

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Nuclear Regulatory Commission:

Shirley Ann Jackson, Chairman  
Edward McGaffigan, Jr.  
Nils J. Diaz  
Greta J. Dicus  
Jeffrey S. Merrifield

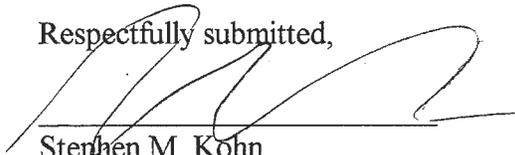
OFFICE OF THE  
GENERAL COUNSEL  
ADJUTANT GENERAL

_____ )	
In the Matter of )	Docket Nos. 50-295/304-LA
COMMONWEALTH EDISON COMPANY )	ASLBP No. 98-744-04-LA
(Zion Nuclear Power Station, )	
Units 1 and 2) )	November 16, 1998
_____ )	

**NOTICE OF APPEAL**

Pursuant to 10 C.F.R. Part 2, 10 C.F.R. §§ 2.714a, Petitioner Edwin D. Dienethal hereby files his Notice of Appeal to the Commission for review of the Atomic Safety and Licensing Board's November 5, 1998 Memorandum and Order denying Petitioner's petition for leave to intervene and request for hearing. A supporting brief is submitted herewith.

Respectfully submitted,



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November 16, 1998

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman  
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**BRIEF IN SUPPORT OF PETITIONER'S APPEAL**

Pursuant to 10 C.F.R. Part 2 and 10 C.F.R. §§ 2.714a, Petitioner Edwin D. Dienethal hereby files a brief in support of his appeal of the Atomic Safety and Licensing Board's ("ASLB") November 5, 1998 Memorandum and Order denying his petition for leave to intervene and request for hearing.

**INTRODUCTION**

The ASLB assigned to adjudicate Mr. Dienethal's petition for intervention in the above-captioned proceeding dismissed Mr. Dienethal's petition on one simple ground: lack of standing. The Board found that "Mr. Dienethal has failed to establish a plausible chain of causation between his alleged injury and the Applicant's proposed license amendments." ASLB Memorandum and Order (Resolving Standing Issue) issued on

November 5, 1998 (hereinafter, “ASLB Order” or “Order”), p. 9. The Board dismissed Mr. Dienethal’s petition on this ground. ASLB Order, p. 12. For the reasons set forth below, Mr. Dienethal did properly demonstrate a “plausible nexus between the challenged license amendments” and a potential “harm.” Accordingly, Mr. Dienethal has satisfied the standing requirements to intervene in the above-captioned proceeding.

### **STATEMENT OF THE CASE**

On March 30, 1998 the Commonwealth Edison Company (hereinafter, “Applicant”), applied for an amendment to their license to operate Zion Nuclear Power Station, Units 1 and 2 (hereinafter, “Plant Zion”). See letter from John C. Brons, Site Vice President at Zion Nuclear Station to the NRC, dated March 30, 1998. This letter contained a number of attachments. Attachment A to this letter contained a full statement of the proposed amendments.

The Commission on May 6, 1998, published notice of the March amendment request. 63 Fed. Reg. 25,101 (May 6, 1998). On June 4, 1998, Mr. Edwin D. Dienethal, pursuant to 10 C.F.R. 2.714(a), filed a petition to intervene in the Commonwealth Edison license amendment proceeding because of threat to public health and safety posed by Zion Nuclear Station due to intentional violations of safety related procedures. As a result, a Licensing Board was established on June 11, 1998 to preside over the proceedings. On July 31, 1998 Mr. Dienethal filed his Amended Petition to Intervene and Statement of Contentions (hereinafter, “Amended Petition”). On November 5, 1998 the ASLB issued its Order dismissing the petition.

## SUMMARY OF RELEVANT FACTS

This proceeding concerns a request from Mr. Edwin D. Dienethal to intervene in amendments to Applicant Commonwealth Edison's license to operate Plant Zion. Mr. Dienethal resides within ten miles of Plant Zion. He worked at the plant as a supervisor for ten years. Based upon his knowledge of actual plant operations, his ability to obtain information (and expert opinions) from current and former plant employees, his participation as co-director of the Committee for Safety at Plant Zion, and his direct personal interest in the safe operations of Plant Zion, Mr. Dienethal sought to intervene in this proceeding and is uniquely situated to positively contribute to the licensing proceeding. Amended Petition, p. 2-3.

