

February 24, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

March 2, 2004 (1:15PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
System Energy Resources, Inc.)
)
(Early Site Permit for)
Grand Gulf ESP Site))
)

Docket No. 52-009

ANSWER BY SYSTEM ENERGY RESOURCES, INC. TO PETITION TO INTERVENE

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), System Energy Resources, Inc. (“SERI”) hereby answers the Hearing Request and Petition to Intervene filed on February 12, 2004 by the National Association for the Advancement of Colored People, Claiborne County, Mississippi Branch (“NAACP”); Nuclear Information and Resource Service (“NIRS”); Public Citizen; and the Mississippi Chapter of the Sierra Club (“Sierra Club”) (collectively, “Petitioners”). SERI is the applicant for the Early Site Permit (“ESP”) that is at issue in this proceeding. SERI does not contest the representational standing of any of the Petitioners. However, SERI does not concede that all of the “specific aspects” of interest identified by the Petitioners are within the proper scope of this proceeding. SERI will respond to the admissibility of particular proposed contentions at the appropriate time once such contentions have been submitted.

II. DISCUSSION

A. Representational Standing

Any entity requesting a hearing and seeking to intervene in an NRC licensing proceeding must demonstrate that it has standing to do so. *See* 10 C.F.R. §§ 2.714(a)(1) and (a)(2). An organization can demonstrate “representational” standing based on the interests of the individuals that it represents. To derive standing from an individual, the organization must identify at least one member (by name and address) and provide a concrete indication (such as by affidavit) that the member has authorized the organization to represent him or her in the proceeding. *See, e.g., Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-94 (1979). The intervention petition must further establish the standing of that individual member, based for example on his or her residence or activities proximate to the facility in question. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323-24 (1999).

In the present case, all four petitioner organizations base their standing on the residence of individual members who reside near the site at issue. Petitioners also cite the NRC’s longstanding presumption of standing for individuals who live within 50 miles of a site, generally applicable in construction permit and operating license cases. Without conceding that a 50-mile presumption applies in an ESP case, and taking the affidavits provided by the Petitioners at face value, SERI nonetheless does not contest the representational standing of any of the organizations, because

- NAACP identifies members who live as close as 6 and 7 miles from the site;
- NIRS identifies members who live within 25 miles from the site;
- Public Citizen identifies one member who lives within 35 miles from the site; and

- Sierra Club identifies a member who lives within 20 miles of the site.

SERI assumes that for efficiency the Petitioners will collectively submit one set of proposed contentions and will proceed on a consolidated basis.

B. Petitioners' Specific Aspects

Under NRC rules, a petition to intervene must also set forth “the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.” See 10 C.F.R. § 2.714(a)(2). A petitioner may satisfy this requirement by identifying “general potential effects of the licensing action or areas of concern that are within the scope of matters that may be considered in the proceeding.” *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990), citing *Virginia Elec. and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973).

In this case, Petitioners have provided a laundry list of “specific aspects” of the proceeding on which they seek to participate. SERI does not contest the Petitioners’ compliance with 10 C.F.R. § 2.714(a)(2), in that the Petitioners have identified at least one or more general areas of concern that are arguably within the scope of the present proceeding. However, SERI does not concede that all of the specific aspects or concerns identified are within the scope of this proceeding. Many are broad and seem to raise matters immaterial to an ESP. For example:

- The concern regarding whether “enough information is available regarding reactor designs for the proposed site to permit sound judgments about the environmental impacts of the proposed construction and operation of new reactors on the site” (Petition at 5-6, para. 1), while presently vague, may upon further elaboration challenge the NRC’s regulations allowing an ESP based upon a “plant parameter envelope.” The regulations, 10 C.F.R. §§ 52.17(a)(2) and 52.18, specifically contemplate an environmental review of the effects of construction and operation of a reactor, or reactors, that have characteristics that fall within postulated (and bounding) site parameters. Under the Part 52

regulations, the focus of an ESP review is on site characteristics. Reactor design would be the subject of a separate application under the design certification or combined operating license subsections of Part 52.

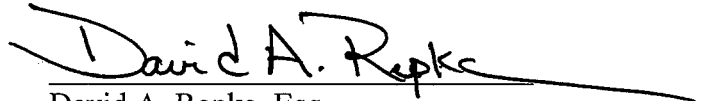
- The concerns regarding the sufficiency of the Environmental Report discussion of the “need” for the proposed action and the range of alternatives considered (Petition at 6, para. 3) could also involve matters explicitly beyond the scope of the proceeding under 10 C.F.R. §§ 52.17(a)(2) and 52.18.
- The aspect regarding the need for and adequacy of a “site redress plan” (Petition at 6, para. 5) raises an issue that is not required for the present application and is therefore beyond the scope of the proceeding under 10 C.F.R. Part 52. Authority for activities permitted under 10 C.F.R. § 50.10(e)(1) is not presently being sought.
- The aspect regarding the “final balance of conflicting factors regarding the environmental impacts of the proposed action” (Petition at 6, para. 6) appears to involve matters beyond the scope of the present application and this proceeding as defined by 10 C.F.R. §§ 52.17(a)(2) and 52.18.
- The broad concern regarding “common defense and security” (Petition at 6, para. 7), if directed to radiological sabotage, is beyond the scope of an ESP proceeding. Moreover, to the extent Petitioners would assert the need for an analysis of the environmental impacts of terrorist attacks, the assertion is contrary to binding Commission precedent. *See, e.g., Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340 (2002).*

Although Petitioners have satisfied the “specific aspects” requirement, to be admitted as a party the Petitioners must still submit at least one admissible contention. 10 C.F.R. § 2.714(b); *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999)*. SERI will address the admissibility of specific contentions in detail at the appropriate time.

III. CONCLUSION

SERI does not contest Petitioners' representational standing or its compliance with 10 C.F.R. § 2.714(a)(2) with respect to identifying "specific aspects" of the proceeding.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style and is positioned above a horizontal line.

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COUNSEL FOR SYSTEM ENERGY
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Dated in Washington, District of Columbia
this 24th day of February 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

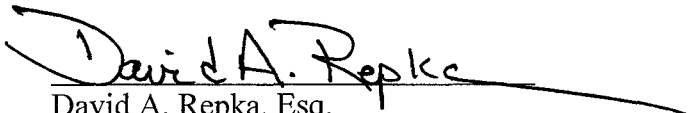
I hereby certify that copies of "ANSWER BY SYSTEM ENERGY RESOURCES, INC. TO PETITION TO INTERVENE" in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 24th day of February 2004. Additional service has also been made this same day by electronic mail as shown below.

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