LBP-98-33



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

B. Paul Cotter, Jr., Chairman
Dr. Richard F. Cole
Dr. Peter S. Lam



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| In the Matter of<br><br>DUKE ENERGY CORPORATION<br><br>(Oconee Nuclear Station,<br>Units 1, 2, and 3) | Docket Nos. 50-269/270/287-LR<br><br>ASLBP No. 98-752-02-LR<br><br>December 29, 1998 |

MEMORANDUM AND ORDER
(Denying Petition to Intervene)

## I. Introduction

The Chattooga River Watershed Coalition and Messrs. Norman "Buzz" Williams, William "Butch" Clay, and William Steven "W. S." Lesan (collectively referred to as "petitioners") seek to intervene in Duke Energy Corporation's license amendment application to extend the license of its Oconee Nuclear Station, Units 1, 2, and 3, for an additional 20-year period. This application was filed on July 6, 1998, and petitioners submitted a timely request for intervention on September 8, 1998. Thereafter, petitioners supplemented their intervention requests

by filing an amendment with an attachment to their petition on September 30, 1998 and by filing a supplemental intervention petition on October 30, 1998. In their October 30, 1998 supplemental petition, they also asked for a stay to prepare another supplemental list of contentions.

For the reasons stated herein, petitioners' requests for intervention and for a stay are denied.

## II. Requirements for Intervention

Before a petitioner may be granted a hearing and allowed to intervene in NRC proceedings, it must satisfy this agency's requirements for intervention set forth at 10 C.F.R. § 2.714(a)(1)-(2)(1998). The first requirement is a showing that the petitioner has standing to intervene. To establish the requisite standing, traditional legal judicial tests are applied which require the petitioner to show that: (1) the proposed action will cause "injury in fact" to the petitioner; (2) the injury is arguably within the zone of interest to be protected by the statutes governing the proceeding; and (3) the asserted injury is capable of redress in the proceeding. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

In addition, before being allowed to intervene, a petitioner must proffer at least one admissible contention for litigation. The standards for admissible contentions are set out in 10 C.F.R. § 2.714(b)(2)(1998). These regulations require that a contention include a specific statement of the issue of law or fact to be raised or controverted and a brief explanation of the basis for the contention. In addition, the contention should include a concise statement of the alleged facts or expert opinions which support it, together with references to those specific sources and documents on which each petitioner intends to rely to prove the contention. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248-49 (1996). Section 2.714(b)(2)(iii) also requires that each petitioner present sufficient information to show that a genuine dispute exists on a material issue of law or fact. A contention that fails to meet these standards must be dismissed, as must a contention that, even if proven, would be of no consequence because it would not entitle a petitioner to any relief. Section 2.714(d)(2).

The Commission also has specifically set forth criteria for the admissibility of contentions in license extension proceedings in a "Statement of Policy on Conduct of Adjudicatory Proceedings," CLI-98-12 48 NRC 18 (1998). As stated therein:

> The scope of a proceeding, and, as a consequence, the scope of contentions that may be admitted, is limited by the nature of the application and

> pertinent Commission regulations. For example, with respect to license renewal, under the governing regulations in 10 C.F.R. Part 54, the review of license renewal applications is confined to matters relevant to the extended period of operation requested by the applicant. The safety review is limited to the plant systems, structures, and components (as delineated in 10 C.F.R. § 54.4) that will require an aging management review for the period of extended operation or are subject to an evaluation of time-limited aging analyses. See 10 C.F.R. §§ 54.21(a) and (c), 54.29, and 54.30. In addition, the review of environmental issues is limited by rule by the generic findings in NUREG-1427, "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants." See 10 C.F.R. §§ 55.71(d) and 51.95(c).
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> Id. at 22.

See also Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3), CLI-98-17, 48 NRC 123 (1998). (Order referring hearing requests for this proceeding.)

