mere academic interest in a matter, or an asserted harm reflecting a generalized grievance shared by a large class of citizens, is not sufficient to establish an organization's standing.<sup>11</sup> Similarly, interests in social causes such as advancing the "generalized goal" of nuclear non-proliferation, seeing that laws are obeyed, or furthering other social goals, do not by themselves establish a basis for an organization's standing. *Dellums v. U.S. Nuclear Regulatory Commission*, 863 F.2d 968, 972 (D.C. Cir. 1988). These types of generalized grievances neither establish the sort of particularized interest, nor result in the type of distinct and palpable harm, necessary to support the participation of an individual or an organization in NRC adjudicatory proceedings. See, e.g., *Westinghouse Electric Corp. (Export to South Korea)*, CLI-80-30, 12 NRC 253, 258 (1980) (no matter how qualified an organization may be to evaluate an issue, to establish its standing it must identify "some threatened or actual injury" resulting from the proposed agency action). Generalized grievances do not establish standing because as both the Commission and federal courts have long recognized, there is a "functional need for well defined and specific interests, which will lend concrete adversity to the decision-making process." *Transnuclear Inc.*, CLI-77-24, 6 NRC 525, 531 (1977) (citation omitted).

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<sup>11</sup> See *Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4)*, ALAB-952, 33 NRC 521, 529-30 (1991).

Although not clearly articulated, Ms. Zeller's July 30 Affidavit may also be read as seeking to establish her individual standing to participate in this proceeding.<sup>12</sup> Her affidavit states that on "a personal level," she and her husband "have a financial, power supply, and liability interest in" the proposed MOX Facility. Ms. Zeller's July 30 Affidavit, at ¶ 3. She explains there that they "are members of the Blue Ridge Electric Membership Cooperative," an electric cooperative in North Carolina, "which along with 27 other electric cooperatives in the NC Electric Membership Corporation, own controlling interest in" one of the four Duke Power reactors (Catawba 2) where MOX fuel may possibly be used in the future. *Id.*

Should the Board reach the question, the Board should find that Ms. Zeller has not established her individual standing. First, while it is not clear exactly where Ms. Zeller resides, it is clear she does not reside anywhere in proximity to the proposed MOX Facility.<sup>13</sup> Moreover, as the Staff has previously discussed in this proceeding (see June 25 Answer, at 6-7), to establish individual standing a person petitioning for a hearing in her own right must show that (1) she will suffer a distinct and palpable "injury in fact" within the zone of interests arguably protected by the statutes governing the proceeding (here, the AEA or NEPA);<sup>14</sup> (2) such injury is fairly traceable to

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<sup>12</sup> In discussing this point (and assuming the Board also views ¶ 3 of Ms. Zeller's affidavit as a request for individual standing), the Staff is not waiving its objection to the tardiness of such a request. As noted above, Mr. Moniak was the sole representative BREDL chose to identify in its initial request for hearing, and Ms. Zeller was subject to the same Notice deadlines as were other members of the general public with respect to requesting a hearing and establishing standing as individuals. Thus, this issue differs from the issue of whether the basis of BREDL's request for representational standing should now be limited to the interests of Mr. Moniak, or whether BREDL may now additionally rely on the interests of other members as well.

<sup>13</sup> Mr. Moniak states an address for Ms. Zeller at "PO Box, Glendale Springs NC" (Mr. Moniak's Additional Filing, Section S5, at 3), while Ms. Zeller's affidavit was sent from "Jefferson, North Carolina 28640."

<sup>14</sup> The zone of interests encompassed by the AEA is radiological health and safety, while the zone of interests covered by NEPA is the identification and balancing of environmental harms. See *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420 (1977).

the proposed action; and (3) such injury is likely to be redressed by a decision in the petitioner's favor.<sup>15</sup> Identification of a threatened injury may be sufficient to establish standing, but the threat must not be "too speculative," since the requisite injury "must be both concrete and particularized, not conjectural or hypothetical." *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (footnote, citations, and internal quotes omitted).

