



a motion to reopen the record. Accordingly, the Staff response to this petition will consist of four parts -- (1) whether the petitioner has the requisite interest and standing to become a party to the proceeding, (2) whether the petition has set forth the specific aspect of the subject matter of the proceeding as to which the petitioner seeks to intervene, (3) whether the aspect is significant enough to warrant reopening of the record, and (4) whether the petition satisfies the good cause and other untimeliness factors set forth in 10 C.F.R. § 2.714(a)(1) for the admission of a late-filed petition. For the reasons advanced below, the NRC Staff submits that this late-filed petition should be denied.

## II. DISCUSSION

### A. Interest and Standing

Section 2.714 of 10 C.F.R. provides that a 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. As a general matter, it is well established that judicial concepts of standing should be applied in determining whether a petitioner is entitled to intervene as a matter of right. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). 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. Pebble Springs, supra, citing Warth v. Seldin, 422 U.S. 490 (1975);

Sierra Club v. Morton, 405 U.S. 727 (1972). The Commission has recognized that sufficient interest may be demonstrated by claims that the petitioner lives within the geographical zone which might be affected by the normal or accidental release of fission products from the facility in question as a result of the proposed licensing action. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188 (1973).

To satisfy these standing requirements, Mr. Alexander alleges that he resides within fifty (50) miles of the proposed Allens Creek facility and that he may be injured by exposure to harmful radiation. These allegations might be sufficient to establish the requisite standing and interest should Mr. Alexander supply information on where he lives and how Applicant's failure to have funds to complete the Allens Creek facility could affect his interests. Cf. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 392-393 (1979); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). However, Mr. Alexander has not supplied this information, and it cannot now be ascertained that he has standing to intervene in this proceeding.

B. Aspects of the Proceeding

In addition to the "interest" requirement of 10 C.F.R. § 2.714, a petition must also set forth with particularity the specific aspect(s) of the subject matter as to which the petitioner wishes to intervene. 10 C.F.R. § 2.714(a)(2). The NRC Staff believes that Mr. Alexander's

contention regarding the reasonable assurance of obtaining the funds necessary to construct Allens Creek in light of the recent downgrading of Applicant's bonds by Standard and Poor's satisfies the "aspects" requirement set forth in 10 C.F.R. § 2.714(a)(2).

C. Burden of Reopening the Record

As indicated earlier, the Licensing Board closed the record in this proceeding on December 9, 1981. Thus, this late-filed petition must be considered similar to a motion to reopen the record. As upon a motion to reopen the record, Mr. Alexander should shoulder a heavy burden to show that the petition should be granted and the issue of financial qualifications relitigated. Cf. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). In meeting this burden, Mr. Alexander should show that the issue (bond derating) is grave or significant and it must be established that a different result would have to be reached if new information with respect to bond ratings were introduced. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Plant, Units 1 & 2), ALAB-598, 11 NRC 876, 879 (1980); Wolf Creek, supra; Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404 (1975); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).

Mr. Alexander contends that the recent bond derating from AA to A by Standard and Poor's is significant because "external financing in the form of long-term debt will now cost more for the same amount of

financing. It casts doubts upon Applicant's scenerio for raising the funds necessary to meet its ambitious construction plans as itemized in Table 20.1 of the Allens Creek SSER #4 (at 20-3)." Petition, pp.1-2.

There can be no doubt that the Applicant's plans to raise funds is a significant consideration in determining whether there is reasonable assurance that necessary funds can be obtained to cover estimated construction costs and related fuel cycle costs. See 10 C.F.R. § 50.33(f); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1 (1978). However, as stated in Seabrook, the "reasonable assurance" requirement

"does not mean a demonstration of near certainty that an applicant will never be pressed for funds in the course of construction. It does mean that an applicant must have a reasonable financing plan in the light of relevant circumstances." 7 NRC at 18.

Thus, the Commission reviewed the original and revised source of funds sheets and the prospect of future rate increases, and concluded that the Seabrook applicant's financial plans should generate the necessary construction funds. Id. at 20. To be sure, the bond rating of an Applicant is important in determining the cost of financing, and should be considered in the overall reasonableness of the financing plan.<sup>3/</sup>

In this proceeding, both the Applicant and the Staff have considered HL&P's bond rating by the various investment services such Standard and

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<sup>3/</sup> In Seabrook, the bond rating of the lead applicant had been rated at Baa by Moody's, but the Commission determined that there was no evidence that a bond offering at that rating "would be unsaleable". Id. at 20.

