

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Thomas S. Moore, Chairman
Charles N. Kelber
Peter S. Lam

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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| In the Matter of |) | |
| |) | |
| DUKE COGEMA STONE & WEBSTER |) | Docket No. 070-03098-ML |
| |) | |
| (Savannah River Mixed Oxide Fuel |) | ASLBP No. 01-790-01-ML |
| Fabrication Facility) |) | |
| _____ |) | |

**Duke Cogema Stone & Webster's Answer to
Environmentalists, Inc.
Amendment to Request for Hearing and Petition to Intervene**

I. INTRODUCTION

Duke Cogema Stone & Webster ("DCS") hereby files its Answer to the Environmentalists, Inc. ("EI") "Amendment" to its Request for Hearing and Petition to Intervene ("Amended Petition") in a proceeding regarding the Mixed Oxide Fuel Fabrication Facility ("MOX Facility") Construction Authorization Request ("CAR"). On May 18, 2001, EI requested a hearing before the Nuclear Regulatory Commission ("NRC") on the MOX Facility CAR ("EI Request"). DCS filed an Answer to the EI Request on June 4, 2001 ("DCS Answer"). The NRC Staff filed its Answer to the EI Request (and the requests of others) on June 25, 2001 ("Staff Answer"). As authorized by the Licensing Board, EI filed its Amended Petition on July 30, 2001.

As discussed below, EI has failed to demonstrate either organizational or representational standing to participate in this proceeding. Accordingly, its request for a hearing should be denied.

II. EI LACKS ORGANIZATIONAL STANDING

As explained in the DCS Answer, in order to obtain organizational standing, EI must demonstrate that if the CAR is approved by the NRC: (1) it, as an organization, will likely suffer a distinct and palpable injury that is within the zone of interests protected by the Atomic Energy Act (“AEA”) or National Environment Policy Act (“NEPA”); (2) the injury is traceable to the NRC’s approval of the MOX Facility CAR (*i.e.*, causation); and (3) the injury can be redressed by a decision in this proceeding.¹

The original EI Request asserted generalized organizational goals as a basis for standing.² DCS argued, and the NRC Staff agreed, that EI had failed to demonstrate that it, as an organization, would be adversely affected if the NRC approved the MOX Facility CAR, and had thus failed to establish organizational standing.³

In its Amended Petition, EI has added little to its original assertions regarding organizational standing. In particular, it states that its “goals” are “protecting the environment of S.C. and the health and safety of its citizens.”⁴ EI also discusses its involvement in prior NRC licensing proceedings involving the Barnwell Nuclear Fuel Plant. It claims that DOE and DCS have “excluded” the record of those proceedings from their environmental reviews of the MOX

¹ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Westinghouse Elec. Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 258-59 (1980).

² See EI Request at 6.

³ See DCS Answer at 13-15; Staff Answer at 39-40.

⁴ Amended Petition at 2.

Facility, and argues that, as a result, it has incurred an “injury in fact...in terms of wasted time, energy and resources....”⁵

With respect to the first claim, EI’s Amended Petition suffers from the same deficiencies as its original Request.⁶ It has provided only generalized grievances regarding broad policy issues of the type that have consistently been rejected by the NRC as bases for standing.⁷ A vague goal of protecting the citizens of South Carolina does not confer the type of particularized injury needed for standing.⁸

EI’s second claim – that it will incur wasted time, energy and resources in raising matters previously discussed in the Barnwell proceeding – does not allege any injury within the zone of interests protected by the AEA or NEPA. Nor does it identify any injury that could be caused by the NRC’s approval of the MOX Facility CAR or that is redressable by the Licensing Board. The alleged injury would occur simply by virtue of EI’s decision to participate in this proceeding – regardless of the NRC’s decision on the CAR.

For the reasons discussed above, EI should not be granted organizational standing.

III. EI LACKS REPRESENTATIONAL STANDING

To invoke representational standing, EI must show: (1) its members have standing in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and

⁵ *Id.* at 2-3.