On its face, the assertion of such a remote and minuscule ownership interest of Ms. Zeller's in a nuclear plant not directly involved in the proposed NRC action here -- a plant which was not even referenced in the Notice initiating this proceeding -- constitutes the identification of a threatened injury which is too speculative to support standing, since the threatened injury is only conjectural and hypothetical, rather than the requisite "concrete and particularized" threat of injury. *See Sequoyah Fuels, supra*, CLI-94-12, 40 NRC at 72. Additionally, as discussed in ¶ B.2 of the June 25 Answer, the possible future use of MOX fuel at the Catawba 2 plant is an issue outside the scope of this proceeding. Moreover, as a more general matter, economic interests of the type asserted by Ms. Zeller do not confer standing in NRC licensing proceedings, as discussed further with respect to Dr. Carl in Section A.4, below.

Accordingly, should the Board reach the question, the Board should find that Ms. Zeller has not established her individual standing to participate in this CAR proceeding.

4. Dr. Carl's July 30 Affidavit

Dr. Carl is a BREDL member who is seeking to support BREDL's request for representational standing. *See* Dr. Carl's July 30 Affidavit, at ¶ 1. Dr. Carl's only stated interests within 30 miles of the site of the proposed MOX Facility relate to property which he owns at the following three locations in Augusta, Georgia: (1) 816 Mary Ave, said to be "24 miles from" the

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<sup>15</sup> *See Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353 (1999), *citing Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). *See also Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72-76 (1994).

proposed MOX Facility; (2) 1226 River Ridge Dr., said to be “25 miles from” the proposed MOX Facility; and (3) 2040 Bridgewater Dr., said to be “27 miles from” the proposed MOX Facility. Dr. Carl’s July 30 Affidavit, at ¶¶ 2 (a)(i-iii).<sup>16</sup> Dr. Carl’s only statement specific to these properties is that his “homeowner insurance policy does not cover damage from radiation accidents.” *Id.*, at ¶ 2 (a). In the absence of any statements linking the proposed action (*i.e.*, authorizing the building of the proposed MOX Facility) to any threat of harm to these three properties, the Staff concludes for the reasons discussed below that these ownership and insurance interests of Dr. Carl’s do not confer representational standing on BREDL.

Injury to economic interests of the type identified by Dr. Carl does not establish a basis for standing under the AEA unless such injury is linked to radiological harm arising from the proposed action. *See Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico)*, CLI-98-11, 48 NRC 1, 10 (1998), *rev. den.*, *Envirocare, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999). Similarly, injury to economic interests is a basis for standing under NEPA only if such injury is identified as being linked to environmental damage threatened by the proposed action. *See Quivira, supra*, CLI-98-11, 48 NRC at 8-10.<sup>17</sup> As indicated above, Dr. Carl’s affidavit refers only briefly to his Augusta properties, and does not state how frequently (if at all) he visits these properties. Significantly, Dr. Carl does specify that he resides in Charlotte, North Carolina (the affidavit’s signature line identifies his Charlotte address as 14501 Smith Road), at a point approximately six miles from the Catawba nuclear plant and 23 miles from the McGuire nuclear plant. Dr. Carl’s July 30 Affidavit, at ¶ 2 (b). Other than a vague reference to recreational activities conducted on

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<sup>16</sup> The Staff surmises -- Dr. Carl’s affidavit is notably vague on the point -- that these Augusta addresses are rental properties.

<sup>17</sup> *See also Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, CLI-92-2, 35 NRC 47, 56-57 (1992). While *Quivira, supra*, involved an asserted business injury to an economic competitor, and *Rancho Seco, supra*, involved an economic injury arising from loss of employment, the Staff views these cases as nonetheless applicable here on the general issue of economic harm as a basis for standing.

or near the Savannah River,<sup>18</sup> the rest of Dr. Carl's affidavit focuses on interests related to his Charlotte residence's proximity to the Catawba and McGuire nuclear plants,<sup>19</sup> or on prior actions taken by the DOE.<sup>20</sup> See *id.*, at ¶¶ 2 (c) through 3 (f).

