

is the Staff's position that the Amended Petition filed by SEACA should be granted, subject to the timely submission by petitioner of at least one admissible contention, pursuant to 10 CFR § 2.714(b). Also, in the interest of restricting irrelevant, duplicative and repetitive evidence and argument, the Staff recommends that any order which is entered by the Atomic Safety and Licensing Board (the "Licensing Board") granting petitioner SEACA leave to intervene, be made subject to the condition that SEACA be designated as the spokesman for the common interests of the ten individuals who previously had filed individual petitions for leave to intervene and who now ask to have their common interests represented by SEACA, pursuant to 10 CFR § 2.714(e).^{2/}

Prior Filings by SEACA and Its Members

The Amended Petition, in response to which this Answer is filed, is the second petition for leave to intervene filed by SEACA. On April 7, 1980, SEACA filed its initial "Petition for Leave to Intervene and Request for a Hearing", the same day on which petitions for leave to intervene were filed by 10 individuals who now have identified themselves as members of SEACA.^{3/} On April 28 and May 19, 1980, the Staff filed its Answers to those petitions,

^{2/} The individual petitioners whose common interests would be represented by SEACA are Randy Aronov, Charles O. Butler, Marilyn F. Butler, Robert H. Campbell, Sarah (S.N.) Draut, Robert E. Ely, John A. Johnson, Linda G. Moore, Ann Toledo, and William F. Carroll. See SEACA's Amended Petition, at 1, and Exhibit I thereto.

^{3/} These individuals are identified in footnote 2, supra.

in which the Staff supported the petitions filed by the 10 individuals and opposed the initial petition filed by SEACA.^{4/}

As noted by the Staff in its answers to their petitions, the 10 individual petitioners appeared to have demonstrated the interest and standing required by 10 CFR § 2.714 and to have sufficiently identified the aspects of the proceeding as to which intervention is sought.^{5/} As to the initial petition filed by SEACA, however, the Staff was of the view that the petition failed to demonstrate the requisite interest and standing, in that the petition (a) failed to identify even a single member of the organization who had standing to intervene and possessed interests which might be affected by this proceeding; (b) failed to identify a single member who had authorized SEACA to represent his interests; and (c) failed to demonstrate that the petition had been signed by a person authorized to do so by SEACA (Answer to SEACA and Carroll Petitions, at 13, 15). Accordingly, the Staff recommended that the initial SEACA petition be denied, "subject to the filing by SEACA of a curative amendatory petition, which complies with 10 CFR § 2.714, on or before June 14, 1980" (Answer to SEACA and Carroll Petitions, at 3). The Amended Petition filed by SEACA, in response to which this Answer is filed,

^{4/} See "NRC Staff Answer to Petitions for Leave to Intervene Filed by Robert H. Campbell, Ann Toledo, Robert E. Ely, John A. Johnson, Marilyn F. Butler, Charles O. Butler, Randy Aronov, Linda G. Moore, and Sarah (S.N.) Draut", dated April 28, 1980 (hereinafter referred to as "Answer to Individual Petitions"); and "NRC Staff Answer to Petitions for Leave to Intervene Filed by William F. Carroll and Safe Energy Alliance, Central Alabama", dated May 19, 1980 (hereinafter referred to as "Answer to SEACA and Carroll Petitions").

^{5/} Answer to Individual Petitions, at 2-3; Answer to SEACA and Carroll Petitions, at 2-3.

appears to cure the objections raised by the Staff in our answer to SEACA's initial petition.

I.

INTEREST AND STANDING

A. Applicable Legal Principles

As we discussed in our Answer to SEACA's initial petition, a petition for leave to intervene must comply with the requirements of 10 CFR § 2.714. That rule provides, in essence, that the petition must set forth with particularity the interest of the petitioner and demonstrate how that interest may be affected by the results of the proceeding, and must set forth also the specific aspect(s) of the subject matter of the proceeding as to which the petitioner seeks to intervene. In considering the petition, the Licensing Board should take into account (a) the nature and extent of the petitioner's right to be made a party, (b) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (c) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. 10 CFR § 2.714(a)(2); Washington Public Power Supply System (WPPSS Nuclear Projects, No. 3 and No. 5), LBP-77-16, 5 NRC 650 (1977).⁶

^{6/} A more complete discussion of the applicable legal principles may be found in our answer to SEACA's initial petition (See Answer to SEACA and Carroll Petitions at 5-7 and 12-13). In order to eliminate repetition, only a summary of the applicable law, as set forth in our answer to SEACA's initial petition, is presented herein.

