

RAS 7384

January 20, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE COMMISSION

January 21, 2004 (9:00AM)

In the Matter of )  
 )  
DOMINION NUCLEAR NORTH ANNA, LLC )  
 )  
(Early Site Permit for North Anna ESP Site) )  
 )

Docket No. 52-008

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

NRC STAFF'S ANSWER TO HEARING REQUEST AND PETITION TO INTERVENE BY BLUE  
RIDGE ENVIRONMENTAL DEFENSE LEAGUE, NUCLEAR INFORMATION AND RESOURCE  
SERVICE, AND PUBLIC CITIZEN

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the "Hearing Request and Petition to Intervene [Petition]" filed on January 2, 2004 by Blue Ridge Environmental Defense League (BREDL), Nuclear Information and Resource Service (NIRS), and Public Citizen (collectively, Petitioners) in this Early Site Permit (ESP) proceeding. For the reasons set forth below, the Staff does not object to Petitioners' standing to intervene in this matter, however, Petitioners must still proffer at least one admissible contention pursuant to 10 C.F.R. § 2.714(b).

BACKGROUND

On September 25, 2003, Dominion Nuclear North Anna, L.L.C. (Dominion) submitted an application pursuant to 10 C.F.R. Part 52 in which it requested an ESP for the North Anna site located in Louisa County, Virginia. A Notice of Hearing initiating the proceeding on the application and offering an opportunity to petition for leave to intervene was published in the *Federal Register* on December 2, 2003. 68 Fed. Reg. 67,489 (2003). In response to the Notice, BREDL, NIRS and Public Citizen filed the petition, in which they jointly seek to intervene in the ESP proceeding. As

set forth below, the NRC Staff has no objection to granting standing to BREDL, NIRS, and Public Citizen.<sup>1</sup>

## DISCUSSION

### A. Legal Requirements for Intervention

Any person who seeks to intervene in a Commission proceeding must demonstrate that they have standing to do so. See Section 189a.(1) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a) (AEA or Act). To establish standing, the petitioner “shall set forth with particularity [his] interest. . . in the proceeding, [and] how [his] interest may be affected by the results of the proceeding, including the reasons why [he] should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)].” 10 C.F.R. § 2.714(a)(2). In addition, the petitioner must advance a “specific aspect or aspects of the subject matter of the proceeding as to which [he] wishes to intervene,” *id.*, and at least one admissible contention. 10 C.F.R. § 2.714(b).

In order to establish the requisite interest for standing, the petitioner must demonstrate 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) (Vogtle). The petitioner, whether an individual or an organization, must establish the requisite interest for standing. See *Private Fuel Storage, L.L.C.*, (Independent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). 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 of 1969 (NEPA). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

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<sup>1</sup> In order to be admitted as parties to the proceeding, petitioners must still subsequently proffer at least one admissible contention pursuant to 10 C.F.R. § 2.714.

To establish injury in fact, the 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. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998), citing *Steele Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle*, 38 NRC at 32. 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 Corp. & Gen. Atomic* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994).

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; 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 (1979), *aff'd*, ALAB-549, 9 NRC 644 (1979). An abstract, hypothetical injury is insufficient to establish standing to intervene. *International Uranium Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117-18 (1998).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Thus, an organization may meet the injury-in-fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *South Texas Project*, 9 NRC at 447-48.

Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his

individual capacity has authorized the organization to represent him. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31 (1998); *Georgia Tech*, CLI-95-12, 42 NRC at 115. The alleged injury-in-fact to the member must fall within the purposes of the organization. *Private Fuel Storage*, 48 NRC at 33-34.

Historically, standing was found based on a petitioner's close proximity to the facility at issue. *Virginia Electric and Power Company* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). In construction permit and operating license proceedings, for example, there was a range of distances from sites in which standing was granted. See e.g. *Northern States Power Co.* (Prairie Island Nuclear Generating Station, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973) (30-40 miles from the site); *Virginia Electric and Power Company*, 6 AEC at 634 (16 miles from the site); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421, n. 4 (1977) (50 miles from the site, standing denied on other grounds). Other types of licensing actions have also adopted a variation of the "proximity presumption." See *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989).<sup>2</sup> In *St. Lucie*, the Commission noted:

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. . . . 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.

*Id.* at 329 (citations omitted). Thus, in other licensing actions, "absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific 'injury in fact...'" *St. Lucie*, 30 NRC at 329-30. In this case, while there arguably are differences between an ESP

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<sup>2</sup> This case involved an exemption from regulatory requirements, however, the Commission decision delineated the "proximity presumption" for various types of NRC licensing actions.

and a construction permit or operating license, the NRC Staff does not object to Petitioners' standing based on their members' proximity to the ESP site.

B. Petitioners' Standing to Intervene

BREDL, NIRS and Public Citizen allege that they have established representational standing to intervene in this proceeding by demonstrating an injury in fact to several members of their respective organizations and identifying aspects within the scope of the proceeding. All three organizations have contended that their members reside within the immediate area of the North Anna ESP site and, due to the "inherently dangerous" nature of nuclear facilities, their members' health and welfare will be impacted by the construction of one or more nuclear reactors at the site. Petition at 5-6, Affidavit at 1.<sup>3</sup> In order to obtain representational standing, an organization must demonstrate, *inter alia*, that its members would otherwise have standing to participate in their own right and that at least one of its members has authorized it to represent the member's interests. As outlined below, all three groups satisfy the representational standing requirement.

