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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 901121 A10:38

In the Matter of)
)
Sequoyah Fuels Corporation)
)
(Source Material License)
No. SUB-1010))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 40-08027-MLA

NRC STAFF'S (1) RESPONSE TO REQUESTS FOR HEARING FILED
BY THE NATIVE AMERICANS FOR A CLEAN ENVIRONMENT, EARTH
CONCERNS OF OKLAHOMA, AND THE NATIONAL TOXICS CAMPAIGN AND
(2) STATUS REPORT CONCERNING THE APPLICATION

I. INTRODUCTION

On August 29, 1990, an application for renewal of a source material license for a period of ten years was submitted by Sequoyah Fuels Corporation (hereinafter Sequoyah Fuels), for its facility in Gore, Oklahoma. In response thereto, on September 28, 1990, Native Americans for a Clean Environment (hereinafter NACE) filed a request for hearing, pursuant to 10 C.F.R. § 2.1205, as supplemented by a further letter dated October 22, 1990. On October 1, 1990, Earth Concerns of Oklahoma (hereinafter ECO) filed a request for hearing; and on October 8, 1990, The National Toxics Campaign (TNTC) also filed a request for hearing in this matter.¹ Following the submission of NACE and ECO's requests, a notice designating the Presiding Officer was issued on October 30, 1990, and published in the Federal Register on November 6, 1990 (55 Fed. Reg. 46744).

¹ In addition, the Carlile Area Resident Assn. filed a letter, dated September 28, 1990, indicating that it intends to file as an intervenor in the future, and requesting to be placed on the service list.

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Pursuant to 10 C.F.R. § 2.1213, the NRC Staff (Staff) has determined that it wishes to participate as a party in this matter, should the Presiding Officer decide to grant any of the requests for hearing. Accordingly, the Staff files this answer to these hearing requests pursuant to 10 C.F.R. § 2.1205(f).

The request for hearing filed by NACE on September 28, 1990, and by ECO on October 1, 1990, are virtually identical, consisting of letters which simply inform the NRC that those organizations are requesting a hearing in this matter; TNTC's letter of October 8, 1990, similarly constitutes nothing more than a notice that TNTC desires a hearing. NACE's letter of October 22, 1990, while containing an allegation of interests and certain potential adverse impacts upon those interests, fails to identify any of its members or provide authorization from any of them for representation by NACE; fails to identify any interests sufficient to confer standing upon NACE; fails to identify any adverse impacts upon such interests resulting from the application; and fails to specifically relate any of the listed concerns to members of NACE. For these reasons, as more fully set forth below, the Staff submits that the requests for hearing filed on behalf of NACE, ECO and TNTC, as filed, do not meet the requirements relating to standing and interest set forth in 10 C.F.R. § 2.1205 of the Commission's regulations. Accordingly, the Staff recommends that the requests for hearing be denied.

II. ARGUMENT

A. The Requestors Have Failed To Demonstrate Standing To Participate In This Proceeding.

An individual who wishes to intervene in a Commission proceeding must demonstrate that he has standing to do so. An evaluation of the requests for hearing

filed herein indicates that ECO, NACE and TNTC have failed to demonstrate their standing to participate in this proceeding.

Section 189(1) of the Atomic Energy Act, 42 U.S.C. § 2239(a), provides that:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license..., 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.

[emphasis added]. Pursuant to 10 C.F.R. § 2.1205(a), "[a]ny person *whose interest may be affected by a proceeding* for the grant, transfer, [or] renewal . . . of a license subject to this subpart may file a request for a hearing" (emphasis added). A request for hearing, filed by a person other than an applicant, must contain and "describe in detail" the following factors:

- (1) The interest of the requestor in the proceeding;
- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (g) of this section;
- (3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
- (4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) of this section.