With respect to the requirement of interest and standing, it is well established that judicial concepts of standing should be applied in determining whether or not a petitioner is entitled to intervene as of right. These judicial concepts require a showing (a) that the action being challenged could cause injury-in-fact to the person seeking to establish standing, and (b) that the injury is arguably within the zone of interests protected by the statute which governs the proceeding. Various factors have been held to be sufficient to establish the requisite standing, such as (a) residence of the petitioner within the geographical zone which might be affected by the normal or accidental release of fission products from the facility in question; (b) pursuit of everyday activities in the vicinity of a reactor site; and (c) use of the area surrounding a reactor site for recreational purposes. See the discussion and cases cited in the Staff's answer to SEACA's initial petition (Answer to SEACA and Carroll Petitions, at 4-7).

In addition, where the petitioner is a membership organization, as SEACA purports to be, the petition must disclose certain other factors in order to establish the requisite interest and standing. It is elementary that a party may intervene as of right only when he asserts his own interests under either the Atomic Energy Act or the National Environmental Policy Act, and not when he asserts the interests of third persons. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1&2), ALAB-413, 5 NRC 1418, 1421 (1977). Since a membership organization is unlikely to have "interests" of its own sufficient to establish standing to intervene, its standing to intervene will depend upon whether it represents members of the group who have interests

which will be affected by the licensing action and who, themselves, would have personal standing to intervene. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1&2), ALAB-322, 3 NRC 328 (1976). In order to establish such derivative standing as a representative of its members, it is not enough that the petition alleges that the organization has members who reside in the vicinity of the proposed site; rather, an organization should generally describe its membership and must identify at least one member who has a cognizable interest which might be affected by the results of the proceeding. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station), ALAB-535, 9 NRC 377, 390, 394 (1979). In addition, the member with such an interest must have authorized the organization to represent his interests where such authorization cannot be presumed from the nature of the organization. Allens Creek, supra, 9 NRC at 396. Finally, the petition must show that the person signing it has been authorized by the organization to do so. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1978).

B. SEACA's Amended Petition

When these principles are applied to SEACA's Amended Petition, it appears that SEACA has now demonstrated the interest and standing required by 10 CFR § 2.714. In its Amended Petition, SEACA identifies 18 members who "all live and work in the vicinity of the proposed site of the Westinghouse plant in a close proximity of less than 50 miles from the site" (Amended Petition, at 1). These members fall within two classes -- (a) those who previously filed individual petitions for leave to intervene in this proceeding (see Exhibit I

to SEACA's Amended Petition), and (b) those who had not previously filed individual petitions for leave to intervene (see Exhibit II to SEACA's Amended Petition).^{7/}

The Staff is of the view that most, if not all, of the individuals listed in Exhibits I and II as members of SEACA possess standing in their individual capacity to intervene in this matter. Virtually all of them reside within close proximity of the proposed facility, and most of them have demonstrated that their everyday work activities also are conducted within close proximity of the ANFFP site. Most of them reside and work in Montgomery, Alabama, which is described by Applicant as being approximately 12 miles from the proposed site (Alabama Nuclear Fuel Fabrication Plant Environmental Report (Dec. 1979), at 2-1). The Staff is of the view that these facts are sufficient to establish the requisite standing for the individual members of SEACA.