The ASLB reviewed the facts alleged by Mr. Dienethal in his amended petition and held that he established a sufficient potential "injury in fact" to meet part of the standing requirement:

[T]he petitioner's long list of activities, that, inter alia, regularly place him as close as one mile to the Zion plant throughout the year provides an adequate statement of future harm from the Applicant's facility to meet the standing requirement of pleading a threatened injury in fact.

Order, p. 8.

This finding of fact (and conclusion of law) is not being contested by Mr. Dienethal in this appeal.

As set forth below, contrary to this finding of the ASLB, Mr. Dienethal also set forth facts which demonstrate, for the purpose of establishing standing, that "offsite

release of radioactive fission products at the Zion plants is fairly traceable to the amendments that the Applicant seeks.” Order, p. 8.

As part of its requested license amendments, the Applicant requested leave to eliminate the “continuous onshift presence of a Radiation Protection Person.” Applicant’s Attachment A, p. 12. Although the ASLB did not address this issue, Mr. Dienethal’s Amended Petition unquestionably set forth facts sufficient to establish a causal link between this requested amendment and the potential offsite release of radioactive fission products.

In his Amended Petition, Mr. Dienethal set forth “Contention 10”. This contention directly challenged Applicant’s request to eliminate the continuous onsite presence of a “Radiation Protection Person.” Amended Petition, pp. 29-30. The bases for this contention were fully set forth, and incorporated by reference the facts contained in contentions 1 and 3.

Mr. Dienethal adequately set forth facts which demonstrate, for the purposes of establishing standing, a causal connection between the proposed amendment and the potential offsite release of radiation:

By eliminating a “continuous onshift presence”, Applicant will increase the possibility of unnecessary and excess radiation exposure and increase the likelihood of harm inflicted on employees and the general public. A Radiation Protection Person needs to be onsite at all times to prevent radiation from leaving the protected areas or to quickly rectify the problem if the radiation is brought into unprotected locations. The presence of this person will also decrease the possibility of radiation being taken off-site, contaminating the community. The Radiation Protection program at Plant Zion has been riddled with intentional

violations by supervisors and continuous and significant quality assurance problems. During the Robarge hearing, numerous witnesses testified to a complete breakdown of QA within that department. That evidence introduced by the Complainant in that case, which is part of the public record, is hereby incorporated by reference as part of the basis to this contention.

Additionally, during the discovery phase of the Robarge proceeding, evidence was introduced in depositions concerning the QA breakdown within the Radiation Protection Department. See Exs. 5-8. For example, Mr. Bauman testified that radiation monitors were “substandard” and the ability of the Applicant to properly “inform workers” of potentially unsafe “radiological conditions” at Zion were also “substandard.” In this regard, in the Department of Labor case of Boudrie v. Commonwealth Edison, it was proven that radioactive materials were improperly removed from Plant Zion and carried home, undetected, by employees. The record in the Boudrie proceeding is hereby incorporated by reference.

Moreover, Mr. Robarge (and other persons with expertise in radiation protection) shall testify as of the problems inherent in accepting this amendment. For example, during the Robarge DOL hearing, documentary and oral testimony was placed on the record (and information was produced during discovery, which was required to be returned, uncopied, to the Applicant) demonstrating a complete QA breakdown within the area of radiation protection. This included, but was not limited to, numerous examples of radioactive particles being located outside of the radiation control areas, including radioactive particles being found at locations where employees ate.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

Amended Petition, pp. 29-30.

Mr. Dienethal placed on the record in this proceeding sufficient facts to fully support his allegation that the elimination of the “continuous onshift presence of a Radiation Protection Person” could result in the improper release of radioactive materials.