In the Staff's view, the fact that Dr. Carl does not live in Augusta, and merely owns property there, is quite significant for purposes of determining whether these property interests are sufficient

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<sup>18</sup> In this regard Dr. Carl states that he "commonly" visits recreational sites located in the "Savannah River area," such as "On the River, on the Augusta Canal, at the New Savannah Bluffs Park, at River Walk and in downtown Augusta" (Dr. Carl's July 30 Affidavit, at ¶ 2 (f)), but he does not further specify the frequency of these visits, or identify what geographical or hydrological relationships these sites have with the site of the proposed MOX Facility.

<sup>19</sup> Dr. Carl's statements in this regard are not sufficient to confer representational standing on BREDL. He states in ¶ 2 (d) of his July 30 Affidavit that because his Charlotte residence is located within two and seven miles of alleged MOX fuel transportation routes (Interstate 77 and South Carolina state highway 274, respectively), he will be impacted by the shipment of MOX fuel to Duke Power's nuclear plants, and vaguely adds that "my work, civic activities, and the fact that I own property in Augusta" requires him "to frequently drive" on various roads (Interstates 77 and 20, U.S. Route 321, State Highway 121, and other unspecified routes) "likely to be used" to ship MOX fuel. Such transportation issues are outside the scope of this proceeding, and thus do not confer individual or representational standing here. See June 25 Answer, at 15-16, and 24-25. Dr. Carl next cites his dependence on Charlotte metropolitan ices, and his enjoyment of various recreational and cultural activities in the Charlotte area. *Id.*, at ¶ 2 (e). Echoing previous generalized grievances asserted by Mr. Moniak which the Staff concluded did not support standing in the CAR proceeding (see June 25 Answer, at 20-22), Dr. Carl states that as "an American citizen and taxpayer" he has a financial and civic interest in governmental matters (Dr. Carl's July 30 Affidavit, at ¶ 2 (g)), as well as civic, moral, ethical, financial and property interests in the reduction of plutonium stockpiles "to lower the risk of a nuclear weapon of mass destruction being used." *Id.*, at ¶ 2 (h). Dr. Carl further states that he is a Duke Power Company customer dependent on Duke Power for electricity. *Id.*, at ¶ 2 (i). None of these interests relate to the proposed action under consideration here, and thus do not support BREDL's claim for representational standing. The remaining portions of Dr. Carl's affidavit focus on issues related to the potential future use of MOX fuel in the Catawba and McGuire nuclear plants (see *id.*, at ¶¶ 3 (a-e) -- topics which are outside the scope of this proceeding and do not form bases for standing here, as discussed in ¶ B.2 of the June 25 Answer.

<sup>20</sup> Dr. Carl states that the DOE in its NEPA analysis improperly "excluded all alternatives" to using MOX fuel in the Catawba and McGuire nuclear plants (Dr. Carl's July 30 Affidavit, at ¶ 2 (c)), and that as a Charlotte resident he suffered harm "by having been denied my democratic right to fully participate" in DOE's NEPA process, whereby DOE chose SRS as the site for the proposed MOX Facility. *Id.*, at ¶ 3 (f). The Staff views this stated interest as the type of "informational interest" which does not confer standing in NRC licensing proceedings. See *Rancho Seco, supra*, CLI-92-2, 35 NRC at 57-61.

to confer representational standing on BREDL. As stated in Section A.2, *supra*, regarding the individual interests of Mr. Moniak, the Staff views personal residence -- a location where an individual may be presumed to be more or less constantly for purposes of determining standing -- as the key factor establishing the requisite health and safety interest necessary to support a person's standing in the CAR proceeding, if combined with some other local activity or related interest.<sup>21</sup> Because Dr. Carl lives in Charlotte, North Carolina, rather than in Augusta, Georgia, and because his affidavit does not otherwise specify the degree or frequency or significance of his contacts with areas in the general proximity of the proposed MOX Facility, the Staff concludes that Dr. Carl's stated interests do not confer representational standing on BREDL.

Accordingly, the Board should find that Dr. Carl's stated interests do not confer representational standing on BREDL.