10 C.F.R. § 2.1205(d).

The Commission has long held that contemporaneous judicial concepts of standing will be applied in determining whether a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under Section 189 of the Act. *See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units*

1 and 2), CLI-76-27, 4 NRC 610, 613 (1976). These concepts are applicable to Subpart L proceedings. 54 *Fed. Reg.* 8269, 8272 (Feb. 28, 1989) (Statement of Consideration); *Rockwell International Corp.* (Rocketdyne Division), CLI-90-5, 31 NRC 337, 341 (1990); *Curators of The University of Missouri* (Trump-S Project), LPB-90-18, 31 NRC 559, 564-65 (1990); *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 41 (1990). These standards have been codified in 10 C.F.R. § 2.1205(g), which requires that "[t]he presiding officer shall determine that the requestor meets the judicial standards for standing" in ruling on a request for a hearing filed by a person other than a license applicant.

The Commission has held that the concepts of standing require a showing (a) that the action will cause "injury in fact," and (b) that the injury is "arguably within the zone of interests" protected by the statutes governing the proceeding. *TMI, supra*, 18 NRC at 332; *Pebble Springs, supra*, 4 NRC at 613. Further, in order to establish standing the petitioner must establish (a) that he personally has suffered or will suffer a distinct and palpable harm that constitutes injury in fact; (b) that the injury fairly can be traced to the challenged action; and, (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988). A petitioner also must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48 (1979). While petitioner's stake need not be a "substantial" one, it must be "actual", "direct" or "genuine". *Id.* at 448.

An organization may establish standing as a representative of its members or on its own. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power

Station), LBP-87-7, 25 NRC 116, 118 (1987). An organization must have a "real stake" in the outcome of the proceeding, and must show an injury in fact within the protected zone of interest. *South Texas, supra*, 9 NRC at 447. An organization may meet the injury in fact test in either of two ways, (1) by showing an injury to its organizational interests, or (2) by alleging that its members may suffer an injury due to the challenged action. *Vermont Yankee, supra*, 25 NRC at 118. Where an organization seeks to establish standing to intervene as an organization, it must demonstrate that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. *Id.* An organization cannot establish independent standing to intervene in a licensing proceeding merely by asserting it has "an interest" or a "special interest" in a proceeding. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Unit 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982).

When an organization seeks to establish standing based on the interests of its members, those interests must be "germane to the organization's purpose." *South Texas, supra*, 9 NRC at 447. Further, where the organization's standing is based upon its representation of its members' interests, the name and address of at least one affected member who wishes to be represented by the organization must be provided. *Vermont Yankee, supra*, 25 NRC at 118-19. In addition, an affidavit should be submitted which indicates that the member wants the organization to serve his or her interests in a representative capacity. *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990); *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 411 (1984). Moreover, the group must

demonstrate that it has authorized the particular representative appearing in the proceeding to represent the group's interest. *Vogtle, supra*, 32 NRC at 92.²

10 C.F.R. § 2.1205(g) requires the presiding officer to determine that the specified areas of concern are germane to the proceeding and that the petition is timely. The Presiding Officer is also to consider the following factors in determining standing to intervene:

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

The regulation requires that a *detailed* request for hearing be filed. *Rockwell International Corp.* (Rocketdyne Division), ALAB-925, 30 NRC 709, 716 (1989), *aff'd*, CLI-90-5, 31 NRC 337, 341 (1990).

An application of the above stated principles to the instant requests demonstrates that they should be denied.

A. ECO and TNTC Have Not Met The Judicial Standards For Standing To Participate Required under 10 C.F.R. § 2.1205(g).

ECO filed a letter, dated October 1, 1990, requesting a hearing regarding the instant license renewal application. The letter was signed by Sam Richard, Esq., an

²It has also been held that an organization may establish standing to intervene when its petition is signed by an officer of the organization who has the required personal interest for intervention. *Consolidated Edison Co. of New York* (Indian Point, Unit No. 2) and *Power Authority of the State of New York* (Indian Point, Unit No. 3), LBP-82-25, 15 NRC 715, 728, 734-35 (1982).

attorney located in Tulsa, Oklahoma. The letter, however, is totally deficient as a request for hearing, inasmuch as it contains no allegations of interest or injury in fact, and identifies no areas of concern as required by 10 C.F.R. § 2.1205(d)(1)-(4). Further, the letter does not address the factors set forth in 10 C.F.R. § 2.1205(g)(1)-(3), and makes no attempt to establish that ECO or any of its members have standing to participate in this proceeding. Therefore, the request for hearing filed by ECO should be denied.