First, Mr. Dienethal demonstrated that the current radiation protection program at

Plant Zion had resulted in the offsite release of radioactive material. Specifically, Mr. Dienethal cited to the Steven Boudrie case, in which an employee at Plant Zion passed through the entire radiation protection program applicable to persons who enter the contaminated areas of the site and left the site contaminated with radiation. Amended Petition, p. 30. Thus, any reduction in radiation protection staffing does create a cognizable potential harm to the public, including but not limited to an increased risk in the release of radiation off-site.

However, the Boudrie case did not occur in a vacuum. Mr. Dienethal also set forth facts which, if true, unquestionably support his contention that the reduction of onshift radiation protection employees could negatively impact the public safety.

Mr. Dienethal's Contention No. 10 also incorporated, as part of its factual basis, the facts contained in contentions 1 and 3.<sup>1</sup> The facts set forth in contentions 1 and 3 demonstrate that quality assurance ("QA") breakdowns exist within Plant Zion and its radiation protection department. Additionally, these contentions demonstrate that due to the existence of wilful violations on site, and within the radiation protection department, the Applicant does not have the sufficient character and competence to justify any reduction in its radiation protection department staffing. Taken together, the facts set forth directly in contention 10, and by reference in contentions 1 and 3, set forth a

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<sup>1</sup>Likewise, Contentions 1 and 3 directly or indirectly referenced the elimination of radiation protection personnel as part of the subject area covered by the contentions. Amended Petition, pp. 12 (direct reference) and 19 (indirect reference).

potentially dangerous radiological condition at plant Zion and set forth sufficient factual basis to demonstrate a potential causal link between the Applicant's request to reduce the staffing requirements related (directly or indirectly<sup>2</sup>) to radiation protection and the potential release of radiation into the surrounding environment.

As stated in the Amended Petition, Mr. Dienethal set forth facts which fully supported the causal relationship between the elimination of radiation protection staffing and the potential harm of the public:

The public record demonstrates that Plant Zion's QA/problem identification program has failed. See Exhibit 3, "Notice of Violation (NOV) and Enforcement Action (EA) Resulting from Quality Assurance Breakdown"; Exhibit 4, "Notice of Violation (NOV) and Enforcement Action (EA) Resulting from Failure to Follow Procedures. Due to this breakdown, Applicant cannot insure that any of the amendment changes requested in the license [including the proposal to reduce radiation protection staffing] shall be administered in a manner consistent with the controlling procedures, regulations, laws, and/or the requirements of public safety. The Petitioner can support this contention with a significant amount of evidence.

First, Mr. Allen Mosbaugh will be an expert witness for the Petitioner. He was qualified as an expert on quality assurance matters during the Department of Labor (DOL) proceeding in Robarge v. Commonwealth Edison, 98-ERA-2. During his testimony in that proceeding Mr. Mosbaugh reviewed evidence related to the quality assurance and problem identification program at Plant Zion and testified that the evidence supported a finding of a QA breakdown. The transcript of Mr. Mosbaugh's testimony shall be introduced in this proceeding. See Affidavit of Randy Robarge.

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<sup>2</sup>Mr. Dienethal's Contention No. 10 directly relates to the staffing requirements within the radiation protection department. However, Contentions Number 5, 8 and 9 also relate directly to staffing issues which, by implication, would impact on the plant's radiation protection activities.

Second, both the Petitioner, Mr. Robarge, and numerous other employees or former employees of the Applicant shall testify to the existence of “PIF wars” at Plant Zion. PIFS are “Problem Identification Forms” for which employees at Zion were required to properly file. PIFs constituted one of the most important, if not the most important, method for employees to identify safety problems onsite and for Applicant’s management to correct and trend safety problems onsite. The NRC Staff has fined Applicant for its failure to properly file PIFs, and in the Robarge DOL case numerous witnesses testified that the program had broken down. Plant Zion managers knew that employees were failing to file PIFs, managers were conducting illegal field modifications concerning the PIF requirements, employees were harassed merely for filing PIFs, and PIFs were routinely not filed in violation of procedure. See Robarge, 98-ERA-2.