#### 5. Other BREDL Member Affidavits

The fifth filing submitted by or on behalf of Mr. Moniak and BREDL on July 30, 2001 is a set of 13 affidavits signed by other BREDL members. Each of the 13 additional BREDL members state that they either live or work in the general Charlotte metropolitan area, although no addresses of residence or places of employment (where applicable) are specified. For purposes of determining whether BREDL has representational standing, these affidavits as a group add no significant information apart from what is stated in Dr. Carl's affidavit. The set of 13 affidavits does not identify any cognizable interests held by these BREDL members in any geographic areas within the general proximity of the proposed MOX Facility. The Staff thus concludes, as discussed further below, that these 13 affidavits, whether considered singly or as a group, fail to establish BREDL's representational standing.

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<sup>21</sup> See *Zion, supra*, CLI-99-4, 49 NRC at 191. When the proposed licensing action does not obviously involve "an increased potential for offsite consequences," standing cannot be based simply upon frequent contacts in the general area of a licensed site.

Catherine Mitchell's affidavit (the first in the set of 13) fairly represents the contents of the remaining 12 affidavits. Her stated interest in the construction of the proposed MOX Facility at SRS is based on the following factors: (1) she lives within approximately 15 miles of the Catawba nuclear plant and within 23 miles of the McGuire nuclear plant; (2) she lives close to and drives on the probable MOX fuel routes, including Interstate 77; (3) she is dependent on the Charlotte metropolitan area for a variety of governmental, cultural, and recreational services; (4) as an American citizen and taxpayer she has civic and financial interests in a sound federal government, and reasonable expectations that the federal government will not fund dangerous and unnecessary facilities when better alternatives exist; (5) she has been an active participant in the democratic decision-making process; (6) as an American citizen, she has interests in preventing the expansion of plutonium stockpiles and in reducing the potential for the proliferation of nuclear weapons;<sup>22</sup> and (7) she is dependent on Duke Power for her electricity. For the reasons discussed and referenced regarding Dr. Carl's interests in Section A.4, *supra*, the Staff concludes that the interests of the 13 additional BREDL members set forth above do not confer representational standing on BREDL.

Accordingly, the Board should find that the interests of the 13 additional BREDL members set forth above do not confer representational standing on BREDL. Therefore, for the reasons discussed in Section A, *supra*, the Board should find that BREDL has established neither its organizational nor its representational standing to participate in the CAR proceeding.

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<sup>22</sup> Regarding factor (6), as discussed in Section A.1, *supra*, the proper venue for BREDL members to pursue their interests in preventing the expansion of plutonium stockpiles and in reducing the potential for the proliferation of nuclear weapons is through participation in the political process, rather than through participation in this NRC licensing proceeding on the CAR.

B. Supplemental Filings Submitted by GANE

GANE submitted two documents on the issue of standing on July 30, 2001: (1) “Georgians Against Nuclear Energy’s Amended Petition to Intervene” (GANE’s Amended Petition); and (2) “Amended Affidavit of Susan Bloomfield” (Ms. Bloomfield’s July 30 Affidavit).<sup>23</sup> The Staff noted that Ms. Bloomfield’s original affidavit did not state whether she is a member of GANE (see Ms. Bloomfield’s May 14 Affidavit, at 1), and that this was “a technical pleading defect which would not justify the denial of GANE’s [initial] Petition at this time,” but that GANE should be allowed to submit another affidavit signed by Ms. Bloomfield stating whether she “was at the time she signed her May 14 Affidavit” a member of GANE. June 25 Answer, at 29. Ms. Bloomfield’s amended affidavit does not directly address this point, stating that she has “been associated with GANE since 1993, and a dues paying member as of May, 2001.” Ms. Bloomfield’s July 30 Affidavit, at ¶ 2. The Staff accepts this statement as adequately meeting the requirement that a group’s representational standing must be based, in part, on showing that an identified member would have standing in his or her own right, and now concludes that GANE has established its representational standing.<sup>24</sup>

The Staff has determined that there is no need at this time to address the statements made in GANE’s Amended Petition regarding certain transportation issues. See GANE’s Amended

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<sup>23</sup> The Staff previously concluded that GANE’s initial petition had not established GANE’s organizational standing, but had conditionally established GANE’s representational standing contingent upon its submitting an adequate supplemental affidavit from Ms. Bloomfield. See June 25 Answer at 28-39.

