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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Tennessee Valley Authority	)	Docket Nos. 50-327-LA
	)	50-328-LA
(Sequoyah Nuclear Plant, Units 1 and 2)	)	

TENNESSEE VALLEY AUTHORITY'S ANSWER TO  
REQUEST FOR A HEARING AND PETITION TO  
INTERVENE OF WE THE PEOPLE INC., TENNESSEE

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Tennessee Valley Authority ("TVA"), applicant in the above-captioned matter, hereby files its answer to the request for hearing and petition for leave to intervene ("Petition") filed on January 17, 2002, by We The People, Inc. Tennessee (hereinafter "Petitioner" or "We The People"). The Petition responds to the Notice of Opportunity for a Hearing published by the Nuclear Regulatory Commission ("NRC" or "Commission") in the *Federal Register* on December 17, 2001, concerning TVA's proposed amendment to its operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2 ("SQN").<sup>1</sup> As discussed below, Petitioner has not satisfied the Commission's requirements for standing to intervene with respect to this matter. Therefore, under 10 C.F.R. § 2.714, the Petition must be denied.

<sup>1</sup> See "Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," 66 Fed. Reg. 65,000 (Dec. 17, 2001).

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## II. BACKGROUND

### A. The Approval at Issue

The license amendment request (“LAR”) at issue, first submitted to the NRC on September 21, 2001, concerns proposed changes to Technical Specifications that would allow incore irradiation services for the United States Department of Energy (“DOE”).<sup>2</sup> These changes would allow TVA to insert tritium-producing burnable absorber rods (“TPBARs”) into the SQN reactor cores to support DOE in maintaining its tritium inventory for national defense purposes.<sup>3</sup> In the LAR, TVA proposes to insert up to approximately 2,300 TPBARs into each SQN reactor core. The TPBARs neither contain fissile material nor replace normal reactor fuel, and because the TPBARs will not adversely affect reactor neutronic or thermal-hydraulic performance, their presence in the core would not have a significant effect upon the probability or consequences of previously analyzed accidents, including fuel handling accidents.

The LAR contains a no significant hazards consideration determination (“NSHD”),<sup>4</sup> in which TVA concludes, *inter alia*, that the LAR:

- does not involve a significant increase in the probability or consequences of an accident previously evaluated;
- does not create the possibility of a new or different kind of accident from any accident previously evaluated; and

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<sup>2</sup> See “Sequoyah Nuclear Plant (SQN) - Units 1 and 2 - Revision of Instrumentation Measurement Range, Boron Concentration Limits, Reactor Core Limitations, and Spent Fuel Pool Storage Requirements for Tritium Production Cores (TPCs) - Technical Specification (TS) Change No. 00-06” (Sept. 21, 2001).

<sup>3</sup> The TPBARs absorb neutrons and are similar to (and would replace) normal burnable neutron absorber rods that serve to shape neutron flux in the core. They will be installed in fuel assemblies where burnable absorber rods are normally placed in selected fuel assemblies. 66 Fed. Reg. at 65,000-01.

<sup>4</sup> The NRC made its own proposed determination that the amendment request involves no significant hazards considerations, pursuant to 10 C.F.R. § 50.92. 66 Fed. Reg. at 65,001.

- does not involve a significant reduction in a margin of safety.

LAR at E1-24 - 37. Importantly, other than insertion and removal of the TPBARs, the LAR would not result in any significant change to plant operations. With regard to potential for radiological consequences associated with the LAR, the NSHD concludes that, “[t]he impacts of TPBARs on the radiological consequences for all evaluated events are very small, and they remain within 10 CFR 100 regulatory limits. The additional offsite doses due to tritium are small with respect to LOCA source terms and are well within regulatory limits.” *Id.* at E1-29.

Under the interagency agreement between DOE and TVA with respect to the irradiation services to be provided, TVA’s responsibilities are limited to irradiation of the TPBARs during reactor operation, consolidating the TPBARs into containers and shipping casks provided by DOE, and loading the casks on DOE-furnished transport for removal by DOE.<sup>5</sup> The Technical Specification changes at issue in the LARs do not involve the transport and subsequent storage, processing, and use of the TPBARs by DOE.