⁶ See DCS Answer at 13-15.

⁷ *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 529 (1991) (affirming denial of standing to organization claiming a generalized grievance – alleged danger from a nuclear power plant – that is shared by the general public) see also *Babcock and Wilcox* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 50 (1994) (rejecting standing for an organization requesting a hearing “on behalf of the citizens of Kiski Valley” and “seek[ing] to protect ‘property values and the health and safety of the remaining general population’” because an organization “may not undertake to represent the general public as if [it] were [a] private attorney[] general”).

⁸ See *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); see also *Dellums v. NRC*, 863 F.2d 968, 972 (D.C. Cir. 1988).

(3) neither the claim asserted nor the relief requested requires the participation of the individual members.⁹

The original EI Request relied upon the interests of six individuals as a basis for representational standing.¹⁰ In its Answer, DCS demonstrated that EI had failed to sufficiently particularize an injury to any of its members that might result from NRC's approval of the MOX Facility CAR, and therefore had failed to demonstrate representational standing.¹¹ The NRC Staff agreed that the interests of four of the six named individuals – Mr. And Mrs. Jocoy, Ms. Minerd, and Mr. Riley – were insufficient for standing, since their interests related to the use of MOX fuel in reactors, and were therefore outside the scope of this proceeding.¹²

With respect to the remaining two individuals identified in EI's Request – Mr. Giusto and Mr. McMillan – the NRC Staff listed the shortcomings in the allegations, and advised EI on how it might remedy its request. Specifically, the NRC Staff suggested that EI submit affidavits from the individuals it wishes to represent, establishing: “(1) the distance in miles from their homes to the site of the proposed MOX Facility; (2) that they are members of EI; (3) that they authorize EI to represent them in this proceeding; (4) whether they use the Savannah River (or water therefrom) for any purposes; and (5) the degree to which they eat food grown on their own land, or drink milk produced on their land.”¹³

Even with the opportunity to cure defects in their arguments, however, EI has failed to demonstrate representational standing.

⁹ See *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); see also *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396-97 (1979).

¹⁰ Those individuals were: William Jocoy, Nancy Jocoy, Marian Minerd, Jess Riley, J.S. McMillan and Edward Giusto. EI did not submit affidavits from – or any additional information regarding – Marian Minerd, Jess Riley, or Mr. McMillan with its Amended Petition. DCS therefore does not re-address these individuals' bases for standing, but instead relies upon its original Answer at 4-13.

¹¹ See DCS Answer at 4-13.

¹² See Staff Answer at 40-41.

¹³ *Id.* at 41-42.

A. Edward Giusto

EI relies for representational standing on the interests of Edward Giusto, and has submitted two inconsistent affidavits on his behalf. The first, sworn before a notary on May 17, 2001, claims that:

- Mr. Giusto lives in Augusta, Georgia, “less than 20 miles” from the proposed site of the MOX Facility;
- Plutonium would travel “near” his home en route to the Savannah River Site (“SRS”) for processing; and
- Mr. Giusto believes that his life and health are jeopardized by the MOX Facility.

This affidavit does not state that Mr. Giusto is an EI member.

Mr. Giusto’s second affidavit was never notarized, and it is unclear when it was signed.¹⁴

This second affidavit claims that he:

- Is an EI member;
- Lives in Augusta, Georgia, “22 miles” from the proposed site of the MOX Facility;
- Grows vegetables for personal consumption at his residence and purchases produce from “area growers”;
- Travels 20 – 30 times a year to Hilton Head, South Carolina on roads that pass through the SRS within five miles of the MOX Facility; and
- Consumes water from the Savannah River while in Hilton Head.

As discussed below, these claims are insufficient for Mr. Giusto to demonstrate standing in this proceeding.