The “PIF war” concept was very simple. As testified to by numerous witnesses during the Robarge DOL proceeding, if an employee or a department filed a PIF identifying problems with another employee or department’s work, the target of the original PIF would retaliate and file PIFs against the original alleger. This could escalate into a full scale “war” between departments or between people. “[I]f somebody PIF’s our department, we PIF them back. If we PIF somebody else, they PIF us back to defend” See Exhibit 5, redacted excerpts from the Deposition of Rodney Bauman, Tr. 16. See also Exhibit 6, redacted excerpts from the Deposition of Brent Robinson, Tr. 77-78; Exhibit 7, redacted excerpts from the Deposition of Ronald Schuster, Tr. 17-19; Exhibit 8, redacted excerpts from the Deposition of John C. Meyers, Tr. 68-69. Consequently, most employees would just not file PIFs. See testimony from Robarge and Satterfield placed on the official transcript of the Robarge DOL hearing. Also see, e.g. DOL testimony of Russell Satterfield given in the Robarge matter. Ex. 9, Tr. 432-35. This decision not to file PIFs led to a complete breakdown of Applicant’s QA program and its ability to determine the true condition of its plant. Without the proper filing of PIFs, Applicant was unable to identify or trend problems, or to conduct proper root cause reviews, among numerous other problems.

Allen Mosbaugh, an unquestioned expert in quality assurance and problem identification, testified about PIF wars. Exhibit 10. Mr. Mosbaugh, in his testimony, stated as follows: “If something like a PIF war as I understand it was going down going on I would consider that

virtually a complete breakdown of the PIF program and the quality assurance program that it implements. The concept as I understand is that people would retaliate against each other by writing PIFs. Has no place in the nuclear industry. The management should be by problem address the problems that are known. There is to be no element of retaliation. It's totally unprofessional and its a breakdown of the system." Exhibit 10 Tr. 981-82.

Applicant's highest levels of management were fully aware of the "PIF war" problem and failed to take reasonable steps to correct the problem. In fact, the NRC Staff found that managers themselves were failing to file PIFs. See Robarge, 98-ERA-2.

In addition to the PIF wars, Applicant's supervisors and employees committed knowing and willful violations of mandatory safety procedures. See Robarge, 98-ERA-2. Applicant had full knowledge of these willful violations and failed to take any action to identify, correct, or punish those persons who committed wilful violations. In testimony obtained in December 1997 from depositions conducted in Robarge, supervisors of the Applicant admitted, under oath, to knowing that intentional violations of procedures occurred onsite and that the existence of these intentional violations were well known. Mr. Ron Schuster, a long-term supervisor-employee of the Applicant, testified under oath that he "physically witnessed" a supervisor "operating outside of the bounds." Ex. 7, Tr. 24. Mr. Schuster also confirmed that other supervisors were fully aware of these wilful violations and that the supervisor in question had a "reputation among the supervisors" as "someone who did not strictly adhere to procedures." Ex. 7, Tr. 24-25. Mr. Schuster's allegations were confirmed by three other management level employees of the Applicant during the deposition process in the Robarge case. See, Ex. 5, Tr. 29-30 (Bauman); Ex. 6, Tr. 17-18 (Robinson); Ex. 8, Tr. 24 (Meyers). Official representatives of the Applicant (i.e. their counsel) participated in these depositions and learned of this wilful misconduct. Consistent with the past practice onsite, however, no investigation or action was taken after these depositions were taken to verify, punish, and correct the willful misconduct.

At the hearing conducted in the Robarge DOL case, numerous other witnesses testified, under oath, that they knew that willful violations had been committed by more than one supervisor and that it was common

knowledge on site (including site management) that such wilful violations were occurring. See Robarge, 98-ERA-2. Also see, Exhibit 9, excerpts from the Robarge hearing testimony. For example, Mr. Gerald Ruffolo testified, under oath, to personally witnessing three separate supervisors give instructions that safety-related procedures be intentionally violated. Ex. 9, Tr. 219-232. Some of these witnesses testified to personally being instructed to wilfully violate procedures. Id. Moreover, witnesses confirmed that the reputation of some of the persons who wilfully violated procedures were well known throughout the plant and through every level of management. Id.

