

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
 )  
DUKE ENERGY CORPORATION ) Docket Nos. 50-369, 370, 413 and 414  
 )  
(McGuire Units 1 and 2, and )  
Catawba, Units 1 and 2) )  
 )

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NRC STAFF'S RESPONSE TO REQUESTS FOR HEARING AND PETITIONS  
FOR LEAVE TO INTERVENE FILED BY NUCLEAR INFORMATION AND  
RESOURCE SERVICE AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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Susan L. Uttal  
Counsel for NRC Staff

October 1, 2001

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the September 14, 2001, Request for Hearing and Petition to Intervene filed by the Nuclear Information and Resource Service (NIRS' Petition) and the September 14, 2001, request for hearing and petition for leave to intervene filed by the Blue Ridge Environmental Defense League (BREDL's Petition).<sup>1</sup> For the reasons set forth below, the Staff submits that the Nuclear Information and Resource Service (NIRS) and the Blue Ridge Environmental Defense League (BREDL) have demonstrated standing to intervene in this matter,<sup>2</sup> as required by 10 C.F.R. § 2.714 (a).<sup>3</sup>

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<sup>1</sup> NIRS' Petition was dated September 11, 2001, but was not fully executed or mailed until September 14, 2001, as indicated by the dated postmark on the envelope (copy attached) and the dates affixed to the Notice of Appearance of Mary Olson and the Declaration of Mary Olson attached to NIRS' Petition.

<sup>2</sup> In addition to establishing standing, petitioners must also submit at least one acceptable contention.

<sup>3</sup> Although NIRS has established standing as to McGuire Nuclear Station, it has failed to establish standing as to Catawba Nuclear Station. See, *infra*. at 7-9.

## BACKGROUND

On June 13, 2001, Duke Energy Corporation (Duke) submitted an application to renew the Operating Licenses Nos. NPF-9, NPF-17, NPF-35, and NPF-52 for McGuire Nuclear Station, Units 1 and 2 (McGuire), and Catawba Nuclear Station, Units 1 and 2 (Catawba), for an additional 20 years. The current operating licenses for McGuire, Units 1 and 2, expire on June 12, 2021, and March 3, 2023, respectively. The current operating licenses for Catawba, Units 1 and 2, expire on December 6, 2024, and February 24, 2026, respectively.<sup>4</sup>

On July 16, 2001, the NRC published in the Federal Register a “Notice of Receipt of Application for Renewal of Facility Operating License Nos. NPF-9, NPF-17, NPF-35, and NPF-52 for an Additional 20-Year Period” which indicated that the Duke application was available for public inspection on the NRC website and in the NRC’s Public Document Room. 66 Fed. Reg. 37,072 (2001). On August 15, 2001, the Staff published in the Federal Register a “Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of Facility Operating License Nos. NPF-9, NPF-17, NPF-35, and NPF-52 for an Additional 20-Year Period”. 66 Fed. Reg. 42,893-894 (2001) (Notice). The Notice provided that by September 14, 2001:

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714.

*Id.* at 42,893.

On September 14, 2001, NIRS and BREDL filed the instant petitions requesting a hearing and seeking to intervene in the license renewal proceeding.

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<sup>4</sup> In October 1999, Duke was granted an exemption to the requirement in 10 C.F.R. 54.17(c) that “An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license currently in effect.” 64 Fed. Reg. 54,924-925 (1999).

## DISCUSSION

### 1. Legal Requirements for Intervention

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so. Section 189a.(1) of the Atomic Energy Act of 1954, as amended (Act or AEA), 42 U.S.C. § 2239(a), states:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interests may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.”

*Id.* (emphasis added).

The Commission’s regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition 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)].” Pursuant to section 2.714(d)(1), 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)(2). An aspect must be within the scope of the proceeding to be valid. *Philadelphia Elec. Co.* (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 273, 277 (1986).

In ascertaining whether a petitioner has set forth a sufficient “interest” to intervene, the Commission applies contemporaneous judicial concepts of standing. *See, e.g., Commonwealth*

*Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 188 (1999); *Gulf States Util. Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Org. v. NRC*, 996 F.2d 1224 (9th Cir. 1993); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2) CLI-76-27, 4 NRC 610, 613-614 (1976).