Mr. Giusto has not described how he could be injured by the MOX Facility at his residence, approximately twenty miles away. In *Babcock and Wilcox*, the petitioners lived within two miles of a facility seeking a license amendment to allow extensive decommissioning activities for a fuel fabrication facility. The Licensing Board held that:

It is not enough for the Petitioners simply to assert that they live close to the...facility. To meet their burden of proving that they

¹⁴ The Certificate of Service provided by Donald J. Moniak of Blue Ridge Environmental Defense League seems to indicate that Mr. Giusto signed the affidavit on July 26, 2001 in the absence of a notary, that Mr. Moniak then tried to get the signed affidavit notarized on July 27, 2001 in the absence of Mr. Giusto, and that ultimately Mr. Moniak signed the affidavit as a “witness.”

have the requisite injury in fact, the Petitioners also must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests.¹⁵

The proposed MOX Facility is to be located almost six miles inside the SRS boundary at its closest point.¹⁶ The analysis in the CAR shows that any radiological consequences at the SRS boundary as a result of an accident would be low – approximately 10 mrem for the most bounding accident.¹⁷ Obviously, any postulated consequences to Mr. Giusto, who resides almost 20 miles away, would be substantially less than that. Therefore, it should not be presumed that he would be affected by the MOX Facility based merely upon the location of his residence.¹⁸ Instead, Mr. Giusto must show how the MOX Facility could plausibly affect him.

Mr. Giusto has expressed his “belief” that his life and health would be jeopardized by the proposed MOX Facility, and that he would have “no way of knowing if radioactive contaminants resulting from leaks from the MOX facility” existed in the air, water, or food he intakes.¹⁹ However, he has not identified any mechanism for “leaks” from the MOX Facility, nor has he provided any basis for believing that “leaks” could affect him twenty miles away. As a result, his statements are not sufficient to establish a plausible, non-conjectural injury in fact.

Mr. Giusto’s vague concern that the approval of the CAR might in some way affect locally-produced food he eats or vegetables grown at his residence is similarly insufficient to confer standing.²⁰ Mr. Giusto has failed to identify the location of the “area growers” from

¹⁵ *Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 84 (1993).

¹⁶ See MOX Facility CAR § 1.3.1.1

¹⁷ *Id.* at Section 5.5.3 and Table 5.5-26.

¹⁸ See, e.g., *Florida Power and Light Co.*, (Turkey Point, Units 3 and 4), LBP-01-06, 54 NRC 138 (2001) (holding that in order to avail themselves of a presumption based on proximity to a challenged facility, a petitioner must show that “the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences”).

¹⁹ Amended Petition, sworn Giusto Affidavit at 1 and “witnessed” Giusto Affidavit at 2.

²⁰ *Id.*, “witnessed” Giusto Affidavit at 1-2.

whom he purchases produce, and has failed to identify a plausible scenario by which his own garden, twenty miles away, could possibly be adversely affected by the MOX Facility.

Mr. Giusto claims that he drinks water from the Savannah River while in Hilton Head. However, Hilton Head is a coastal island surrounded by saltwater that, according to the Environmental Protection Agency (“EPA”), receives its drinking water from groundwater, not the Savannah River.²¹

Mr. Giusto also alleges that, about 20 to 30 times per year, he “passes through” within five miles of the proposed site for the MOX Facility on the way to Hilton Head.²² However, there is no indication that Mr. Giusto actually spends any significant time in the vicinity of the proposed location of the MOX Facility during these trips. As the Licensing Board has previously held, “intermittent visits” to the area near the proposed site are not a sufficient basis for standing.²³ Therefore, Mr. Giusto’s claim that he periodically “passes” within five miles of the MOX Facility site, standing alone, cannot confer standing.

