

DOCKETED
November 23, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 NOV 23 P 3:18

BEFORE THE COMMISSION

OFFICE OF THE
PUBLIC
ADJUDICATIVE STAFF

In the Matter of)
)
GPU NUCLEAR, INC.) Docket No. 50-219
)
(Oyster Creek Nuclear Generating Station))
)

NRC STAFF'S RESPONSE TO NUCLEAR INFORMATION AND
RESOURCE SERVICE REQUEST FOR A HEARING AND PETITION
TO INTERVENE IN GENERAL PUBLIC UTILITY NUCLEAR LICENSE
AMENDMENT REQUEST FOR OYSTER CREEK NUCLEAR GENERATING STATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission (Staff) hereby files its response to the November 5, 1999, request for a hearing and petition to intervene filed by Nuclear Information and Resource Service (NIRS or Petitioner). For the reasons set forth below, the Staff does not oppose Petitioner's request for leave to intervene in the proceeding insofar as it establishes standing. As noted below, however, Petitioner must submit at least one valid contention in order to be permitted to participate as a party. See 10 C.F.R. § 2.714(b).

BACKGROUND

On April 28, 1999, the GPU Nuclear, Inc. (Licensee) submitted an amendment request to the Staff in which it sought approval to handle loads up to and including 45 tons using the reactor building crane during power operations. See Letter from Michael B. Roche, Vice President and Director, Oyster Creek to the NRC, dated April 28, 1999. On October 8, 1999, the Staff published a notice of consideration of issuance of an amendment to the Oyster Creek Nuclear Generating

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Station operating license. 64 Fed. Reg. 54925 (Oct. 8, 1999). The Notice stated that any person whose interest may be affected by this proceedings 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 by November 8, 1999. *Id.* On November 5, 1999, the Petitioner filed a timely request for hearing and petition to intervene. "Nuclear Information and Resource Service Request for a Hearing and Petition to Intervene in General Public Utility Nuclear License Amendment Request For Oyster Creek Nuclear Generating Station," dated November 5, 1999 (Petition).

DISCUSSION

I. Legal Requirements for Intervention

Section 189 of the Atomic Energy Act of 1954, as amended (AEA) provides that the Commission shall grant a hearing upon the request of any person "whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding." 42 U.S.C. § 2239. In determining whether a petitioner has established the requisite interest, the Commission has traditionally turned to judicial principles of standing. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 322-23 (1999). In order to show standing, a petitioner must allege an injury in fact from the licensing action being challenged and that the injury impacts a recognizable interest protected by the statute giving rise to the action. The injury must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). 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. *Yankee Atomic Electric Co.*, (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-96 (1998). Second, the injury must be fairly traceable to the

challenged action. *Id.* Such a determination 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. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994). In this regard, licensing boards are to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). Third, it must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan*, 504 U.S. at 561; *Sequoyah*, 40 NRC at 71-72.

The Commission's regulations provide the requirements for prospective intervenors to follow in filing petitions to intervene. The regulations state that "[t]he petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene." 10 C.F.R. § 2.714(a)(2). In addition, the petitioner must address:

- (1) The nature of the petitioner's right under the act to be made a party to the proceeding.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d)(1)(i)-(iii). Finally, the Commission's regulations provide that a petition for leave to intervene should set forth the specific aspect of the subject matter of the proceeding as to which the petitioner seeks intervention. 10 C.F.R. § 2.714(a)(2).

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. To

establish standing from members, an organization must show that at least one of its members suffers "immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit . . ." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). An organization normally must identify at least one member by name and address and must demonstrate that the named member has authorized the organization to represent that member in the proceeding. *Private Fuel Storage, L.L.C.*, 49 NRC at 323.

II. The NIRS Petition

Insofar as it addresses standing, the Staff does not oppose NIRS' petition to intervene in the proceeding in a representational capacity. In its petition to intervene, NIRS states that it is a non-profit tax exempt organization established in 1978 of individuals and groups concerned about the nation's energy and environmental future. Petition at 2.¹ NIRS further asserts that it has focused considerable attention on the Licensee's activities. *Id.*

The Petitioner bases its claim of organizational standing through the standing of its members, Joyce Kuschwara and William deCamp, Jr., as it is permitted to do. *See Warth*, 422 U.S. at 511; *see* Petition at 2-3. NIRS has identified these two members by name and address and has demonstrated through their affidavits that these members have authorized the Petitioner to represent them in the proceeding.² *See* Kuschwara Affidavit at ¶¶ 1, 4; deCamp Affidavit at ¶¶ 1, 4. The Petitioner states that Kuschwara and deCamp are NIRS members "who live, recreate, and work within the close

¹ The Petition contains no pagination, therefore, the page numbers referred to herein have been supplied by the Staff.