Additionally, Applicant has engaged in the harassment and intimidation of whistleblowers at Plant Zion. The NRC Staff has issued a Notice of Violation due to a contractors harassment of a whistleblower and a number of employee's for the Applicant have alleged harassment, wrongful discharge and intimidation. In a July 22, 1997 letter to Thomas Maiman, Applicant's Senior Vice President for Nuclear Operations from A. Bill Beach, NRC Regional Administrator, the NRC Staff warned Applicant about the "chilling effect" harassment and intimidation may be having on employee whistleblowing at the Plant Zion site. All twenty seven allegations of discrimination referenced in this letter indicate a QA breakdown. It is reasonable to assume that the NRC Staff is currently aware of other allegations of harassment and intimidation which were filed after the July 22<sup>nd</sup> letter was issued. Again, the "chilling effect" caused by the improper harassment of employees indicates a QA breakdown at Plant Zion. Evidence of harassment and intimidation was also introduced during the Robarge DOL claim and, upon information and belief, other employee's have filed discrimination claims under Section 211 of the Energy Reorganization Act which are currently under investigation by OSHA.

Procedures onsite were regularly violated. For example, at the hearing in Robarge, testimony was given that Radiation Work Permits (hereinafter "RWP") often were approved, even though they approved work was outside of the scope of the procedures. See Robarge, 98-ERA-2 (testimony by Ruffello). The NRC Staff was never informed about the result of an audit of these violations, despite the fact that numerous supervisors and managers knew of the apparent violations. The NRC has issued a Notice of Violation (NOV) in which Applicant violated technical specifications (TSs) concerning RWP. For example, NOV 295(304)/92034 cites violation of TS 6.2.2 when an operator entered a

high radiation area without the correct RWP. Petitioner himself has witnessed violations of procedure, including improper instruction regarding PIFs: One of Petitioner's supervisors asked him illegally to change information on PIF Number Z1998-00041 which was generated by Petitioner. In addition, the NRC Staff has noted numerous instances in which Applicant did not follow procedures, subsequently resulting in the issuance of numerous NOVs, including, but not limited to, those listed in Exhibit 4. The NRC has also issued Notices of Violation citing the *willful* violation of procedure, including, but not limited to, NOV 295(304)/94008-01 in violation of TS 6.2.2.a.

In an attempt to hide some of the QA breakdown, Applicant has entered into agreements (i.e. protective orders) which prevent Petitioner from discovering matters relevant to this proceeding. These protective orders must be vacated, in part, to allow Petitioner permission to interview all persons who have executed such agreements over the past fifteen years in order to obtain information relevant to this proceeding. One such agreement is the subject of an ongoing 2.206 petition filed in the Robarge matter by the National Whistleblower Center. However, regardless of the outcome of that proceeding, the Petitioner has a right to interview potential witnesses, and the Applicant cannot use protective orders or any other form of agreement to prohibit Petitioner from learning additional facts to support this petition. 10 C.F.R. § 50.7(g). In a Director's Decision, the use of a private contract to hide information from a party to a licensing proceeding, such as Mr. Dienethal, was found to be void and illegal. Texas Utilities Electric Co., 37 NRC 477, Director's Decision (1993), slip op. DD-93-12. See also "Preserving the Free Flow of Information to the Commission," 55 Fed. Reg. 10397, 10402 (1990).

Throughout its existence, employees at Plant Zion have not been properly trained in QA requirements. During the hearing in Robarge, expert witness Mr. Mosbaugh reviewed various documentation related to the Zion QA program and interviewed at least one Zion employee with knowledge of the QA program. Mr. Mosbaugh testified, under oath, that Zion appeared to have a QA breakdown.

Mr. Mosbaugh's entire testimony is included as part of the basis for this contention, as is the testimony provided at the Robarge DOL proceeding given by Randy Robarge, Jerry Ruffolo, Mike Masosput, Robert Chavez, Russ Satterfield, Al Vedder, Brent Robinson, Ron Schuster, Petitioner,

Alan Brown, Rodney Bauman (by deposition) and John Meyers (by deposition). In addition, the entire transcript of Robarge and the entire record of Robarge (including pre-trial depositions, correspondence between counsel, and in-court testimony by witnesses for Commonwealth Edison) are part of the basis for this contention.