Finally, Mr. Giusto’s allegation that plutonium would travel near his house en route to the SRS is not a proper basis for standing. Transportation of plutonium to the SRS is under the jurisdiction and control of the DOE.²⁴ Moreover, plutonium entering the SRS for ultimate use in the MOX Facility would first be taken to the Pit Disassembly and Conversion Facility (“PDCF”), which is likewise under the jurisdiction and control of the DOE.²⁵ Thus, any assertion regarding the safety of DOE’s transportation of plutonium feed material to the PDCF is beyond the scope

²¹ The USEPA EnviroFacts database lists three drinking water systems on Hilton Head. Hilton Head Plantation (permit SC0750028) serves 11,115 people. Hilton Head PSD #1 (permit SC0720006) serves 7,366 people. Hilton Head Rural Water District (permit SC0720010) serves 711 people. According to the database, all three systems obtain water from groundwater. See <http://www.epa.gov/enviro/html/qmr.html#envirofacts>.

²² Amended Petition, “witnessed” Giusto Affidavit at 1.

²³ *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1447-48 (1982) (denying standing to petitioner who traveled within three miles of a nuclear power plant on six specified occasions).

²⁴ SPD Final EIS, Sec. 2.4.4.1, p. 2-37.

of this proceeding and is therefore inappropriate for consideration as a basis for standing. As the Commission has held, “[i]ntervention may not be based on claims pertaining to matters that are beyond the scope of this proceeding.”²⁶

Additionally, a claim similar to Mr. Giusto’s was rejected by the Licensing Board in *Northern States Power Co.*, where a petitioner was denied standing based upon his claim that truck shipments of radioactive waste would be routed within a mile of his home, and that a transportation accident would expose him to unacceptable levels of radioactivity.²⁷ Similarly, in *Exxon Nuclear Co., Inc.*, a petitioner was denied standing based upon an allegation that spent fuel rods would be shipped over train tracks “very near to her home.”²⁸ The *Exxon* Licensing Board held that petitioner’s:

allegations of possible physical and/or economic injury are 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.²⁹

For similar reasons, Mr. Giusto’s allegations regarding transportation are not a sufficient basis for standing in this proceeding.

B. William and Nancy Jocoy

EI also continues to rely on the interests of William Jocoy and Nancy Jocoy despite the fact that, according to their affidavits, they: (1) live in Fort Mill, South Carolina; and (2) rely for standing upon allegations of injury from the potential “fallout” from an accident at the Catawba Nuclear Power Plant or during MOX fuel transport.³⁰ The Jocoys fail to describe any plausible

²⁵ *Id.*

²⁶ *Westinghouse Electric Corp.*, 12 NRC at 260.

²⁷ *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 42 (1990), *cited affirmatively in International Uranium (USA) Corp.* (Source Material License Amendment), CLI-01-18, slip op. at 5 (2001).

²⁸ *Exxon Nuclear Co., Inc.* (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519 (1977).

²⁹ *Id.* at 520.

³⁰ See Affidavits of William Gregg Jocoy and Nancy Lynn Jocoy.

scenario by which they could be adversely affected by the MOX Facility at their residence in Fort Mill, over 100 miles away. Even in licensing proceedings involving power reactors operating at full power, this distance is outside the area in which a petitioner is typically presumed to have standing.³¹ Moreover, as previously explained by both DCS³² and the NRC Staff,³³ neither allegations of harm from use of MOX fuel in the Catawba plant, nor allegations regarding the safety of transport of MOX fuel are sufficient for standing.³⁴

Thus, the Jocoys have again failed to demonstrate standing in their own right, and EI may not rely upon them for representational standing.

C. Kelly Calvo

EI has supplemented its original Request by submitting the affidavit³⁵ of Ms. Kelly Calvo. Ms. Calvo claims that she:

- Is a member of EI;
- Owns a store in Columbia, South Carolina;
- Travels on roads that are “close to” the proposed MOX Facility, or that may be used for the transportation of “nuclear shipments...to and from the MOX Facility”;³⁶
- Uses the Savannah River for recreation while on buying trips;
- Drives over roads on which nuclear shipments would travel to and from the MOX Facility;
- Eats food “grown in the vicinity of the SRS”;³⁷ and
- Fears that the MOX Facility may impact her business in Columbia, South Carolina, because “even if there are no accidents...just a rumor of a problem would have a bad effect on her business and result in financial losses.”³⁸

Ms. Calvo fails to describe any plausible way in which she could be adversely affected by the MOX Facility at her store in Columbia, South Carolina, approximately 60 miles away.³⁹ As

³¹ See, e.g., *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.2 (1994).