² While the language of the affidavits states that the members authorize "Paul Gunter of NIRS" to represent them, it is clear that the affiants are authorizing NIRS itself to represent them, inasmuch as NIRS' intervention request is signed by Mr. Gunter in his capacity as the Director of NIRS.

vicinity of OCN GS." See Petition at 3. The Petition asserts that the health of Kuschwara and deCamp "would be adversely affected by the reduction in the margin of safety and increased risk of a heavy load drop associated with the amendment sought by OCN GS for the movement of heavy load at full power operation." *Id.* Regarding injury-in-fact, the Petition asserts:

a heavy load drop accident involving loads up to 45 tons moved during full power operation without the safety assurances of a single failure proof crane would inflict radiation exposures affecting their health and safety as a result of a heavy load drop accident directly or indirectly damaging reactor safety systems, including safe shutdown functions, and the added risk of rupturing the irradiated fuel pool storage pool liner with an associated loss of fuel pool coolant capability.

Accordingly, the petitioner has demonstrated that they would suffer a direct injury as a result of an accident involving the drop of a heavy load up to 45 tons during full power operation crane [sic] on systems, structures or components affecting reactor safety, including safe shutdown systems and irradiated fuel pool cooling capability.

Id. at 3-4.

Ms. Kuschwara asserts in her affidavit that she lives within the "audible range of the Oyster Creek . . . warning sirens." See Kuschwara Affidavit at ¶ 1. Mr. deCamp asserts that he lives within the Licensee's Ingestion Pathway Zone and that his work "frequently" takes him within the Licensee's Emergency Planning Zone. See deCamp Affidavit at ¶¶ 1, 4. In addition, Mr. deCamp states that he has been active in conservation projects "less than one mile" from the Licensee and that he "frequently recreate[s] on Barnegat Bay within the Emergency Planning Zone." deCamp Affidavit at ¶¶ 4, 5. The Staff considers that Mr. deCamp has demonstrated sufficient contact with the area to establish an ongoing connection and presence with the surroundings of the facility. See *Private Fuel Storage, L.L.C.*, 49 NRC at 323. Ms. Kuschwara, however, has not demonstrated sufficient contact, because it is unclear from her affidavit how close she is to the facility and therefore, she has not demonstrated an ongoing connection and presence. See *Private Fuel Storage*,

L.L.C., 49 NRC at 325 (potential intervenors should either provide specific information regarding their geographic proximity or the timing of their visits). In this regard, while she asserts that she can hear the sirens from her residence, she has provided no other information regarding her geographical proximity such that, without more, an effect on her interest can be assumed. Nevertheless, in light of Mr. deCamp's affidavit, it is not necessary for Petitioner to demonstrate that its other members maintain sufficient contacts in the area for standing purposes.

The Commission has recognized that a petitioner's claim that he or she resides within a certain geographical distance from a facility may be sufficient to establish standing in proceedings involving 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). Those cases involve "clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences." *Id.* For example, spent fuel pool expansion proceedings have been found significant enough to warrant standing based on geographical proximity to the facility. *See e.g., Virginia Elec. and Power Co.* (North Anna Nuclear Power Station, Units 1 and 2, ALAB-522, 9 NRC 54 (1979). In the *Millstone* proceeding, involving the offloading and storage of a full core in the spent fuel pool, the licensing board could not conclude that the safety issues were not comparable to a spent fuel pool expansion proceeding. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 1), LBP-96-1, 43 NRC 19 (1996). Further, in the *Seabrook* proceeding, proximity was sufficient to establish injury-in-fact in a proceeding involving decreased steam generator tube inspections. *See North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), LPB-98-23, 48 NRC 157, 161-63 (1998).