## III. The Petitioners' Standing to Intervene

To establish their standing for this proceeding, petitioners Williams, Clay and Lesan, have filed affidavits stating they are members of the Chattooga River Watershed Coalition (CRWC), and they and their families live, work, recreate, travel, drink water, and eat food produced within 20 miles of the Oconee Nuclear Station. Mr. Williams also states he is an employee and Executive Director of CRWC and serves as the organization's official representative.

Each of these individuals also claims that health and safety, property rights, and personal finances for him and his family could be adversely impacted by the proposed Oconee license amendment. Damages to the petitioners could be caused by accidental radiological releases from the facility if the plant is allowed to operate for an additional 20 years. In regard to this extended operation, they are concerned that the Oconee license renewal application has unanswered questions regarding the structural integrity of the reactor and containment building, the effects of aging and embrittlement on the reactor vessels and containment vessels, the resolution of Oconee spent fuel disposal, the safeguards for terrorist actions, and the structural integrity of Oconee to withstand tornados and earthquakes. They also claim that their enjoyment of the Chattooga River Watershed may be diminished if the flora, fauna, air, and aquatic resources of the ecosystem are damaged or destroyed by such releases. They explain that such damage could occur because the Chattooga River Watershed lies within 15 miles of the Oconee facility at its closest point and that about 90 percent of the Watershed's entire 180,000 acres lies within 30 miles of the facility. See Petitioners' Supplemental Filing of October 31, 1998 and affidavits attached thereto.

Each of these individuals has authorized CRWC to represent him in this proceeding. They contend CRWC has standing to

intervene as an organization since its mission (as stated in Article III of its Bylaws) is

> [t]o protect, promote and restore the natural ecological integrity of the Chattooga River Watershed ecosystem; to ensure the viability of native species in harmony with the need for a healthy human environment; and to educate and empower communities to practice good stewardship on public and private lands.

They also claim that CRWC's educational mission could be diminished or destroyed by an accident at Oconee that causes CRWC employees (whose office is in Clayton, Georgia -- a town only 30 miles from the Oconee facility) "to suffer severe injury and/or die." Id.

Neither the NRC staff nor the applicant contest the standing of these three individuals. NRC Staff November 16, 1998 Response at 4-5; Applicant November 16, 1998 Response at 3-4. Staff also acknowledges that CRWC, the organization, has standing to intervene derived from its representational capacity on behalf of its members. However, staff does not believe that CRWC's standing can be based on its own organizational activities. Applicant takes the position that CRWC does not have either organizational or representational standing. Id.

We agree with staff and applicant that these three individuals have standing to intervene. Nuclear Regulatory Commission case law establishes that sufficient potential injury in fact exists for establishing standing where a contested

licensing action has obvious potential for offsite consequences and petitioners reside or engage in activities near the nuclear facility. Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 116 (1995); North Atlantic Energy Service Corporation (Seabrook Station Unit No. 1), LBP-98-23, 49 NRC 157, 162 (1998). Potential injury is obvious here because the aging and embrittlement of the Oconee reactor vessel and containment alleged by the petitioners could cause accidents with potential off-site effects to these individuals.[1]

CRWC also has standing to intervene. Organizations as well as individuals may intervene in NRC proceedings. An organization may attempt to show standing through one of its individual members if it establishes that the member wishes to be represented by the organization and he or she lives or conducts

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[1] Although not necessary for a determination in this case, standing for these individuals can additionally be found based upon the "proximity presumption" used in reactor construction permit and reactor operating license proceedings. In those proceedings, Commission case law recognizes a presumption that persons who live, work or otherwise have contact within the area around the reactor have standing to intervene if they live within close proximity of the facility (e.g., 50 miles). See Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979). We believe that this recognized 50 mile presumption should also apply to reactor license extension cases because license extensions allow operation of the reactor over an additional period of time during which the reactor can be subject to some of the same equipment failure and personnel error as during operations over the original period of the license.

activities within close enough physical proximity to the nuclear facility to be potentially adversely affected by the contested licensing action. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-97-27, 36 NRC 196, 1999 (1992). In this case, CRWC's representational standing has been established by Messrs. Williams, Clay, and Lesan establishing their own standing and authorizing CRWC to represent them. Having established an entitlement of CRWC to represent these individual members, there is no need to determine whether CRWC has established organizational standing in its own right.