An organization may satisfy the standing criteria of 10 C.F.R. § 2.714(a)(2) and (d)(1) in two ways, based either upon the licensing action's effect upon the interest of the petitioning organization itself (i.e., organizational standing) or upon the interest of at least one of its members who has authorized the organization to represent the member and the member's interests (i.e., representational standing). *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-196 (1998); *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-2, 42 NRC 111, 115 (1995). Where an organization asserts a right to represent the interests of its members, judicial concepts of standing require a showing that: (1) its members would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). Longstanding NRC practice also requires an organization to demonstrate that at least one of its members has authorized it to represent the member's interests. See *Georgia Institute of Technology*, CLI-95-2, 42 NRC at 115.

In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest, and that the injury is arguably within the "zone of interests"

protected by the statutes governing the proceeding. See, e.g., *Georgia Power Co.* (Vogtle Elec. Generating Plant, Units 1 & 2), CLI-93-16, 38 NRC 25, 32 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991) (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983)). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, *et seq.* *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

To establish injury in fact, petitioner must establish (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1988) (citing *Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998)); see also *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 5-6 (1998). A determination that the injury is fairly traceable to the challenged action does not depend “on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels Corp.* (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 75 (1994). Finally, it must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Sequoyah Fuels*, CLI-94-12, 40 NRC at 71-72.

The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. A petitioner must have a “real stake” in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979). While the petitioner’s stake need not be a “substantial” one, it must be “actual,” “direct” or “genuine.”

*Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-74, 16 NRC 981, 983 (1982) (*citing Allied General Nuclear Services* (Barnwell Fuel Receiving & Storage Station), ALAB-328, 3 NRC 420, 422 (1976)); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *International Uranium Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116 (1998). A “generalized grievance” shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983) (*citing Transnuclear, Inc.* (Ten Applications for Low-Enriched Uranium Exports to EUROTOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977)).

Proximity of residence, within a specific distance from a plant, has been found in the past, to be sufficient alone to confer standing on a petitioner in proceedings concerning construction permits, operating licenses, or significant amendments thereto. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). Such cases have involved construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences. *Id.* Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific injury-in-fact. *Id.* at 329-30. *Zion*, CLI-99-04, 49 NRC at 188.

Even in amendment proceedings in which there were findings that licensing actions involved obvious potential for offsite consequences, thus presumptively establishing injury-in-fact through proximity, the Commission and licensing boards have nevertheless traced alleged concrete injuries to the requested actions in finding that petitioners have standing. *See, e.g., Cleveland Electric*

*Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 93-95 (1993)(finding petitioner had standing based on proximity and claim that material withdrawal schedule was safety-related); *Vogtle*, CLI-93-16, 38 NRC at 35 (finding petitioner had an interest based on proximity, which was linked to the proposed license transfer amendment based on concern regarding “non-safety-conscious management”); *General Public Util. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 159 (1996) (proximity in conjunction with possible offsite consequences from a shield plug accident sufficient to establish standing); *but see Florida Power and Light Co* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-06, 53 NRC 138 (2001) (proximity alone is sufficient to support standing in a license renewal matter).<sup>5</sup> *Arizona Public Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 NRC 153, 157 (1991) (proximity alone in the case of an operating license amendment proceeding can support standing to intervene).

In this case, as discussed below, both petitioners allege proximity to the reactor sites plus concerns regarding the off-site consequences of aging. Therefore, they have met the standing requirement.

## 2. NIRS Has Established Standing to Intervene as to McGuire 1 and 2

NIRS has established representational standing to intervene in this proceeding as to McGuire by showing an injury in fact to a member of the organization and identifying a specific aspect of the subject matter of the proceeding as to which NIRS wishes to intervene. NIRS has raised concerns that its members, some of whom have authorized NIRS to represent them and their interests, reside within the immediate area of McGuire and Catawba, and due to possible future unsafe operation of the plants and risks posed to the environment by said operation resulting

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<sup>5</sup> Upon review, the Commission found petitioner’s contentions to be inadmissible, and therefore did not address the Board’s determination regarding the proximity presumption. *Florida Power and Light Co.*(Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 26 n.20 (2001).



from aging, their health and welfare will be impacted by the license renewal. NIRS Petition at 2. As demonstrated below, however, NIRS has failed to establish standing to intervene in this matter as to Catawba.