The Petitioner asserts that it was previously granted standing in a proceeding involving the movement of heavy loads over irradiated fuel at the Licensee's facility. Petition at 3. That proceeding concerned an amendment to the Oyster Creek license that permitted heavy loads in the form of a shield plug and associated lifting hardware to be moved over irradiated fuel assemblies that are in a dry shielded canister within the transfer cask in the cask drop protection system. *See General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 147-48 (1996)*. Petitioner, NIRS, was granted intervenor status based, in part, on an affidavit of Mr. deCamp, who alleged many of the same geographical connections with the facility: that he lives within the ingestion pathway zone; that he frequents the plume exposure emergency planning zone; that his work on conservation projects takes him within one mile of the facility; and that he engages in recreational activities on the bay within the emergency planning zone. *Id.* at 157. The licensing board concluded that Mr. deCamp's recreational activities that bring him within a mile or less to the facility provide him with standing to contest the proposed license amendment. *Id.* at 159.

The *Oyster Creek* licensing board determined that NIRS had demonstrated that 1) a shield plug drop can occur, and 2) such an accident can have offsite radiological consequences that may impact the health and safety of NIRS' members. In this regard, the licensing board was influenced by NIRS' documentation regarding load drop accidents, which indicated that nuclear facility load drop accidents have occurred that resulted in damage to facility equipment. *Id.* at 158. The licensing board was also persuaded, with regard to the consequences of an accident, that, based on Oyster Creek's worst case shield plug drop analysis, there could be some off-site consequences, although minor. *Id.*

NIRS again has provided documentation concerning accidental heavy load drops. *See* Petition at 8-9 and Attachments C and D. Regarding consequences of such a drop, Petitioner has alleged that a heavy load drop onto safety-related equipment during power operation could occur, resulting in "unacceptable off-site radiation doses and consequences." Petition at 4-5. Mr. deCamp's affidavit likewise asserts that "a load drop which releases radiation to the atmosphere as the result of damage to safe shutdown equipment will adversely impact my health . . ." deCamp Affidavit at ¶ 3. In light of Petitioner's assertions, the postulated off-site consequences appear sufficient to support standing based on geographical proximity.³ *See Georgia Tech*, 42 NRC at 115.

In addition, in accordance with 10 C.F.R. § 2.714(a), Petitioner submitted aspects, at least one of which is within the scope of the *Federal Register* notice. Petition at 5-6. For example, Petitioner states in its discussion of aspects that a load drop accident can "damage safety-related relay switches located throughout the reactor building" because it can "initiate a 'chatter' (the rapid uncontrolled opening and closing) within electrical relay switches rendering the safety-related switches and associated safety-related equipment inoperable." *Id.* at 5. Petitioner, has therefore set forth at least one aspect -- the effect of a load drop on safety-related equipment -- and thus satisfies the Commission's requirement that a petitioner set forth aspects of the proceeding upon which intervention is sought. 10 C.F.R. § 2.714(a). In accordance with 10 C.F.R. § 2.714(b), however, Petitioner must set forth at least one valid contention in order to participate as a party to the proceeding.

³ In light of the Staff's position regarding Petitioner's standing based on geographic proximity, the Staff will not address Petitioner's assertion that it should be granted discretionary intervention.

CONCLUSION

For the reasons set forth above, to the extent that it addresses standing, the staff does not oppose Petitioner's request for hearing and for leave to intervene, subject to the submittal of at least one valid contention.

Respectfully submitted,

Catherine L. Marco

Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 23rd day of November 1999

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BOARD

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 NOV 23 P 3:18

BEFORE THE COMMISSION

OFFICE
REG
ADJ

In the Matter of)

GPU NUCLEAR, INC.)

Docket No. 50-219

(Oyster Creek Nuclear Generating Station))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

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Name of Party:

NRC Staff

Respectfully submitted,

Catherine L. Marco

Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 23rd day of November, 1999.

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'99 NOV 23 P3:19

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

OFFICE OF THE SECRETARY
RULEMAKING AND ADJUDICATIONS

In the Matter of)	
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GPU NUCLEAR, INC.)	Docket No. 50-219
)	
(Oyster Creek Nuclear Generating)	
Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO NUCLEAR INFORMATION AND RESOURCE SERVICE REQUEST FOR A HEARING AND PETITION TO INTERVENE IN GENERAL PUBLIC UTILITY NUCLEAR LICENSE AMENDMENT REQUEST FOR OYSTER CREEK NUCLEAR GENERATING STATION" and "NOTICE OF APPEARANCE" of Catherine L. Marco in the above-captioned matter have been served on the following by deposit in the United States mail, first class, as indicated by asterisk or through deposit in the Nuclear Regulatory Commission's internal mail system this 23rd day of November, 1999:

Office of the Secretary
ATTN: Rulemakings and Adjudications
Staff
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