In addition, the individual members of SEACA appear to have interests which might be affected by the results of this proceeding. As noted supra at 6, SEACA states that its 18 members listed in Exhibits I and II "all live and work in the vicinity of the proposed site of the Westinghouse Plant in a

^{7/} Exhibit I to SEACA's Amended Petition is signed by the ten individual members of SEACA who previously filed petitions for leave to intervene; Exhibit II to SEACA's Amended Petition is signed by eight other individuals who seek to have their interests represented by SEACA, and who are identified in SEACA's Amended Petition as members of SEACA (Amended Petition at 1, para. 3). Although Exhibit II fails to indicate that its signatories are members of SEACA, attorney Julian McPhillips has confirmed by telephone conversation with the Staff on June 30, 1980, that these individuals are, in fact, members of SEACA. The Staff will regard them as such in this Answer, based upon these representations.

close proximity of less than 50 miles from the site" (Amended Petition, at 1). Further, SEACA identifies its members' interests as follows:

(a) The named SEACA members would be affected by any release of radiation into the environment by the proposed Westinghouse nuclear fuel fabrication plant to be located in Prattville. This environment includes air, ground, and water, especially the Alabama River.

(b) The named SEACA members would be affected by any accident involving transportation of uranium to the proposed facility or transportation of nuclear fuel pellets from the facility.

(c) The named SEACA members would be affected by releases of radiation from waste storage containers to be located at the proposed facility.

(d) The named SEACA members would be affected by any accident or other incident involving the proposed Westinghouse plant which occurred as the result of sabotage, geological upheavals, flooding, tornadoes, or for any other causes.

(e) The named SEACA members' enjoyment of their property may be adversely affected by the construction and operation of the proposed Westinghouse plant. (Amended Petition, at 1-2).

In addition, it appears that SEACA has been authorized to represent its members' interests in this proceeding. All of the individuals listed in Exhibits I and II to the Amended Petition state that they "authorize and designate" SEACA and its President, Robert H. Campbell, "to serve as a single spokesman to represent our common interests" in this proceeding, and "further authorize and direct attorney Julian McPhillips to continue as our individual and corporate attorney in his representation of [SEACA]." In view of these facts, the Staff is of the view that SEACA has been duly authorized by its members to represent their interests herein.

Finally, it appears that Robert H. Campbell, the individual who signed SEACA's Amended Petition on its behalf, was fully authorized by SEACA to do so. In its Amended Petition, SEACA states that it "is a duly-incorporated non-profit corporation, having been properly incorporated in ... Montgomery County, Alabama on June 10, 1980" (Amended Petition, at 1, Para. 1). SEACA identifies one of its chartered purposes to be the filing of a petition for leave to intervene in the ANFFP proceeding "for the purpose of opposing said license and plant as being detrimental to the health and life interests of the people of Central Alabama and other forms of animal and plant life in said vicinity" (Id., at 2, Para. 5). SEACA states in its Amended Petition that its president, Robert H. Campbell, "has been authorized by the Board of Directors of SEACA to sign this petition in the name of SEACA," (Id., at 2, Para. 6), as indicated in the "Resolution of the Board of Directors of Safe Energy Alliance of Central Alabama, Inc. (SEACA) Authorizing Robert H. Campbell, as President of SEACA, to Sign Petition to Intervene of SEACA," attached to the Amended Petition as Exhibit III. The Resolution is signed by five individuals who are identified as the "Board of Directors of Safe Energy Alliance of Central Alabama, Inc."

In view of these facts, the Staff is of the view that (a) at least one of SEACA's members has standing to intervene in this proceeding and has cognizable interests which may be affected by the outcome of this proceeding; (b) SEACA has been authorized by such member(s) to represent those interests in this proceeding; and (c) the individual who signed SEACA's Amended Petition was duly authorized by SEACA to do so. Thus, SEACA has demonstrated that it

possesses the requisite interest and standing for a petition for leave to intervene, pursuant to 10 CFR § 2.714. Accordingly, the Staff withdraws the objections it raised with respect to SEACA's initial petition for leave to intervene, and now supports SEACA's Amended Petition.

II.

ASPECTS OF THE PROCEEDING

As we discussed in our answer to SEACA's initial petition for leave to intervene, a petition must also set forth with particularity the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene (see Answer to SEACA and Carroll Petitions, at 17). In its Amended Petition, as in its initial petition, SEACA has expressed concern over the effects of radiation releases from the proposed plant, and the effects of various postulated accident sequences upon its members' safety, health, and enjoyment of their property. Accordingly, as the Staff concluded in our answer to SEACA's initial petition, it appears that petitioner has adequately identified several aspects of the subject matter of the proceeding as to which intervention is desired (see Answer to SEACA and Carroll Petitions, at 18). For these reasons, the Staff is of the view that SEACA has satisfied the "aspects" requirement set forth in 10 CFR § 2.714(a)(2).