<sup>24</sup> Other than the subject of her GANE membership, Ms. Bloomfield’s new affidavit adds nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding GANE’s representational standing. She states in part that she attends “concerts and fireworks by the Savannah River” and that she uses the river “for boating downstream of” the proposed MOX Facility (Ms. Bloomfield’s July 30 Affidavit, at ¶ 3), but the frequency of these actions is not stated. She states that she drives “through the Savannah River Site to visit my son and granddaughter who live in Hilton Head,” and that because of her concerns “about the hazards to my health posed by the Savannah River Site I sometimes choose a less convenient route in order to avoid SRS and the threat of radiation exposure” (*id*), but this latter point reflects the alleged hazard of the SRS site as it now exists, as opposed to any hazard related to the proposed action.

Petition, ¶ 4, at 2-4. The Staff's conclusion that GANE has representational standing is based on Ms. Bloomfield's place of residence, for the reasons previously stated by the Staff. See June 25 Answer, at Sections III. C. 3, 4, and 13.

C. Supplemental Filings Submitted by EI

The Staff previously concluded in its June 25 Answer that EI's initial hearing petition had not established its organizational standing, but that EI should be given the opportunity to establish its representational standing by submitting affidavits of EI members it had referenced in its initial petition.<sup>25</sup> Additionally, the Staff specified that if EI chose to pursue its claim for representational standing based on the interests of members, EI should be required to submit member affidavits establishing the following facts: (a) the distance in miles from their homes to the site of the proposed MOX Facility; (b) that they are members of EI; (c) that they authorize EI to represent them in this proceeding; (d) whether they use the Savannah River (or water therefrom) for any purposes; and (e) the degree to which they eat food grown on their own land, or drink milk produced on their land. See June 25 Answer, at 42.

EI submitted five documents on the issue of standing on July 30-31, 2001: (1) a three-page supplement (titled "Amendment") to its initial hearing petition (EI's Amended Petition); (2) a two-page document dated September 23, 1999 titled "Comments Regarding U.S. Department of Energy Surplus Plutonium Disposition Draft Environmental Impact Statement" (1999 Comments); (3) a three-page document dated January 1981 titled "Regulatory and Legal Events Affecting the

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<sup>25</sup> As with the BREDL filings discussed in Section A, *supra*, some of the EI affidavits filed on July 30 raise an initial issue of whether the basis of EI's request for representational standing should now be limited to the interests of EI members previously identified, or whether EI may now additionally rely on the interests of other members as well. EI obtained affidavits from EI members Kelley Calvo, Basil Garzia, and Maxine Warshauer after submitting its initial hearing petition, and did not reference these members in its initial hearing petition. For the reasons discussed in Section A, *supra*, the Staff proceeds to specifically address all of EI's affidavits filed on July 30-31.

Barnwell Nuclear Fuel Plant” (1981 Comments); (4) a set of six affidavits signed by EI members;<sup>26</sup> and (5) a signed “Affidavit of Edward A. Giusto,” dated July 26, 2001, which was faxed to Judge Moore on July 31.<sup>27</sup> These five documents are discussed below.

1. EI’s Amended Petition

This supplemental filing adds nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding EI. To the extent that EI focuses on alleged inadequacies in NEPA evaluations performed by the DOE, this argument has no bearing here for the reasons discussed in Section A.1, *supra*. To the extent that EI’s supplemental filing may be read as asserting inadequacies in the NRC’s NEPA process to date regarding the proposed MOX Facility (see EI’s Amended Petition, at 2), such argument misapprehends the NEPA process here, since the NRC has yet to complete any such evaluations.

2. 1999 Comments

The 1999 Comments focus exclusively on alleged inadequacies in NEPA evaluations performed by the DOE. This argument has no bearing here for the reasons discussed in Section A.1, *supra*. Moreover, the Staff views this stated interest in prior DOE NEPA actions as the type of “informational interest” which does not confer standing in NRC licensing proceedings. See *Rancho Seco, supra*, CLI-92-2, 35 NRC at 57-61. The 1999 Comments thus add nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding EI.