Similarly, the letter filed by TNTC on October 8, 1990, requests a hearing but is altogether devoid of any allegation of interest or injury in fact, and fails to identify any areas of concern as required by the regulation. For these and other reasons stated herein with regard to NACE, the requests of ECO and TNTC should be denied.

B. NACE's Request For Hearing Should Be Denied.

(1) NACE Has Not Met The Judicial Standards For Standing To Participate As Required By 10 C.F.R. §2.1205.

Native Americans for a Clean Environment (NACE) filed a letter signed by Sam T. Richard, Esq., dated September 28, 1990, requesting a hearing in this matter. Thereafter, in an apparent effort to comply with 10 C.F.R. § 2.1205, Mr. Richard filed a supplemental letter on behalf of NACE, dated October 22, 1990. These letters, however, taken together, do not meet the Commission's requirements for standing.

NACE's initial request for hearing contains no information whatsoever which would permit the presiding officer to conclude that NACE or any of its members have standing to participate in this proceeding. NACE's second letter, dated October 22, 1990, although more informative, similarly fails to meet the threshold requirements for

standing. In its letters, NACE does not identify any of its members by name and address, does not establish that any member has a cognizable interest in this proceeding, and does not show that such member has authorized NACE to represent his or her interests. Similarly, no information has been provided to establish NACE's standing to participate in its own right. In addition, NACE has completely failed to address the factors in 10 C.F.R. § 2.1205(g), i.e., the nature of its right under the Act to be made a party, the nature and extent of its property, financial or other interests, and the possible effect of any order on its interests.

All that appears in NACE's submittals is (a) a bare statement that "NACE membership includes individuals residing within a thirty-mile radius of SFC as well as others nationwide," and (b) a statement that the Cherokee Nation's tribal property interest in Arkansas River beds may be adversely affected, in that the *Illinois River*, a *tributary* of the Arkansas River, is threatened by groundwater migration and plant discharges. These statements are insufficient to confer standing upon NACE. First, the statement that Cherokee Nation tribal properties may be affected, without identifying NACE members who own the property and without showing authorization to act on behalf of the Cherokee Nation, is insufficient to establish injury in fact, interest or standing for NACE. Second, the allegation that some members of NACE reside within a 30-mile radius of the facility is not dispositive of standing in this case. In a materials licensing case, any decision regarding standing "should be determined based upon the circumstances of that case as they relate to the factors set forth in [10 C.F.R. § 2.1205(g)]." *Statement of Consideration, supra*, 54 Fed. Reg. at 8272. The decision "should be based upon an analysis of the particular material that was the subject of the

licensing action and not the 'fifty-mile radius' rule that had developed with respect to power reactor licensing proceedings (52 FR at 20090)." *Id.*

In sum, NACE's letters completely fail to establish that NACE or any of its members have an interest that will be injured or affected by the license renewal in question, and they therefore fail to establish standing to participate herein. See *Vermont Yankee, supra*, 25 NRC at 118-19. See also *Dellums, supra*, 863 F.2d at 971; *Pathfinder, supra*, 31 NRC at 41; *Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility)*, LBP-89-23, 30 NRC 140, 148-49 (1989); *TMI, supra*, 18 NRC at 332. Therefore, based upon NACE's failure to establish standing to participate in this matter, its request for hearing should be denied.

(2) NACE Has Failed To Show An Adverse Impact Upon Its Interests.

As stated above, pursuant to 10 C.F.R. 2.1205(d), a request for hearing must, describe in detail --

- (1) The interest of the requestor in the proceeding;
- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in [10 C.F.R. § 2.1205(g)].