Poor's, Duff and Phelps, and Moody's in their respective financial analyses. See Testimony of Hollis R. Dean on Financial Qualifications, foll. Tr. 16,723, pp.5-7; Testimony of Jim Peterson, foll. Tr. 20,433; Tr. 20,516. In fact, Mr. Dean's conclusion that there would be an adequate market for external financing was based on a comparison of single A rated utilities even though HL&P was rated double A by Standard and Poor at that time.<sup>4/</sup> Mr. Dean testified that HL&P's projected performance with respect to interest coverage, return on equity, and debt-equity ratios for the construction period 1981 to 1991, is considerably higher than the median for single A rated utilities. He concluded that HL&P has the financial strength to undertake the ACNGS construction schedule. Dean at 6. Mr. Peterson testified that he would not expect HL&P's bond rating to go lower than single A. Tr. 20516. The Staff concluded that HL&P has presented a reasonable financing plan in light of relevant circumstances. Peterson at 20-7.

Accordingly, based on the foregoing analyses that assumed a single A bond rating, Mr. Alexander's assertion that the recent bond derating from AA to A by Standard and Poor will "cast doubts upon Applicant's scenario for raising the funds necessary to meet its ambitious construction plans" is not supported by the existing record. The evidence of record indicates that HL&P has sufficient financial strength (which is reflected in the most recent bond rating) to provide the necessary funds to cover estimated

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<sup>4/</sup> In September 1981 when Mr. Dean testified, HL&P's bonds were rated "AA" by Standard and Poor, and "A" by Moody's and Duff and Phelps. In November 1981, Standard and Poor derated the bonds to "A".

construction costs. Therefore, Mr. Alexander's petition fails to meet the heavy burden needed to reopen the record on this issue. Standing by itself, the bond derating by Standard and Poor is not significant and, in fact, is consistent with the financial analyses done by Applicant and Staff. Mr. Alexander has not and, probably cannot, show how receipt and consideration of this fact would change the Board's conclusion with respect to a reasonable financing plan.

D. Failure to File Petition on Time

On June 18, 1979 the Licensing Board published in the Federal Register (44 Fed. Reg. 35062) a "Supplemental Notice of Intervention Procedures". The notice stated that petitions should be filed not later than July 18, 1979. Thus, Mr. Alexander's petition is obviously late as he himself noted in the petition. Pursuant to the Commission's regulations, petitions for leave to intervene which are non-timely filed are governed by the provisions of 10 C.F.R. § 2.714(a)(1). Those provisions provide that tardy petitions will not be entertained absent a determination by the Board that the petition should be approved based upon a balancing of the following five factors:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Furthermore, the burden of establishing the requisite "good cause" and the weight to be accorded to the other factors rests with the petitioner. See 10 C.F.R. § 2.723; 10 C.F.R. § 2.714(a)(1); Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

Mr. Alexander has attempted to justify his extremely late-filed petition. As indicated earlier, he asserts that justification is based on the bond derating by Standard and Poor in late-November 1981. Obviously, new information with respect to an issue that is crucial in the consideration of an application can be considered "good cause" for a late-filed petition. However, as discussed earlier, the bond derating by Standard and Poor is not crucial new information that should be considered justification for either reopening the record or admitting this late-filed petition. The single A bond rating was considered in the financial analyses presented by both Applicant and Staff and, thus, is not "good cause" for this petition.

With respect to the other four factors listed above, Mr. Alexander makes a feeble attempt to show (1) how he knows of no other means whereby his interests will be protected, (2) how his knowledge as a school teacher can reasonably be expected to assist in developing a sound record on this issue<sup>5/</sup>, (3) how none of the existing parties have addressed the

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<sup>5/</sup> Mr. Alexander also asserts that he expects to present at "least one brokerage house expert who will testify on the impact of S&P's action upon Applicant's financial plans." Petition, p.2. Without identification of this expert and an outline of his qualifications and testimony, the Staff believes that no credence should be placed on this assertion.

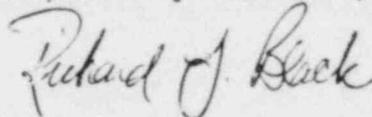
singular aspect of Standard and Poor's actions, and (4) how his participation may slightly broaden the issues and delay the proceeding but that any delay would be relatively small. In regard to these factors, Mr. Alexander ignores that there have been other intervenors in the proceeding litigating the Applicant's financial qualifications. Similarly, there is no question that this proceeding would be delayed by reopening a record that has been closed.

In light of the fact that the existing financial analyses take into account a single A bond rating, Mr. Alexander's assertions regarding these other four factors is irrelevant. It is axiomatic that if the underlying basis of this late-filed petition has already been considered, good cause does not exist, and the petitioner's participation in and the effect on the proceeding is totally irrelevant. Accordingly, these factors should be weighed against the admission of this petition particularly since Mr. Alexander has failed to meet his burden of establishing the weight to be accorded to these factors.

### III. CONCLUSION

For the foregoing reasons, the Staff submits that this extremely late-filed petition filed by Robert Alexander should be denied.

Respectfully submitted,



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this 17th day of December, 1981.



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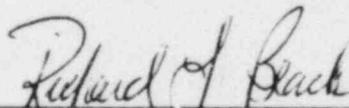
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