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<sup>26</sup> The set of six affidavits of EI members filed by EI on July 30, 2001 are packaged in the following order: Kelley Calvo (affidavit dated July 28, 2001, but not signed by Ms. Calvo); Basil Garzia (affidavit dated July 26, 2001); William Jocoy (affidavit dated May 15, 2001); Edward Giusto (affidavit dated May 17, 2001); Nancy Jocoy (affidavit dated May 15, 2001); and Maxine Warshauer (affidavit dated July 27, 2001).

<sup>27</sup> There are three separate affidavits of Mr. Giusto: (1) the signed and notarized affidavit dated May 17, 2001; (2) the unsigned affidavit dated July 26, 2001, which Mr. Moniak submitted on EI’s behalf on July 30; and (3) the signed affidavit dated July 26, 2001, filed by EI on July 31. These affidavits are discussed as a group below.

3. 1981 Comments

The 1981 Comments focus exclusively on the Barnwell fuel plant, in which EI provides a chronology of selected regulatory and legal events there dating from the late 1960's to 1980. Even while acknowledging the weapons-grade source of plutonium for the proposed MOX Facility -- as opposed to the spent nuclear fuel source of the plutonium involved in the Barnwell fuel plant -- the only EI statement attempting to establish the relevance of the Barnwell events to this proceeding is that "there are similarities between the two plutonium recycling plans." EI's Amended Petition, at 3. EI has not shown that the Barnwell events are relevant here, and the 1981 Comments thus add nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding EI.

4. EI Member Affidavits

As noted above, three of the six EI affidavits recently submitted are from EI members Kelley Calvo, Basil Garzia, and Maxine Warshauer. On each of these one-page affidavits, these EI members state that he or she lives or works in Columbia, South Carolina. As a group, these three affidavits identify interests even more remote from the proposed MOX Facility than those of BREDL member Dr. Carl (whose interests, as discussed in Section A.4, *supra*, the Staff found were insufficient to support BREDL's representational standing), and fail to meet criteria (a), (d), and (e) previously identified by the Staff and set forth in Section C, *supra*. For these reasons, and as discussed further below, the Staff concludes that these affidavits do not establish EI's representational standing in this CAR proceeding.

Ms. Calvo owns a store in Columbia. She states that she "travels on roads close to the site of the proposed MOX Facility," and "drives on roads over which nuclear shipments would travel to and from the MOX Facility," but does not state the frequency of such trips. Such transportation issues are outside the scope of this proceeding, and thus do not confer individual or representational standing here. See June 25 Answer, at 15-16, and 24-25. Ms. Calvo states that

“she eats foods grown in the vicinity of the SRS,” but she does not state how often she eats such foods, or provide other particulars about these foods. Mr. Garzia also owns a store in Columbia. He sells produce, some of which “is grown close to” the site of the proposed MOX Facility.<sup>28</sup> Ms. Warshauer lives in Columbia. To a large extent her affidavit focuses on alleged inadequacies in NEPA evaluations performed by the DOE. Such topics involving the DOE’s NEPA process have no bearing on standing here for the reasons discussed in Section A.1, *supra*, and are akin to the type of informational interest which (as noted in Section A.4, *supra*) the Commission has determined does not confer standing in NRC licensing proceedings.<sup>29</sup> Ms. Warshauer also asserts interests as a taxpayer, a type of generalized grievance which does not establish standing here for the reasons referenced in Section A.4, *supra*, regarding one of Dr. Carl’s stated interests. Moreover, as a group, these three EI affidavits identify neither the distance in miles from the EI members’ homes to the site of the proposed MOX Facility, nor whether they use the Savannah River (or water therefrom) for any purposes, nor whether they consume food products grown on their own land in proximity to the proposed MOX Facility.

Accordingly, the Board should find that these affidavits do not establish EI’s representational standing in this CAR proceeding.

Regarding the interests identified in the affidavits of EI members Mr. and Mrs. Jocoy, the Staff previously addressed these interests, and concluded that they did not establish EI’s representational standing in this proceeding. See June 25 Answer, at 40-41. The May 15 affidavits of Mr. and Mrs. Jocoy (EI does not explain why these affidavits were not submitted as part of its

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<sup>28</sup> Mr. Garzia apparently does not eat such food himself, but is concerned for the health of his customers. EI makes no showing that it is authorized to represent the interests of any such customers, and their interests thus provide no basis which supports EI’s claim for representational standing.