Finally, Applicant's QA breakdown was one of the root causes of the premature shut-down of Plant Zion. If this root cause is not properly investigated, identified, and corrected, numerous health and safety violations will occur or re-occur during the decommissioning phase of Plant Zion.

Amended Petition, pp. 11-18.

The facts set forth in Contention 1 all relate directly to the concern regarding the elimination of radiation protection staffing. The testimony of Mr. Mosbaugh and Mr. Robarge all related to incidents which occurred within the radiation protection department. The testimony and other evidence placed before the Board all documented "PIF wars", a QA breakdown, intentional violations of safety procedures, a lack of management and employee integrity, the violation of Radiation Work Permit requirements, the regular violation of technical specifications and the violation of PIF requirements all within the radiation protection area. Consequently, given these facts, the further reduction of any radiation protection staffing requirements and/or the further reduction of any training and/or management oversight powers, which may impact the area of radiation protection, unquestionably demonstrates the necessary causal connection between Applicant's proposed amendments and the potential offsite release of radioactive materials.

The following other contentions set forth by Mr. Dienethal all directly relate to

either the oversight of the radiation protection department, the training of employees who will perform radiation protection jobs, the monitoring of radiation and/or the integrity of the radiation protection department: Contentions 1, 2, 3, 5, 6, 7, 8, 9, 12, 13, 17 and 18. Based on the record set forth in this proceeding, Mr. Dienethal also has set forth sufficient facts to demonstrate standing on each of these contentions.

### **STANDING**

Under section 189a of the Atomic Energy Act, the Commission must grant a hearing upon the request of any person “whose interest may be affected by the proceeding.” 42 U.S.C. § 2239(a). The basic standards for standing were set forth by the Commission in Yankee Atomic Electric, 43 NRC 1, 6 (1996).

As set forth by the Board, in order to meet the standing requirements, Mr. Dienethal needed to demonstrate that he may suffer a distinct and palpable injury in fact within the zone of interest. And that the injury is or can be *fairly* traceable to the challenged action. Order p. 7 and 8-9. Also see, e.g. Yankee Atomic Electric Co., 43 NRC 61, 68 (1996). The Board found that Mr. Dienethal met the potential injury standard, but also found that he did not meet the causal relationship standard. Order, p. 8 and 12.

As set forth in the summary of facts Mr. Dienethal did set forth a factual basis establishing a causal relationship between the Applicant’s proposed amendments and the potential offsite release of radiation. Consequently, the decision of the Board must be vacated and this case must be remanded for further proceedings.

Moreover, although the facts placed on the record in this case fully demonstrate the safety problems implicit with the proposed amendments, Mr. Dienethal is under no obligation at this stage of the proceeding to actually prove that his allegations will be sustained. Claybrook v. Slater, 111 F.3d 904, 907 (D.C. Cir. 1997) (“[w]hether a plaintiff has a legally protected interest (and thus standing) does not depend on whether he can demonstrate that he will succeed on the merits.”).

The proposed amendments place Petitioner Dienethal and his minor children in distinct and palpable risk of serious injury in fact, directly traceable to Plant Zion’s proposed amendments. Georgia Power Co., 37 NRC 96, 106 (1993). There is a direct causal relationship between the elimination of onshift radiation protection employees, the elimination of the management oversight of radiation protection, the elimination of radiation protection monitors and the reduction in training related to radiation protection, and potential harm to Mr. Dienethal and his minor children who live, recreate, and conduct their daily activities within one to ten miles of Plant Zion.

Given the documented QA breakdown in the radiation protection department, the documented intentional violations of procedures within the radiation protection department, the breakdown of the PIF problem identification process within the radiation protection department, the breakdown of management oversight of the radiation protection department, the documented actual release of radioactive materials offsite, the documented actual release of radioactive materials outside of the plant’s radiation protection areas and the under-oath testimony of plant employees validating these

allegations, Mr. Dienethal's legitimate concern regarding his, his minor children's and the overall community's safety cannot be seriously questioned.