III.

REPRESENTATION OF COMMON INTERESTS BY A SINGLE SPOKESMAN

In the Staff's answer to the petitions filed by the 10 individual petitioners who have now identified themselves as members of SEACA, we recommended that any Order which is entered granting petitioners leave to intervene be conditioned upon "the appointment by petitioners of a single spokesman who will thereafter represent the petitioners' common interests" (Answer to Individual Petitions, at 10; Answer to SEACA and Carroll Petitions, at 10). Similarly, in the Staff's Answer to the initial petition filed by SEACA, we recommended that "any future Order granting Petitioner SEACA leave to intervene be conditioned upon the representation of the common interests of SEACA's members with those of the ten individual petitioners represented by attorney McPhillips" (Answer to SEACA and Carroll Petitions, at 18). As we stated in our previous pleadings, such an Order would serve the interests of all the parties, in that it would limit "repetitive, duplicative, and irrelevant evidence and argument, while preserving the rights of the petitioners to have their interests fully represented and their concerns properly addressed" (Answer to Individual Petitions, at 10; Answer to SEACA and Carroll Petitions, at 11, 19).

It now appears that SEACA and its 10 individual members who previously filed petitions for leave to intervene have accepted the Staff's suggestion of consolidation pursuant to 10 CFR § 2.714(e). In their attachment to SEACA's Amended Petition,^{8/} the 10 individual petitioners unequivocally "authorize

^{8/} See Exhibit I to the Amended Petition, entitled "Designation-Authorization of The Safe Energy Alliance of Central Alabama, Inc. to Represent Interests of the Named Individual Petitioners."

and designate [SEACA] and its president, Robert H. Campbell to serve as a single spokesman to represent our common interests" in this proceeding (Exhibit I, at 1). SEACA, for its part, appears to have accepted this responsibility; it notes that the 10 individual petitioners "have authorized and designated SEACA to represent [their] common interests," and that the eight other named members of SEACA who did not previously file petitions also "have duly authorized and designated SEACA to represent their interests" (Amended Petition, at 1, Para. 2).

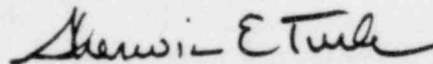
Based upon this designation of SEACA by the the 10 individual petitioners to represent their common interests in this proceeding, the Staff is of the view that no reason exists why such representation should not be made a condition of any Order granting leave to intervene to SEACA and/or its individual members who previously filed petitions for leave to intervene. In the Staff's view, the entry of an Order subject to such a condition is appropriate, and should specify that the separate participation of the 10 individual petitioners will be limited solely to matters outside the scope of their common interests as represented by SEACA.^{9/}

^{9/} Although the 10 individuals who previously filed separate petitions for leave to intervene now asked that their common interests be represented by SEACA, they have not, as yet, withdrawn their individual petitions. Accordingly, it is not clear whether they intend to file separate contentions and to participate individually in this proceeding. Any such separate participation in this proceeding should be limited to matters involving their separate interests which are outside the scope of SEACA's representation.

CONCLUSION

For the foregoing reasons the NRC Staff respectfully submits that petitioner, The Safe Energy Alliance of Central Alabama, Inc., has demonstrated that it has standing to intervene and possesses interests which may be affected by the outcome of this proceeding; further, the Staff submits that SEACA has adequately identified the aspects of this proceeding as to which it seeks to intervene. Accordingly, the Staff supports the Amended Petition filed by SEACA, subject to the timely filing by SEACA of at least one admissible contention as required by 10 CFR § 2.714(b), and urges that such intervention be conditioned upon the representation by SEACA of the common interests of its 10 members who previously filed petitions for leave to intervene, pursuant to 10 CFR § 2.714(e).

Respectfully submitted,



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Dated at Bethesda, Maryland
this 2nd day of July, 1980