In order to obtain representational standing<sup>6</sup> NIRS must demonstrate, *inter alia*, that its members would otherwise have standing to sue in their own right and that at least one of its members has authorized it to represent the member's interests. NIRS filed two affidavits in support of its petition. The Staff submits that only one of the affidavits supports NIRS' request for standing. In that affidavit, Jan Jenson states that she is a member of NIRS and authorizes it to represent her interests in this matter. Jenson Aff. at 1. She states that she resides in Statesville, North Carolina, which is within 40 miles of both the McGuire and Catawba reactors, and contends that extended operation of the facilities and "increased radioactive releases from extended operations, wastes generated, and any accident which becomes more likely with time, age and changes in reactor operations" will jeopardize the life, safety and health of her and her family. *Id.* She also contends that her livelihood would be damaged in the event of a nuclear accident. *Id.* Finally, she states that she is concerned that the problems raised in NIRS' Petition could affect the health and safety of her and her family. *Id.* Ms. Jenson's affidavit does not establish standing to intervene as to Catawba. While her residence in Statesville is within 40 miles of the McGuire site near Huntersville, North Carolina, it appears, by reference to a map of the area, to be at least 60 miles from the Catawba site outside Rock Hill, South Carolina. Therefore, Ms. Jenson has not established "injury in fact" in that her residence is at too great a distance from Catawba to demonstrate that any interest she may have will be affected by the renewal of Catawba's operating license. As to McGuire, Ms. Jenson and NIRS' Petition have alleged both residential proximity to

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<sup>6</sup> Although NIRS has established representational standing by demonstrating that at least one of its members has standing, it has not sufficiently established organizational standing by failing to adequately demonstrate the effect of the license renewal upon its organizational interests.

the site and concern with radioactive releases due to aging. The combination of these factors establishes "injury in fact" within the "zone of interests" of the Atomic Energy Act and NEPA.

The other affidavit filed in support of the NIRS petition, signed by Ronald Phillip Barnette does not support a finding of standing. Mr. Barnette asserts that he owns property within 40 miles of the Catawba and McGuire reactors, and has contact (6-8 times per year) with family living within 40 miles of the Catawba and McGuire reactors and consumes garden produce during those visits. Barnette Aff. at 1-2. Mr. Barnette does not claim that he resides in proximity to either site. He cites no contact with the property he owns nor does he specify the locations of the various relatives he asserts he visits. He does not address the duration of his contacts with the area. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). Therefore, Mr. Barnette has not demonstrated an "injury in fact" sufficient to afford standing.

### 3. NIRS Has Identified an Aspect Within the Scope of the License Renewal Request

Pursuant to 10 C.F.R. § 2.714(a)(2), a petitioner is required to state the "specific aspect or aspects of the subject matter of the proceeding" as to which it wishes to intervene. The purpose of this requirement is not to judge the admissibility of the issues, but to determine whether NIRS specifies "proper aspects" for the license renewal proceeding. *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). The requirement is satisfied by identifying general potential areas of concern that are within the scope of the proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990).

In its petition, NIRS outlines several possible areas of concern with the renewal of the McGuire and Catawba operating licenses. Only four of these concerns are sufficiently within the scope of the license renewal proceedings to qualify as aspects. NIRS alleges inadequacies in Duke's surveillance program intended to detect severe age-related degradation of metal components. NIRS Petition at 4. It also expresses concern about the aging of the ice condensers.

*Id.* Both of these concerns qualify as aspects, necessary to establish standing. NIRS raises a concern about the impact of continued operation of the reactors on the Carolina Heelsplitter, an endangered species. *Id.* at 5. Potential impact on endangered species does constitute an acceptable aspect. NIRS has also raised specific aspects with relation to fish entrainment, impingement and heat shock. *Id.* at 5. These aspects, in conjunction with the proximity and the concerns regarding aging, provide a sufficient basis for standing. The remaining concerns raised by NIRS do not constitute appropriate aspects to support standing to intervene in this proceeding.