#### B. NRC Standing Requirements

It is fundamental that any entity requesting a hearing or seeking to intervene in a Commission proceeding must demonstrate that it has standing to do so. The Commission’s regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, among other things, “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 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene, the Atomic Safety and Licensing Board (“Licensing Board”) is to consider:

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<sup>5</sup> Interagency Agreement No. DE-AI02-00DP00315 between the United States Department of Energy and the Tennessee Valley Authority for Irradiation Services (Jan. 1, 2000).

- (i) The nature of the petitioner's right 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 petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2).

In determining whether a petitioner has established the requisite interest, the Commission traditionally has applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utils. Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). The Commission has further determined that to satisfy the standing requirements of 10 C.F.R. § 2.714, a petitioner must demonstrate that:

1. it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;
2. the injury can fairly be traced to the challenged action; and
3. the injury is likely to be redressed by a favorable decision.

*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In particular, with respect to the alleged "injury-in-fact," the Commission has held that it

is incumbent upon the petitioner to allege some “plausible chain of causation” from the licensing action at issue to the alleged injury that would or could be redressed in the proceeding. *Commonwealth Edison*, 49 NRC at 192 (1999). Such injury may be actual or threatened. *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995), *cert. denied*, 515 U.S. 1159 (1995). The injury, however, must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560 (citations omitted). Additionally, the claimed injury suffered by a petitioner must fall within the “zone of interests” sought to be protected by the Atomic Energy Act (“AEA”) or the National Environmental Policy Act. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-04, \_\_\_ NRC \_\_\_ (slip op. at 7, Jan. 24, 2002); *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

Thus, a petitioner must have a “real stake” in the outcome of the proceeding to establish an injury-in-fact for standing. While this stake need not be a “substantial” one, it must be “actual,” “direct,” or “genuine.” *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979). A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the petitioner must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982) (*citing Allied-Gen. Nuclear Serv.* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976)); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982). Herein, Petitioner has failed to demonstrate any more than an academic interest and, therefore, has failed to show standing. The Petition should be dismissed.

### III. DISCUSSION

#### A. Petitioner Has Not Established Standing to Intervene

The Petition does not demonstrate that the petitioner organization has standing. As recited in *Private Fuel Storage*, there are two routes by which an organization can attempt to demonstrate standing in an NRC hearing. First, it can assert injury to organizational interests and demonstrate that these interests are protected by the Atomic Energy Act. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991). Second, an organization can base standing on the interests of individuals that it represents. To derive representational standing from an individual, an organization must identify at least one member (by name and address) and provide some “concrete indication” that the member has authorized the organization to represent him or her in the proceeding. In addition, the petition must demonstrate the standing of that individual assessed against the standards recited above. *See, e.g., Vermont Yankee Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987).

Here, We The People appears to assert representational standing based on the interests of one identified member, Mr. Phil Carroll. Attached to the Petition is the declaration of Mr. Carroll (“Carroll Declaration”), in which he avers that We The People is authorized to represent him in this proceeding. Carroll Declaration at 1. In addition, although it is far from clear, We The People may be asserting the interests of the organization itself (organizational standing). As discussed below, however, Petitioner has failed to demonstrate either representational or organizational standing in this matter.

1. Petitioner Is Not Entitled to Standing Based on Mr. Carroll's Geographic Proximity

Turning first to We The People's reliance on Mr. Carroll's interests to establish representational standing, we note that he resides in the Lookout Mountain community of Tennessee, located approximately 12 miles from SQN. Indeed, several of Mr. Carroll's claims of potential injury arise from his proximity to SQN. Carroll Declaration at 1, 2. In the circumstances of this proceeding, however, geographic proximity is insufficient to confer standing on Mr. Carroll, and thus does not establish representational standing for the Petitioner.

Where the proposed action involves the obvious potential for offsite consequences, the NRC has recognized a "proximity presumption" under which a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity. That presumption, however, does not apply in a license amendment case like the present case. As the Commission stated in *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989):

It is true that in the past, we have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool. *See, e.g., Virginia Electric Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979). However, those cases involved the 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. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 8 AEC 222, 226 (1974). *Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific "injury in fact" which will result from the action taken....*

*Id.* at 329, 330 (emphasis added).

Applying this standard to this proceeding, We The People has not demonstrated any means by which the proposed amendment could lead to offsite consequences injurious to Mr. Carroll or his property. To the contrary, the NSHD and the LAR, as discussed above, make it clear that issuance of the proposed license amendment does not involve any potential for offsite consequences. The TPBARs neither contain fissile material nor replace normal reactor fuel. They will not adversely affect fuel handling procedures, reactor operations, or reactor neutronic or thermal-hydraulic performance. The presence of TPBARs in the core would have no significant effect upon the probability of previously analyzed accidents, including fuel handling accidents.