NACE's request generally fails to satisfy this requirement, in that it fails to identify how the license renewal would have a direct and adverse impact on any cognizable interests it may have. Most of the impacts alleged (e.g., on-site or near-site radiation readings, the "threat" of surface and ground water migration, and the licensee's use of "raffinate fertilizer") are general and vague, and have not been shown to relate to any interests of NACE or its members. For instance, no showing has been made that persons living 30 miles from the plant may be affected by the licensed activities; that surface and

groundwater migration is likely to impact its members' interests; that on-site and near-site radiation level readings might adversely affect any of its members; or that a decline in nearby property values resulting from the licensee's use of certain fertilizers might affect its members. Similarly, no adverse impact upon NACE's members is shown result from the alleged risk to plant workers and nearby residents due to inadequacies in the licensee's emergency plans.

In sum, NACE has failed to show that the license renewal may reasonably be found to have some adverse impact, i.e., some "injury in fact", upon any interest of NACE or its members; and it has failed to show that such injury can fairly be traced to the challenged action or that such injury could be redressed by permitting a hearing in this matter. For all of these reasons, NACE's request should be denied.

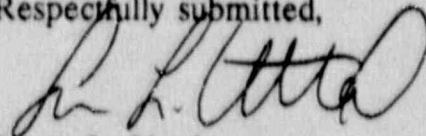
III. CURRENT STATUS OF APPLICATION

As indicated above, the licensee submitted its application for renewal on August 29, 1990. In a separate action, by Order dated September 19, 1990, the NRC modified Sequoyah Fuels' license to require the licensee to obtain information and develop characterization studies regarding seepage of uranium-contaminated water into the ground; that Order was published on October 5, 1990 (55 Fed. Reg. 40960). On November 5, 1990, a 29-page Demand for Information was served on Sequoyah Fuels by the Office of Nuclear Materials Safety and Safeguards, seeking further information required, *inter alia*, for evaluation of the license renewal application; that demand for information remains outstanding at this time. The information sought by the Staff bears directly on license renewal, and the license renewal application is therefore incomplete at this time.

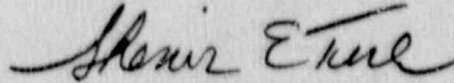
IV. CONCLUSION

For the reasons set forth above, the request for hearing filed by the Native Americans for A Clean Environment, Earth Concerns of Oklahoma, and The National Toxics Campaign should be denied. Further information concerning the status of the application for license renewal will be provided to the Presiding Officer and persons on the service list pending action on the subject hearing requests.

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff



Sherwin E. Turk
Senior Supervisory Trial Attorney

Dated at Rockville, Maryland
this 20th day of November, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

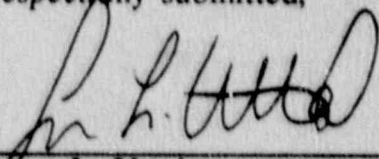
In the Matter of)
)
Sequoyah Fuels Corporation) Docket No. 40-08027-MLA
)
(Source Material License)
No. SUB-1010))

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:

Name: Susan L. Uttal
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Admissions: New Jersey; Pennsylvania; Maryland;
U.S. Court of Appeals 3rd Circuit
Name of Party: NRC Staff

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of November, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

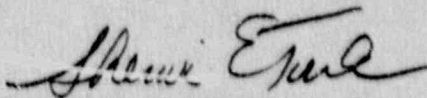
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)
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No. SUB-1010))

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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Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of November, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
SEQUOYAH FUEL CO. CORPORATION) Docket No. 40-08027-MLA
(Source Material License)
No. SUB-1010))

I hereby certify that copies of "NRC STAFF'S (1) RESPONSE TO REQUESTS FOR HEARING FILED BY THE NATIVE AMERICANS FOR A CLEAN ENVIRONMENT, EARTH CONCERNS OF OKLAHOMA, AND THE NATIONAL TOXICS CAMPAIGN AND (2) STATUS REPORT CONCERNING THE APPLICATION," and "NOTICES OF APPEARANCE" for Susan L. Uttal and Sherwin E. Turk in the above-captioned matter have been served on the following by deposit in the United States mail, first class, or as indicated by asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 20th day of November, 1990:

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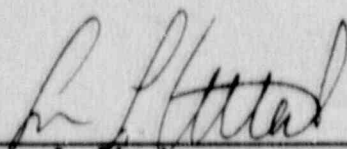
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