#### 4. Conclusion as to NIRS' standing

NIRS has established standing to intervene in the license renewal proceeding as to the McGuire site, but has failed to establish standing as to the Catawba site. Standing is established by means of the affidavit of Jan Jenson, who is a member of NIRS, authorizes NIRS to represent her interests, resides within 40 miles of the McGuire site and raises concerns regarding the off-site consequences of aging. In addition, NIRS has stated at least one aspect within the scope of the proceeding.

#### 5. BREDL Has Established Representational Standing to Intervene.

BREDL has established representational standing<sup>7</sup> to intervene in this proceeding by demonstrating that its members have standing, that the members have authorized the submission of BREDL's Petition, and by showing an injury in fact and identifying a specific aspect of the subject matter of the proceeding as to which NIRS wishes to intervene. BREDL has raised concerns regarding its members who reside within the vicinity of McGuire and Catawba, in that due to possible unsafe operation of the plants, risks posed to the environment by said operation and aging

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<sup>7</sup> BREDL has established representational standing by demonstrating that at least one of its members has standing, but like NIRS it has not sufficiently established organizational standing by failing to adequately demonstrate the effect of the license renewal upon its organizational interests.

of the ice condensers and other reactor components, their health and welfare will be impacted by the license renewal. BREDL Petition at 3, 5, 7-8.

BREDL filed 24 affidavits filed in support of its Petition. The affiants state that they are members of BREDL and that they are filing the affidavits in support of BREDL's Petition. Although this is not a direct statement that they authorize BREDL to represent their interests, the Staff believes that it is sufficient to demonstrate that BREDL is acting with the authorization of 24 of its members. The affiants individually state that they reside at various distances of between 5 and 59 miles from McGuire, and between 3 and 40 miles from Catawba.<sup>8</sup> All the affiants assert that a major nuclear accident during reactor operations would "disperse dangerous levels of radioactivity, and exposure to such radiation is likely to cause cancer, induce chronic health problems or provoke other maladies resulting from radioactive contamination . . . [that would] drastically lower property values and cause immense social upheaval . . . [and] have a negative impact on my ability to live a normal life and would place me in a permanently contaminated landscape." See e.g. Mahood affidavit at 2. This statement, when read in conjunction with BREDL's petition, wherein BREDL states that it is concerned with aging issues that could cause failures and offsite exposure, and combined with the residential proximity of the members of BREDL, establishes standing for the individual members.

#### 6. BREDL Has Identified an Aspect Within the Scope of the License Renewal Request

In its petition, BREDL asserts several possible areas of concern regarding the renewal of the McGuire and Catawba reactors, but only three are sufficiently within the scope of the license renewal proceedings to qualify as aspects. BREDL expresses concern that aging of the ice condensers may lead to offsite exposure. BREDL's Petition at 5-7. BREDL also expresses

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<sup>8</sup> For example, affiant Robert Phillips Mahood alleges that he resides 5 miles from McGuire and 30 miles from Catawba, and affiant Crystal Elizabeth Carmack alleges that she resides 27 miles from McGuire and 3 miles from Catawba.

concern regarding aging as it relates to embrittlement of reactor components and aging of key mechanical and electrical parts. *Id.* at 7-8. Finally, BREDL asserts that alternative energy sources must be discussed. *Id.* at 9. These concerns qualify as aspects necessary to establish standing. The remaining concerns raised by BREDL do not constitute appropriate aspects to support standing to intervene in this proceeding.

7. Conclusion as to BREDL's Standing

BREDL has established standing to intervene in this license renewal proceeding through at least one of its members for both sites, by means of the affidavits of its members that authorize BREDL to petition for intervention. The affidavits and BREDL's Petition establish proximity to the reactor sites and raise concerns regarding the off-site consequences of aging. In addition, BREDL has stated at least one aspect within the scope of the proceeding.

CONCLUSION

Based upon the foregoing discussion, NIRS has established standing as to the McGuire site only and BREDL has established standing as to both McGuire and Catawba.

Respectfully submitted,

**/RA/**

Susan L. Uttal  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 1<sup>st</sup> day of October 2001.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO REQUESTS FOR HEARING AND PETITIONS FOR LEAVE TO INTERVENE FILED BY NUCLEAR INFORMATION AND RESOURCE SERVICE AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (\*), by deposit in the Nuclear Regulatory Commission's internal mail system, this 1<sup>st</sup> day of October, 2001.

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