## IV. Petitioners' Contentions

Petitioners have listed four contentions for litigation in this proceeding. See Petitioners' October 30, 1998 Supplemental Petition at pp. 3-5. The staff and the applicant oppose all four. See NRC staff's November 16, 1998, Response at pp. 8-23; Applicant's November 16, 1998, Response at pp. 8-26.

Each of these contentions is set forth below, along with our analysis of its admissibility.

Contention 1

> As a matter of law and fact, Duke Energy Corporation's Application for Renewed Operating License for Oconee Nuclear Station Units 1, 2, and 3 (hereinafter referred to as

"Application") is incomplete, and should be withdrawn and/or summarily dismissed.

As a basis for this contention, petitioners cite several Babcock & Wilcox Owners Group (B&WOG) generic topical reports, BAW-2251 and BAW-2248, and an applicant report pertaining to Oconee license extension which are currently under review by the staff. They also reference a number of staff Requests for Additional Information ("RAIs") regarding the Oconee application which apparently are still outstanding. Petitioners' October 30, 1998 Supplemental Petition at p. 3. They claim the incomplete status of these reports and RAIs renders the application incomplete, and they assert that meaningful public and technical expert review, as well as their ability to litigate this case, has been inhibited by this lack of information.

We find this contention to be inadequate for failure to demonstrate, as required by 10 C.F.R. § 2.714(b)(2)(iii), that a genuine dispute exists on a material issue of law or fact. What petitioners have done is search the record for instances of uncompleted staff review of the Oconee application, and then assert that the application should be rejected based on these instances. This argument fails to recognize that all information regarding staff review of an NRC licensing application does not have to be complete prior to the time the application is contested at a hearing. "Open items" regarding a license

application, which eventually must be dealt with by staff before the license can be granted, are not unusual, nor does the fact that such items exist, standing alone, provide the basis for a contention. Indeed, to accept such a contention would be contrary to the well established principal that contentions regarding the adequacy of staff's review of a license application (as opposed to the application itself) are inadmissible in licensing hearings. Curators of the University of Missouri, CLI-95-8, 41 NRC 386, 395-96 (1995). See also CLI-95-1, 41 NRC at 121-22 and reactor cases cited in fn. 67. Because petitioners have only shown that staff review is ongoing and have not identified instances where the application itself is allegedly in error, Contention 1 must be rejected.

Similarly, petitioners' complaint that staff's open items prevent adequate public and technical expert review is also unpersuasive. The technical reports in question are part of the Oconee application and are available for public review. Contentions must be based upon problems with the reports themselves. After the NRC staff completes its review, if petitioners have problems with staff conclusions, they are then free to intervene (if their intervention petition has been previously rejected) and file late contentions in accordance with 10 C.F.R. § 2.714(a)(1).

The RAIs cited by petitioners also are not appropriate as a basis for contentions in this proceeding. The subject of RAIs in license extension cases was dealt with in the Commission's recent Calvert Cliff's decision. There the Commission, in holding that the petitioner's list of RAIs were not appropriate as contentions in that proceeding, stated:

> Contrary to NWCs view (Appeal at 7, 21-23), the NRC staff's mere posing of questions does not suggest that the application was incomplete, or that it provided insufficient information to frame contentions, and NWC has cited no language in the RAIs suggesting otherwise. Indeed, were the application as rife with serious omissions as NEC suggests, then NWC should have no problem identifying such inadequacies -- yet NWC has not done so. What NWC ignores is that RAIs are a standard and ongoing part of NRC licensing reviews. Questions by the NRC regulatory staff simply indicate that the staff is doing its job: making sure that the application, if granted, will result in safe operation of the facility. The staff assuredly will not grant the renewal application if the responses to the RAIs suggest unresolved safety concerns.
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> Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC__ , Slip Opinion at 20 (Dec. 23, 1998).