³² DCS Answer at 7-9.

³³ Staff Answer at 40-41.

³⁴ Additionally, EI's Request claims that the Jocoys are EI members. However, neither of their Affidavits confirms this claim.

³⁵ It appears that Ms. Calvo has not signed the affidavit. Although her name is hand-written in the body of the affidavit, there is no signature on the signature line.

³⁶ Amended Petition, Affidavit of Kelly Calvo at 1.

³⁷ *Id.*

stated above, even in licensing proceedings involving power reactors operating at full power, this distance is outside the area in which a petitioner is typically presumed to have standing.⁴⁰

Furthermore, Ms. Calvo's assertion that she "travels on roads close to the site of the proposed MOX facility" is too vague to confer standing. She does not identify how close she comes to the site, how often she travels near the site, or for how long she remains in the vicinity. This information is necessary, since "intermittent visits" to the area near the proposed site are not a sufficient basis for standing.⁴¹

Ms. Calvo also alleges that she travels on the roads that would be used for transportation of "nuclear shipments" to and from the MOX Facility. As explained above with respect to Mr. Giusto, allegations regarding the safety of DOE's transportation of nuclear materials are inappropriate bases for standing since they are (1) beyond the scope of this proceeding; and (2) too speculative to constitute actual injury.

Ms. Calvo's reference to her recreational use of the Savannah River does not identify where on the river – and with what frequency – she recreates, and therefore cannot confer standing.⁴² Similarly, Ms. Calvo fails to specify her sources of food, stating only that she eats food "grown in the vicinity of the SRS."⁴³ Her vague concern that the approval of the CAR

³⁸

Id.

³⁹ Ms. Calvo does not provide the location of her residence, or its distance in miles to the MOX Facility.

⁴⁰ *See, e.g., Yankee Atomic Electric Co.*, 39 NRC at 102 n.2.

⁴¹ *Philadelphia Electric Co.*, 15 NRC at 1447-48.

⁴² *See, e.g., Atlas Corp.* (Moab, Utah Facility), LBP-97-10, 45 NRC 414, 426 (1997) (denying standing based on claim of radiological harm as a result of "drinking, bathing, and cooking" with water from a river flowing next to the challenged facility, since petitioner had "not provided any information that indicates whether these water-related activities are being conducted upstream or downstream from the facility, a fact critical to establishing whether these activities will establish the requisite injury in fact").

⁴³ Amended Petition, Affidavit of Kelly Calvo at 1.

might in some way affect locally produced food or other agricultural products is insufficient to confer standing.⁴⁴

The allegation that “a rumor of a problem would have a bad effect on her business and result in financial losses” is not a sufficient basis for standing. As the Licensing Board held in *Philadelphia Electric Co.*, adverse economic impacts due to a “fear of contamination” (as distinct from the economic effects of actual contamination) are not within the zone of interests protected by the AEA or NEPA.⁴⁵

Because Ms. Calvo has failed to demonstrate standing in her own right, EI may not rely upon her for representational standing.