Furthermore, issuance of the LAR would not result in any significant change to offsite radiological consequences associated with SQN design basis accidents. The NSHD concludes that, “[t]he impacts of TPBARs on the radiological consequences for all evaluated events are very small, and they remain within 10 CFR 100 regulatory limits. The additional offsite doses due to tritium are small with respect to LOCA source terms and are well within regulatory limits.” *Id.* at E1-29.

Given the absence of a clear potential for offsite consequences, Mr. Carroll’s proximity to SQN — alone — is insufficient to confer standing upon We The People in this proceeding. Even if there was such a potential, We The People has not so asserted in its Petition, nor has Mr. Carroll so alleged in his Declaration. Petitioner has not shown any “plausible chain of causation” from the proposed amendment to offsite radiological injury. Consequently, because the Petitioner cannot make and has not made such a showing, its standing cannot be based on the proximity of Mr. Carroll’s residence to SQN.

In particular, three of Mr. Carroll's purported injuries are as follows:

- his "life, health, and property will be jeopardized" if tritium is produced at SQN;
- he and/or his family will be injured by a tritium release in the event of a serious accident at SQN; and
- the production of tritium at SQN will result in an increased risk to his health, quality of water supply, habitability and property value of his home.

In this regard, Mr. Carroll speculates that he and his family "will be injured by a tritium release in the event of a serious accident" at SQN. Carroll Declaration at 2. He further hypothesizes that "there is an increased risk" to his "health" and "the quality of [his] water supply" in the event that TVA produces tritium at SQN. *Id.* As a matter of law, however, these broad assertions of potential injuries, without more, do not demonstrate the requisite injury-in-fact. *See International Uranium (USA) Corp.*, CLI-98-6, 47 NRC 116, 117 (1998) (a petitioner must show an injury that is "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical"), *citing Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83 (1998); *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp. (Gore, Oklahoma Site)*, CLI-94-12, 40 NRC 64, 72 (1994).

Mr. Carroll's alleged interests are nothing more than abstract conjecture and speculation. Aside from the sweeping, unsupported claim that his "life" and "health" will be "jeopardized," Mr. Carroll has not even suggested with any particularity how these purported injuries would occur *as a result of issuance of the proposed license amendment*. *Puget Sound*, 3 NRC at 422, and 15 NRC at 743. Nor has Petitioner shown any chain of causation linking activities associated with the LAR on the one hand (*i.e.*, activities at the plant actually changed by the amendment), to the purported injuries on the other. Therefore, We The People's standing cannot be based on Mr. Carroll's asserted abstract interests.

2. Other Asserted Interests By We The People and Its Members Are Not Distinct and Exceed the Zone of Interests in This Proceeding

None of the remaining interests asserted by We The People in its Petition constitute any cognizable injury-in-fact. In their totality, We The People's claims are nothing more than undefined conjecture and general statements of opinion. First, We The People — still relying on Mr. Carroll for representational standing — complains that because of the proposed amendment, as a “U.S. taxpayer” Mr. Carroll will be financing the “unnecessary” and “risky” production of tritium at SQN. Carroll Declaration at 1. While no basis or explanation is offered in support of this “generalized grievance,” it in any event would be a grievance shared in substantially equal measure by all or a large class of citizens. Therefore, it does not result in a distinct and palpable harm sufficient to support We The People's standing in this proceeding. *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-81-25, 18 NRC 327, 333 (1983), citing *Transnuclear Inc.*, CLI-77-24, 6 NRC 525, 531 (1977).

Moreover, Petitioner's assertions of economic injury (*i.e.*, property value, unnecessary production of tritium), unconnected to any radiological harm, do not fall within the zone of interests arguably protected by the governing statute, the AEA.

The AEA concentrates on the licensing and regulation of nuclear materials for the purpose of protecting public health and safety and the common defense and security. The appropriate party to raise safety objections about a specific licensing action is the party who, because of the licensing, may face some radiological harm (or the party who seeks the license). As such, it has long been our practice as an agency to reject standing for petitioners asserting a bare economic injury, unlinked to any radiological harm.

*International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 265 (1998). See also *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-06 (1976). We The People cannot base its representational standing on assertions of unnecessary use of federal taxpayer funds.