This case is similar to Calvert Cliffs because the petitioners here also have not shown how the presence of these RAIs evidence credible safety significance, how the Oconee application is materially incomplete because of the RAI matters, or how the

application fails to provide sufficient information to frame contentions.[2]

For all of these reasons, Contention 1 is rejected.

Contention 2

> As a matter of law and fact, Duke Energy Corporation's Application for Renewal Operating License for Oconee Nuclear Station Units 1, 2, and 3 does not meet the aging management and other safety-related requirements mandated by law and NRC regulations, and therefore should be withdrawn and/or summarily dismissed.

As basis for this contention, petitioners again point to the unresolved status of BAW-2251 and BAW-2248, relied upon in Contention 1, and also cite owners group reports BAW-2243A and BAW-2244A as containing unresolved matters referenced in the Oconee application. However, as in Contention 1, staff's ongoing review of reports relied upon in the application cannot be the basis for a contention. See Contention 1 discussion, supra. Moreover, petitioners have erred in their reliance on BAW-2243A

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[2] In an unauthorized filing dated December 9, 1998 entitled "New Information for the ASLBP to Consider with the Petitioners' First Supplemental Filing," petitioners cite several new RAIs that they claim were not received by them until after the October 30, 1998 filing deadline. According to petitioners, these RAIs support their first three contentions and identify areas where the application is deficient in providing essential information for evaluating issues of safety and aging effects. Staff and the applicant have responded that this unauthorized filing does not materially aid the admission of these contentions. See Staff's December 22, 1998 Response and Applicant's December 21, 1998 Response. We agree. The new RAIs listed by petitioners are merely additional examples of areas where information regarding the application is being sought by staff, and, as such, are unacceptable as contentions or basis for contentions.

and BAW-2244A because these two reports have, in fact, already been approved by staff. See NRC Staff's November 16, 1998 Response at footnote 9, Applicant's November 16, 1998 Response at 14; and staff's revised Final Safety Evaluation for BAW-2243 and BAW-2244.

Petitioners also rely on several statements in the Oconee application as an additional basis for Contention 2. These include a statement concerning section v. 3, 4.3-30 that applicant will have to provide details to staff about applicant's inspection program. However, as a practical matter, this statement does not present a problem since, as pointed out by staff in its response, detailed information regarding applicant's inspection program is provided in the application at v. 3, 4.3-29-30. See NRC Staff's November 16, 1998 Response at 12-13 and Attachment 1 thereto.

Petitioners also cite a statement in section v.1, 2.4-28 of the application which refers to a "one time inspection" for applicant's pressure cladding demonstration program. Petitioners are concerned that performing this inspection in the license extension's early years could overlook "ten years of wear and tear" on the pressure cladding system in subsequent years. Petitioners' October 3, 1998 Supplement at 4. However, their concern is based on a misunderstanding about this subject. This statement refers only to the fact that a single inspection will

be needed to determine whether there have been past cracks in the stainless steel cladding. It does not refer, as petitioners evidently believe, to age-related management during the period of extended operation. See Final Safety Evaluation Report for Clarification of BAW-2244 found in Attachment 3 of Staff's November 16, 1998 Response.

As an additional basis for this contention, petitioners refer to their statements in Contention 1. See Petitioners' October 30, 1998 Filing at p. 3. For the reasons stated in our discussion of Contention 1, we do not consider the basis provided for that contention to be adequate to support a contention. Accordingly, we find that petitioners' Contention 2 is not admissible.

Contention 3

> As a matter of law and fact, Duke Energy Corporation's application for Renewed Operating License for Oconee Nuclear Station Units 1, 2, and 3 fails to meet mandated law under the National Environmental Policy Act (NEPA), and therefore should be withdrawn or summarily dismissed.