In a license amendment case involving allegations of the unfitness or lack of character and competence of management there is an obvious potential for offsite consequences, so standing is analogous to that in an operating license case. Georgia Power Co., 37 NRC 96, 100-01, 108 (ASLB, 1993). In this case, Petitioner has set forth contentions that raise allegations that Commonwealth Edison Company management officials have intentionally violated nuclear safety regulations and operated Plant Zion in a deliberately non-safety-conscious manner and that a complete quality assurance breakdown exists at the plant. Moreover, Petitioner alleges that if Commonwealth Edison Co.'s request for amendment is approved then these already unsafe conditions at Plant Zion will worsen. The causal relationship between these allegations, the facts Mr. Dienethal used to base these allegations and many of the proposed amendments are direct and certain: the reduction in radiation protection staffing (contention 10), the QA breakdown (contention 1), the existence of wilful violations (i.e. ongoing criminal activities) within the radiation protection department (contention 2), the lack of management character and competence (contention 3), the reduction of management and staff oversight of radiation protection (contentions 5 and 9), the potential reduction in the amount of training required of persons responsible for protecting the public from radiation protection hazards (contentions 6 and 8) and the elimination of radiation protection monitors (contention 17).

As in the Commission's decision in Georgia Institute of Technology, 42 NRC 111, 117 (1995), the reduction in radiation protection staffing and oversight "potentially" creates the "risk of radiation releases" and consequently Mr. Dienethal has standing to challenge the proposed amendments. Furthermore, the Board could not dismiss the factual arguments raised by Mr. Dienethal, as these arguments unquestionably set forth the "minimum showing" necessary to support his petition. Id., p. 118.

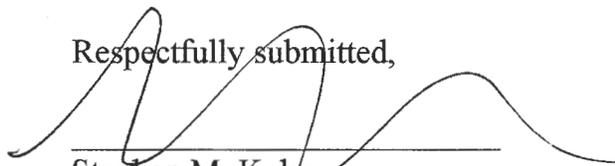
Moreover, in regard to causation, Mr. Dienethal merely had to set forth facts which could create a "plausible" "chain of causation." Sequoyah Fuels Corp., 40 NRC 64, 75 (1994). The Commission has long recognized, by case law and regulation, that adequate radiation protection is essential for the public safety. Likewise the Commission has long recognized, by case law and regulation, the quality assurance, the strict prohibition of intentional violations and management integrity, are important issues. Mr. Dienethal set forth facts which create a "plausible" "chain of causation" between the reduction of radiation protection staffing, the reduction of radiation protection staff oversight, the reduction of radiation monitoring and the potential offsite release of radioactive material.

Accordingly, Petitioner has more than satisfied the standing requirements and has demonstrated the actual and/or potential relationship between the proposed amendments referenced above and actual and/or potential injury to himself, his property, his minor children and his community.

### **CONCLUSION**

For the foregoing reasons, the Order of the ASLB should be vacated. The Commission should find that Petitioner set forth sufficient facts to justify standing related to the proposed amendments identified in contentions 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 17 and 18. In the alternative, Petitioner's request to intervene should be granted as to contention 10 and 17 (and by direct reference contentions 1 and 3), and all of the factual information contained in the petition related to any of the dismissed contentions should be considered as part of the basis for any and all admitted contentions. This case should be remanded to the ASLB for further proceedings

Respectfully submitted,



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Docket Nos. 50-295/304-LA

ASLBP No. 98-750-06-LA

OFFICE OF THE  
ADMINISTRATIVE  
JUDGE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal and Brief were served by first class mail, postage prepaid, and by facsimile transmission (where indicated), on this 16<sup>th</sup> day of November, 1998, upon:

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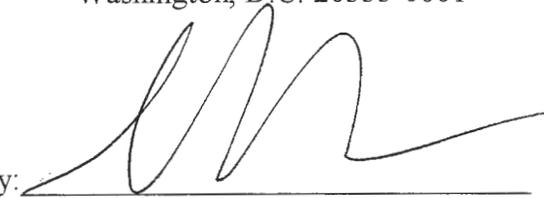
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