D. Basil Garzia

EI also has supplemented its original Request by submitting the affidavit of Mr. Basil Garzia. Mr. Garzia claims:

- He is a member of EI;
- He owns a health food store and deli in Columbia, South Carolina;
- He sells produce and other foods which are “at risk of being contaminated as a result of the routine operation and/or accidental events at the MOX Facility and/or due to such related activities as transportation of radioactive materials to and from the MOX Facility”;
- Shipments of food travel the same roads as nuclear materials to and from the SRS;
- Produce he sells is grown close to the MOX Facility site;
- He is “concerned for his customers’ health”; and
- He fears that the MOX Facility may impact his business in Columbia, South Carolina, because “even if there are no accidents...just a rumor of a problem would adversely effect [*sic*]...his business.”⁴⁶

Mr. Garzia’s claim for standing is extremely tenuous. He makes no attempt to describe any plausible method by which the MOX Facility could cause him injury. Instead, Mr. Garzia

⁴⁴ See generally, *Philadelphia Electric Co.* 15 NRC at 1449 (denying standing where the petitioner alleged that a nuclear facility “will cause radiologically contaminated food, which [petitioner] may consume” because such “allegations are too remote and too generalized to provide a basis for standing to intervene”).

⁴⁵ *Id.* at 1448-49.

⁴⁶ Amended Petition, Affidavit of Basil Garzia at 1.

relies exclusively on his ownership of a health food store and deli in Columbia, South Carolina, approximately 60 miles away from the proposed MOX Facility site. He claims, without any basis, that his customers' health may be adversely affected as a result of the MOX Facility. Neither Mr. Garzia, nor EI, is authorized to represent the interests of Mr. Garzia's customers.⁴⁷

Mr. Garzia also alleges that some of the produce sold in his store "is grown close to" the MOX Facility site, and that the produce is "at risk of being contaminated as a result of the routine operation and/or accidental events at the MOX Facility." He then implies that this would cause "a negative impact on his business." Even if his string of allegations is accepted *arguendo*, Mr. Garzia does not explain how such a scenario could affect his business.⁴⁸ More fundamentally, Mr. Garzia's allegations are simply too remote and generalized to support a claim of standing. As the Licensing Board has previously held, a person who resides more than 50 miles from the site of the proposed facility cannot base a claim of standing upon an allegation that he may consume contaminated produce grown near the site.⁴⁹ Obviously, if allegations regarding the *consumption* of such produce are not a sufficient basis for standing, allegations regarding the *selling* of such produce afford even less of a basis for standing.

Because Mr. Garzia has no standing in his own right, EI may not rely upon him for representational standing.

E. Maxine M. Warshauer

Finally, EI submits the affidavit of Ms. Maxine Warshauer. Ms. Warshauer claims:

⁴⁷ See, e.g., *Florida Power & Light Co.*, (St. Lucie, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) ("petitioner must himself fulfill the requirement for standing; he may not derive standing from the interests of another person or organization").

⁴⁸ Mr. Garzia has not alleged that he owns the farms that raise the produce or has any economic interest in the produce until it reaches his store. If it is assumed (as alleged by Mr. Garzia) that the produce is contaminated in the fields or during transportation to his store, the produce would in all likelihood be interdicted before it reaches his store; or, Mr. Garzia could simply refuse to purchase the contaminated produce. In such an event, there is no indication that he would incur any economic impact upon his business.

- She is a member of EI;
- She lives in Columbia, South Carolina;
- She has “sought to be involved in the decision making process related to the proposed MOX Facility”;
- As a taxpayer, “she stands to be negatively affected financially due to a poor decision being made regarding the choice of a site” for the MOX Facility;⁵⁰ and
- DOE’s siting decision was not made in compliance with NEPA.

Ms. Warshauer has made no effort to explain any plausible way in which she could be adversely affected by the MOX Facility at her residence over 60 miles away. In addition, it is well settled that an individual’s status as a United States citizen or taxpayer is insufficient to confer standing.⁵¹ Finally, because DOE’s NEPA decision making is not within the scope of this proceeding, EI may not claim standing based upon DOE’s decisions.⁵²

Because Ms. Warshauer has no standing in her own right, EI may not rely upon her for representational standing.