In proposed Contention 3, petitioners claim that the Oconee application violates NEPA because it fails to furnish adequate environmental information regarding the project. They contend, as a basis for this contention, the specific violation of NEPA sections 1500.1(b), 1502.2(g), and 1502.21. Section 1500.1(b) states that "NEPA procedures must insure that environmental

information is available to public officials and citizens before actions are taken." Section 1502.2(g) states that "[e]nvironmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying a decision already made." Section 1502.21 states that

> Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potential interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

As an additional basis, petitioners claim that the application constitutes impermissible "segmentation" of a project which contradicts a series of NEPA cases. Finally, they assert that the application violates NEPA because of the incomplete RAIs.

This Board rejects Contention 3. As a preliminary matter, we note that Sections 1500.1(b), 1502.2(g), and 1502.21 relied upon by petitioners are Council on Environmental Quality (CEQ) guidelines codified at 40 C.F.R. Part 1500. Although the NRC considers CEQ guidelines (see 43 Fed. Reg. 55978-56007 (November 29, 1978)), it is not bound by them if they substantively impact

on the way the NRC performs its regulatory functions. 49 Fed. Reg. 9352 (March 12, 1984). In the first instance the NRC is bound by 10 C.F.R. Part 51 to implement NEPA. Petitioners have not contended, nor attempted to show, that applicant's environmental report does not meet the specific requirements of 10 C.F.R. § 51.53(c).

More importantly, petitioners have failed to provide an adequate basis for these NEPA claims to meet the requirements of 10 C.F.R. § 2.714(b)(2). Their only basis for alleging a Section 1500.1(b) violation (i.e., that information must be made available before decisions are made) is a general reference to Contentions 1 and 2. But as we have already discussed, relevant information regarding the license extension was made publically available in the Oconee application, and the pending staff review of portions of the application does not alter the availability of this basic information.

Nor has sufficient information to establish a Section 1502.2(g) violation (i.e., requiring that environmental impact statements assess impacts rather than justifying a decision already made) been made available. In support of this assertion, petitioners refer to their "discussion of M. S. Tuckman's application submittal letter." But that discussion in petitioners' October 30, 1998, filing at page 2 only makes vague reference to an alleged close-working relationship between

applicant and the NRC and does not appear to be related to a possible Section 1502.2(g) violation. Similarly, the Section 1502.21 allegation lacks adequate basis because it is not clear what petitioners are referring to regarding the incorporation of materials by reference into environmental impact statements.

So too, petitioners' "segmentation" argument is inadequate to provide an admissible basis. "Segmentation," as it pertains to NEPA, occurs when environmental review of the total effects of a project is thwarted because portions of the project are dealt with separately. See City of Rochester v. United States Postal Service, 541 Fed. 2d. 967, 972 (2d Cir. 1876). Here, petitioners seem to suggest that applicant has intentionally delayed completing certain portions of the application to avoid an assessment of its overall effects. However, this argument fails because applicant has filed a license application with the staff for Oconee addressing required environmental issues. Petitioners could have alleged deficiencies in applicants' treatment of these issues, but instead, as basis for their contentions, merely listed certain "open items" in the application which are not acceptable as contentions in NRC proceedings. In fact, these open items refer to safety issues which are not even NEPA related.

The staff has not inappropriately segmented its treatment of the Oconee application. Thus far, staff has prepared a Generic

Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437, 1996 (GEIS) which will generically apply to the Oconee application, and it will later issue a plant specific environmental impact statement for Oconee which will supplement this GEIS. See 63 Fed. Reg. 50257 (Sept. 21, 1998). Accordingly, no basis has been stated for Contention 3, and it must be rejected.

Contention 4

> The Petitioners submit that the specific issue of the storage of spent fuel and other radioactive substances on the site of the Oconee Nuclear station must be addressed in these proceedings. In addition, the status and capacity of the current spent fuel storage facility must be disclosed and addressed. The real and potential availability and viability of other High-Level Waste storage sites must be disclosed and addressed.