1. BREDL

In its Petition, BREDL claims to have representational standing to intervene in the instant proceeding based on the interests of four members: Marione M. Cobb, Samuel Shores Forrest, Marcello Aurelio Lanfranchi, and Jerry S. Rosenthal. These individuals have provided affidavits in support of BREDL's standing in which they assert that they reside in close proximity to the plants<sup>4</sup> and that nuclear facilities in close proximity to their homes "could pose a grave risk to my health and safety." Aff. at 1. Based on these assertions, and in light of the proximity standard set

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<sup>3</sup> The claims contained in all of the affidavits provided are identical in substance. Therefore, unless reference to a specific affidavit is warranted, all will be noted in this pleading as "Aff."

<sup>4</sup> Mr. Rosenthal states that he lives within 19 miles of the proposed site. Mr. Lanfranchi and Ms. Cobb state that they live within 16 miles of the site; and Mr. Forrest lives within 30 miles of the site. All are residents of Louisa, Virginia.

in *St. Lucie*, the NRC Staff does not challenge the standing of each of BREDL's four members to intervene in his or her own right. Further, all members have authorized BREDL to represent their interests in the instant proceeding. *Id.* Thus, the NRC Staff does not object to BREDL's representational standing to intervene.

## 2. NIRS

NIRS claims to have representational standing to intervene in the instant proceeding based on the affidavits of twelve of its members in support of the petition. Those members are: Kathryn Margaret Adamson, Paxus Calta, Jason Cuzzupe, John Steven Fawley, Benjamin James Grondahl, Marcello Aurelio Lanfranchi, Amy Martin, Nikolena Moysich, Chris Prime, Shana Smulyan, Kelly Tassinari, and Hillary Anne Tinapple. All of the affiants claim standing based on their proximity to the proposed site,<sup>5</sup> and each affiant authorizes NIRS to represent their interests in this matter. *See Aff.* at 1. Inasmuch as the Staff would not challenge the affiants' standing to intervene as individuals based on the above, the Staff does not object to NIRS' representational standing.

## 3. Public Citizen

Public Citizen asserts representational standing to intervene based on the affidavits of two of its members: Donal Day and Thomas Wasmund. Mr. Day resides in Charlottesville, Virginia, within 35 miles of the proposed site, and Mr. Wasmund resides in King George, Virginia within 48 miles of the North Anna site. Each has authorized Public Citizen to represent their interests in this matter. *Aff.* at 1. As the Staff would not contest the affiants' standing to intervene as individuals, the Staff does not object to Public Citizen's representational standing.

## C. Petitioners' Aspects

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

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<sup>5</sup> The affiants are all residents of Louisa, Virginia and claim to reside within 16 miles of the proposed site.

of this requirement is not to judge the admissibility of the issues, but to determine whether the Petitioners specified "proper aspects" for the proceeding. *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 277-78 (1978). To constitute an appropriate aspect, the subject matter of the aspects must be within the scope of the application, *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-39, 34 NRC 273, 282 (1991), or the scope of the proceeding. *Florida Power & Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 151 (2001); *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, 280 (2001); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 206 (1993). While an aspect is broader than a contention, it is not so broad as to include general reference to NRC operating statutes. *Midland*, LBP-78-27, 8 NRC at 278.

In their joint petition, BREDL, NIRS and Public Citizen set forth eight aspects of the subject matter of the ESP application they wish to challenge. Petition at 5-6. Petitioner's Aspects 1-5 are within the scope of the ESP application:

1. Whether enough information is available regarding reactor designs for the proposed site to permit sound judgments about environmental impacts of the proposed construction and operation of new reactors on the site (citations omitted).
2. Whether there is a reasonable basis for information provided by the applicant regarding projected emissions, site impacts, safety factors, and exact operational parameters.
3. Whether the applicant's Environmental Report contains a sufficient discussion of the purpose and need for the proposed action; the proposed action's environmental impacts; and the relative costs and benefits of a reasonable range of alternatives for avoiding or mitigating those impacts, including obviously superior alternative sites.<sup>6</sup>
4. Whether the applicant's Environmental Report contains sufficient discussion of cumulative impacts, including the combined impacts of

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<sup>6</sup> While the Staff considers Aspect 3 to be an appropriate aspect in part, it should be noted that under 10 C.F.R. Part 52, the "benefits of the proposed action" need not be considered. 10 C.F.R. § 52.18.

the operation of the two new proposed reactors and the existing North Anna nuclear reactors.

5. Whether the applicant's Environmental Report contains an adequate site redress plan.

Petition at 5-6. Consequently, the NRC Staff does not object to Petitioner's Aspects 1-5.

CONCLUSION

For the reasons set forth above, the Staff concludes that Petitioners have established standing to intervene jointly in this proceeding, and have identified aspects of the subject matter of the proceeding in which they wish to intervene. Leave to intervene, however, should not be granted unless the Petitioners submit at least one valid contention, pursuant to 10 C.F.R. § 2.714(b).

Respectfully submitted,

*Robert M. Weisman*

Robert M. Weisman  
Counsel for NRC Staff

*Laura C. Zaccari*

Laura C. Zaccari  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 20th day of January, 2004

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Respectfully submitted,

*Robert M. Weisman*

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Robert M. Weisman  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 20<sup>th</sup> day of January, 2004

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Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Respectfully submitted,



Laura C. Zaccari  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 20th day of January 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO HEARING REQUEST AND PETITION TO INTERVENE BY BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, NUCLEAR INFORMATION AND RESOURCE SERVICE, AND PUBLIC CITIZEN" and the "NOTICE OF APPEARANCE" of Laura C. Zaccari and the "NOTICE OF APPEARANCE" of Robert M. Weisman in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with courtesy copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with courtesy copies by electronic mail this 20<sup>th</sup> day of January, 2004:

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