Assuming that We The People is asserting additional organizational interests as the bases for standing (an assumption which is by no means clear on the face of the Petition), those alleged interests also fail to demonstrate any cognizable injury-in-fact. Specifically, Petitioner avers that it supports both “employees and citizens during contact with the nuclear industry,” and “safe operation and management of nuclear facilities.” Petition at 1. In addition, We The People seeks “legal and safe resolution to safety issues that affect the public health and safety.” *Id.* Even pushing the bounds of interpretation beyond any reasonable measure, these assertions are undefined, abstract statements of organizational purpose that lack any nexus to the LAR at issue. They certainly do not constitute distinct and palpable harm, and cannot serve as a basis for organizational standing. *Metro. Edison*, 18 NRC at 333.

In sum, each of We The People’s concerns falls short of demonstrating that Petitioner will suffer distinct and palpable harm as a result of the proposed amendment. *International Uranium (USA) Corp.* (Receipt of Additional Material from Tonawanda, New York), LBP-99-8, 49 NRC 131, 133 (1999). Mr. Carroll’s proximity to SQN, alone, is an insufficient basis for standing given the lack of offsite consequences. His broad-based financial interests are inadequate to establish standing. The remaining interests raised by Mr. Carroll and We The People are neither distinct and palpable, nor traceable to the LAR, nor within the zone of interests protected by the AEA.

3. Petitioner Has Not Demonstrated Any Injury That is Likely to be Redressed by a Favorable Decision

The Petitioner also has failed to demonstrate that its asserted injuries are likely to be redressed by a favorable decision in this proceeding. The vague and unsupported assertions concerning a tritium release or an accident at SQN, as discussed above, do not demonstrate the possibility of a new or different kind of accident and thus cannot be traced to the LAR. No

plausible chain of causation is provided from the insertion of the TPBARs to any tritium releases or accidents at SQN. Consequently, any related injuries cannot be redressed in this proceeding.

Mr. Carroll makes the further claim that “tritium made available through past treaties is sufficient to maintain the United States arsenal at a level far beyond what is required to defend the United States for at least 20 years into the future.” Carroll Declaration at 1. As set forth in the DOE Tritium EIS, DOE’s action is sanctioned by United States law and treaty obligations, including those concerned with nuclear nonproliferation. *See* DOE Tritium EIS, DOE/EIS-0288 (March 1999), at pp. S-14 through S-15. Putting aside all questions about the accuracy of Petitioner’s assertion, this simply is not the proper forum in which to challenge DOE’s legal obligations and TVA’s resulting tritium-related activities.

B. Petitioner Has Failed to Identify an Aspect Within the Scope of the Proceeding

10 C.F.R. § 2.714(a)(2) also requires a petitioner to identify 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 the petitioner specifies “proper aspects” for the 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 effects of the licensing action or areas of concern” within the scope of the proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990).

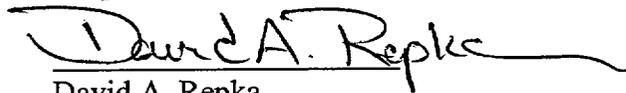
The Petition is devoid of any information regarding the specific aspects of the LARs on which We The People wishes to intervene. As the Commission has held, “[t]he burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner.” *Commonwealth Edison*, 49 NRC at 194. Thus, neither the Licensing Board, TVA, nor the NRC

Staff is required to look to Petitioner's assertions to try to divine an aspect not advanced by Petitioner itself. *Id.*

IV. CONCLUSION

For reasons set forth above, Petitioner's request for a hearing and intervenor status does not satisfy the requirements of 10 C.F.R. § 2.714. Accordingly, the Petition should be denied.

Respectfully submitted,



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Dated in Washington, D.C.  
this 29<sup>th</sup> day of January 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "TENNESSEE VALLEY AUTHORITY'S ANSWER TO REQUEST FOR A HEARING AND PETITION TO INTERVENE OF WE THE PEOPLE, INC., TENNESSEE" in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 29<sup>th</sup> day of January 2002. Additional e-mail service has been made this same day as shown below.

Richard A. Meserve, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Edward McGaffigan, Commissioner  
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Jeffrey S. Merrifield, Commissioner  
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Greta J. Dicus, Commissioner  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn: Rulemakings and Adjudications Staff  
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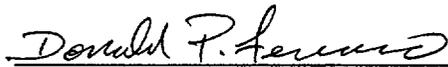
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