Petitioners' Contention 4 raises issues related to on-site storage, transportation, and ultimate disposal of Oconee spent nuclear fuel. However, none of these subjects can provide a basis for admissible contentions in this proceeding.

The Commission's Regulations provide that applicants for operating license renewals do not have to furnish environmental information regarding the on-site storage of spent fuel or high-level waste disposal, low-level waste storage and disposal, and mixed waste storage and disposal. See 10 C.F.R. §§ 51.53(c)(2), 51.53(c)(3)(i), and 51.95. See also the presumptions in

10 C.F.R. § 51.23 regarding high-level waste permanent storage; and see Table B-1 in Appendix B to Subpart A of Part 51, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants" (that includes specific findings on offsite radiological impacts of spent fuel and high-level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and on-site spent fuel storage). Each of these areas of waste storage are barred as subjects for contentions because 10 C.F.R. § 2.758 provides that Commission rules and regulations are not subject to attack in NRC adjudicatory proceedings involving initial or renewal licensing. In addition, Commission case law holds that petitioners are precluded from litigating generic determinations established by NRC rulemakings. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-729, 17 NRC 814, 889-90 (1938), *rev' in part on other grounds*, CLI-84-11, 20 NRC 1, 4 (1984). See also Private Fuel Storage, L.L.C. (Independent Spent Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998). Petitioners have not offered any showing of special circumstances to establish the admissibility of Contention 4 by demonstrating that the application of these regulations does not serve the purpose for which these regulations were adopted. See 10 C.F.R. § 2.758(b). Thus, the areas of this contention dealing

with spent fuel storage at the Oconee facility and at off-site facilities are not appropriate subjects for contentions.

The transportation of spent fuel rods from the Oconee reactor to an off-site storage site also is not a permissible subject for a contention in this proceeding. In SRM M970612 dated January 13, 1998, the Commission directed staff to proceed with a generic rulemaking for the transportation of high-level waste. In it, the Commission also stated that license renewal applicants would not have to include these transportation issues in their applications if the rulemaking would not delay the license renewal application. See SECY-97-279 and SRM M970612 attached to Staff's November 16, 1998 Response as Attachment 2. Although this board is not bound by Commission SRMs, we agree with the general concept that it would be counterproductive to litigate issues which are being treated in an ongoing generic rulemaking unless there is good reason to do otherwise. As the Commission has recognized, delay to a license extension proceeding would provide a good basis for requiring treatment of the fuel transportation issue in the application and not awaiting completion of the transportation rulemaking. However, because this rulemaking commenced on January 13, 1998 and will become effective no later than September 1999, it is clear that the rulemaking will not delay the December 2000 completion of the Oconee license renewal proceeding. See NRC Staff Response of

December 2, 1998 and affidavit of Donald P. Cleary attached thereto. No other good reasons are apparent as to why high-level transportation information should be included in the Oconee application.

## V. Petitioners Request for a Stay

In their October 30, 1998 filing, petitioners request that these proceedings be stayed pending their review of staff's RAIs and the applicant's responses. As part of this request, they ask that they be given 90 days after applicant's responses to file a supplemental list of contentions.[3] We deny this request.

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[3] Related to this request is petitioners' complaint that they have had insufficient time to prepare their case because of the huge number of documents in the Oconee application. They claim in this regard that the tight schedules in this proceeding severely compromise meaningful public review. Petitioners' October 30, 1998 filing at p. 2. Applicant responds that the Oconee application has been publicly available for at least four months (see 63 Fed. Reg. 37909, July 14, 1998) and that most of the complained-about materials are unrelated to the Oconee license renewal. Applicants November 16, 1998 Response at p. 27. Applicant also claims that petitioners' complaints are at odds with the NRC's Catawba decision where the Commission stated:

> While we are sympathetic with the fact that a party may have personal or other obligations or possess fewer resources than others to devote to a proceeding, this fact does not relieve that party of its hearing obligations. *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981) ("Statement of Policy"). Thus an intervener in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material. Statements that such material is too voluminous or written in too abstruse or technical

Standards for granting stays in NRC adjudicatory proceedings are set forth in 10 C.F.R. § 2.788. These include a consideration of:

1. Whether the moving party has made a strong showing that it is likely to prevail on the merits;
2. Whether the party will be irreparably injured unless a stay is granted;
3. Whether the granting of a stay would harm other parties, and
4. Where the public interest lies.