<sup>29</sup> Informational interests do not confer standing in NRC licensing proceedings. See *Rancho Seco*, *supra*, CLI-92-2, 35 NRC at 57-61.

initial hearing petition) add nothing to the record which would affect the conclusions on standing reached by the Staff in its June 25 Answer regarding EI.

Regarding the interests of EI member Mr. Giusto, these interests were first identified in EI's initial hearing petition, but no affidavit of Mr. Giusto's was then submitted. On July 30, EI submitted an affidavit of his dated May 17, 2001. On July 31, EI submitted a second affidavit of Mr. Giusto's dated July 26, 2001.<sup>30</sup> The Staff previously advised EI that if it chose to pursue its claim for representational standing based on the interests of its identified members (which included Mr. Giusto), EI should submit an affidavit of Mr. Giusto's establishing the following facts: (a) the distance in miles from his home to the site of the proposed MOX Facility; (b) that he is a member of EI; (c) that he authorizes EI to represent him in this proceeding; (d) whether he uses the Savannah River (or water therefrom) for any purposes; and (e) the degree to which he eats food grown on his own land, or drinks milk produced on his land. See June 25 Answer, at 42.

In the Staff's view, Mr. Giusto's July 26 affidavit adequately establishes these facts. Mr. Giusto states that he owns and lives on property located 22 miles from the site of the proposed MOX Facility. He further states that he is a member of EI, and authorizes EI to represent him in this proceeding. Mr. Giusto also states that he grows vegetables at his residence for personal consumption.<sup>31</sup> The interests thereby established are sufficiently similar to those on which the Staff previously concluded that Mr. Moniak had individual standing to warrant, in the Staff's view, a

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<sup>30</sup> See also n. 27, *supra*, referencing the unsigned copy of Mr. Giusto's July 26 affidavit submitted July 30 by Mr. Moniak on EI's behalf. There is a question regarding the validity of Mr. Giusto's July 26 affidavit, since its signing was witnessed only by Mr. Moniak, and this affidavit was not notarized. However, Mr. Giusto's May 17, 2001 affidavit was notarized, and Mr. Giusto's July 26 signature does not appear to be a forgery or a copy of the earlier signature. In the absence of any evidence of wrongdoing, the Staff is prepared to accept Mr. Giusto's July 26 affidavit as genuine.

<sup>31</sup> For the reasons discussed elsewhere in this filing, the interests identified by Mr. Giusto in the third and fourth paragraphs of his July 26 affidavit are not relevant to questions of standing in this proceeding.

similar finding regarding Mr. Giusto's interests. The Staff therefore concludes that Mr. Giusto's July 26 affidavit establishes EI's representational standing in this CAR proceeding.

Accordingly, the Board should find that Mr. Giusto's July 26 affidavit establishes EI's representational standing in this CAR proceeding.

CONCLUSION

For the reasons set forth above, and for those stated in the June 25 Answer, the Board should make the following findings on standing in this proceeding: (1) that Mr. Moniak has established his individual standing; (2) that BREDL has established neither its organizational nor its representational standing; (3) that GANE has established its representational (but not its organizational) standing; (4) that EI has established its representational (but not its organizational) standing; and (5) that Mrs. Edna Foster has not established her individual standing.

Respectfully submitted,

**/RA/**

John T. Hull  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 10<sup>th</sup> day of August, 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of )  
)  
DUKE COGEMA STONE & WEBSTER ) Docket No. 70-3098  
)  
(Savannah River Mixed Oxide Fuel )  
Fabrication Facility) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO SUPPLEMENTAL FILINGS ON THE ISSUE OF STANDING" have been served upon the following persons this 10<sup>th</sup> day of August, 2001, by electronic mail, and by U.S. mail, first class (or as indicated by an asterisk (\*) through the Nuclear Regulatory Commission's internal distribution); or as indicated by double asterisks (\*\*), solely by express overnight mail.

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John T. Hull /**RA**/  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 10<sup>th</sup> day of August, 2001