F. EI’s General Claims of Injury

In its Amended Petition, EI sets forth various claims on behalf of its members in general.⁵³ In particular, EI alleges various deficiencies with DOE’s implementation of NEPA, including: (1) “there has not been a proper identification and balancing of the potential

⁴⁹ See generally, *Philadelphia Electric Co.*, 15 NRC at 1449; *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979).

⁵⁰ Amended Petition, Affidavit of Maxine Warshauer at 1.

⁵¹ See generally, *Babcock and Wilcox*, 39 NRC at 49; see also *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 477-482, 102 S. Ct. 752, 761-764 (1982) (the mere fact that a person is a taxpayer is an insufficient basis for standing to object to particular government conduct); *Northern States Power Co.*, (Pathfinder Atomic Plant, Byproduct Material License), LBP-89-30, 30 NRC 311, 315 (1989); *Exxon Nuclear Co., Inc.*, 6 NRC at 520.

⁵² Furthermore, with respect to EI’s allegations of NEPA violations by DOE, the Commission has recently stated that it “has never held that a claimed violation of law creates a presumption of standing, without some showing that the violation could harm the petitioner.” *International Uranium (USA) Corp.*, CLI-01-18, slip op. at 4. This principle seems particularly applicable when the alleged violator is not the NRC license applicant.

⁵³ In the absence of a sufficient assertion of injury in fact by at least one of EI’s members, these general allegations on their own cannot confer representational standing upon EI. See, e.g., *Houston Lighting & Power Co.*, 9 NRC 377; *Northern States Power Co.*, 30 NRC at 313 (explaining that for representational standing, an organization “must provide with its petition identification of at least one member who will be injured, a description of the nature of that injury, and an authorization for the organization to represent that individual in the proceeding”).

cumulative impacts...”; and (2) DOE “failed to comply with NEPA” in its Surplus Plutonium Disposition Environmental Impact Statement.⁵⁴ Alleged deficiencies in DOE’s NEPA review are outside the scope of this proceeding. With respect to NEPA issues, the scope of this proceeding is limited to the sufficiency of the NRC’s NEPA process and determinations relating to the proposed MOX Facility. An NRC hearing does not provide a forum to litigate whether the DOE has met its separate NEPA obligations associated with the overall surplus plutonium disposition program.

EI also alleges that the Safety Assessment in chapter 5 of the CAR is deficient in several respects, specifically noting that “the potential for cumulative impacts were [*sic*] not properly identified and balanced as required by the NEPA.”⁵⁵ The Safety Assessment need not provide an assessment of cumulative impacts pursuant to NEPA, since it was prepared by DCS pursuant to 10 CFR § 70.22(f) – not NEPA or NRC regulations implementing NEPA. DCS’ Environmental Report does address cumulative impacts.⁵⁶ Therefore, EI’s general claims of injury are not sufficient to confer standing.

⁵⁴ Amended Petition at 1.

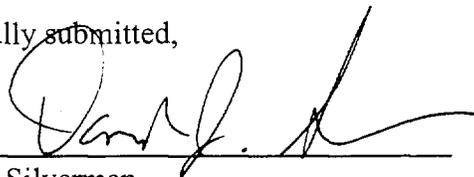
⁵⁵ *Id.* at 2.

⁵⁶ MOX Facility Environmental Report, Section 5.6.

IV. CONCLUSION

For the reasons discussed above, EI does not have either organizational or representational standing to obtain a hearing on the MOX Facility CAR. Therefore, DCS requests that EI's Request for Hearing be denied.

Respectfully submitted,



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Dated: August 10, 2001

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

**Before Administrative Judges:
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| |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of "Duke Cogema Stone & Webster's Answer to Environmentalists, Inc. Amendment to Request for Hearing and Petition to Intervene" were served this day upon the persons listed below, by both e-mail and United States Postal Service, first class mail, with the exception of Environmentalists, Inc, which was served by first-class mail.

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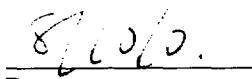
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