Although petitioners briefly mention potential irreparable injury to themselves in their December 8, 1998 filing (at p. 2), they do not address the three other standards in their request for a stay. However, even if addressed, it is apparent from the discussion below that they would not meet their burden in obtaining this stay.

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language are inconsistent with the responsibilities connected with participation in Commission proceedings and, thus, do not present cognizable arguments." (Emphasis added)

Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983).

We agree that petitioners' complaints about scheduling obligations and the size of the record in this proceeding do not excuse them from their hearing obligations.

With respect to the first criteria, there is no basis for concluding that petitioners would have success on the merits. First, as we have already indicated, the fact that the staff review process is ongoing does not establish a legal deficiency in the agency's licensing process. This is particularly so given the fact that RAIs can be the subject of late-filed contentions. Further, there is no reason for concluding that petitioners' review of the RAIs and responses thereto would result in a valid contention, much less be successful on the merits after litigation.

Similarly, for criteria two and three regarding irreparable injury or harm to the parties, we have no basis to conclude that petitioners will be irreparably injured or harmed by failing to review applicant's responses to RAIs. In their December 9, 1998 filing, petitioners contend that their interests in protecting and promoting the natural ecological integrity of the Chattooga River Watershed would be irreparably damaged should a major radiological accident occur. This claim, however, is far from compelling given their failure to allege specific problems with the Oconee license application that might cause such an event. Moreover, speculation that the RAIs may later reveal potential problems does not constitute a reasonable likelihood of irreparable injury for purposes of a stay. Applicant, on the

other hand, may be harmed if its license extension application is not timely resolved.

Finally, criteria four, regarding where the public interest lies, also weighs against petitioners. There is a public interest in assuring that petitioners receive a fair opportunity to present their contentions about a license application. At the same time, however, the public interest requires the timely completion of adjudicatory proceedings. For this particular proceeding, the Commission emphasized this point by establishing milestones for its timely completion, including a directive that, within 90 days of the date of their September 15, 1998 Order, the Licensing Board will reach a decision on intervention petitions and admissibility of contentions affecting the public health and safety almost three decades in the future. CLI-98-17, Slip Opinion at 5. If petitioners' extension request is granted, not only will the Commission's milestone be missed, but completion of the remainder of the proceeding could be delayed because of additional time necessary to resolve new contentions and to conduct possible discovery and litigation related thereto.

Thus, because each of the standards for evaluating stays weigh against the petitioners, their request is denied.

## VI. Conclusion

For all the foregoing reasons, we find that petitioners have standing to intervene. However, because their proffered contentions fail to meet the requirements for admissibility, their request for intervention is denied. Consequently, this proceeding is terminated.

Within ten days of service of this Memorandum and Order, petitioners may appeal this Memorandum and Order to the Commission by filing a notice of appeal and accompanying brief in accordance with 10 C.F.R. § 2.714a (1998).

THE ATOMIC SAFETY AND
LICENSING BOARD

B. Paul Cotter, Jr., Chairman
Administrative Judge

Dr. Richard F. Cole
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Dr. Peter S. Lam
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Rockville, Maryland

December 29, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

DUKE ENERGY CORPORATION

(Oconee Nuclear Station,
Units 1, 2, and 3)

Docket No.(s) 50-269/270/287-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-98-33) DENY'G PET. have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
30 day of December 1998

Adrian T. Byrdsong
Office of the Secretary of the Commission