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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ARIZONA PUBLIC SERVICE COMPANY, *ET AL.*	)	Docket Nos. 50-528-OLA-2 50-529-OLA-2 50-530-OLA-2
	)	
(Palo Verde Nuclear Generating Station, Units 1, 2 & 3)	)	(Allowable Setpoint Tolerance)
	)	

NRC STAFF RESPONSE TO SUPPLEMENTAL PETITIONS TO INTERVENE FILED BY MYRON L. SCOTT, BARBARA S. BUSH AND THE COALITION FOR RESPONSIBLE ENERGY EDUCATION AND ALLAN L. AND LINDA E. MITCHELL

INTRODUCTION

By a February 19, 1991 Memorandum and Order,[1] this Board ruled that Allan L. and Linda E. Mitchell ("Mitchell Petitioners") had established standing to intervene by virtue of their residence within several miles of the Palo Verde Station. *Slip op.* at 9. Regarding petitioners Myron L. Scott, Barbara S. Bush and The Coalition for Responsible Energy Education ("Scott/Bush/CREE Petitioners"), however, the Board found that standing to intervene had not been established. *Id.* at 9-11. A final ruling on their status to participate on the basis of proximity was held in abeyance until after the filing of amended and supplemental petitions, if any. *Id.* at 9-11.

On March 11, 1990, the Mitchell Petitioners filed a supplemental petition for leave to intervene in which they set forth five proposed contentions along with

[1] *Arizona Public Service Co., et al.* (Palo Verde Nuclear Power Station, Units 1, 2 and 3), LBP-91-4, 33 NRC ___ (Feb. 19, 1991).

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affidavits and other supporting information.[2] A supplemental and amended petition was also received from the Scott/Bush/CREE Petitioners setting forth additional information concerning their standing to intervene.[3] Petitioner CREE asked the Board to accept the Mitchell contentions as joint contentions and Petitioners Scott, Bush and CREE set forth separate contentions which they stated they were proposing jointly with the Mitchell Petitioners. *Id.* at 5.

In the following pleading, the Staff will first address the question of whether the Scott/Bush/CREE Petitioners have established standing to intervene. The admissibility of the separate Scott/Bush/CREE contentions as well as each of the Mitchell contentions will then be addressed in detail.

DISCUSSION

I. The Scott/Bush Petitioners' Standing to Intervene.

In their Supplemental Petition, the Scott/Bush Petitioners state that both Myron L. Scott and Barbara S. Bush live approximately 50 miles from the generating station. This statement, without more, is insufficient to establish standing on the basis of proximity. As the Board indicated in its February 19 Order, the general rule that petitioners living within fifty miles from a generating station are

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[2]Supplemental Petition of Mitchell Petitioners For Leave to Intervene, March 11, 1991 ("Mitchell Supplemental Petition").

[3]Supplemental and Amended Petition To Intervene of Myron L. Scott, Barbara S. Bush and The Coalition For Responsible Energy Education, March 13, 1991 ("Scott/Bush/CREE Supplemental Petition"). While a supplemental petition was originally filed on behalf of these Petitioners on March 11, it appears to have been incomplete. Therefore, our response is directed to the March 13 filing on the assumption that it represents the final and correct draft of the pleading.

permitted to intervene on the basis of proximity is already very liberal and therefore not susceptible to extension. Slip op. at 9. Absent any showing that Mr. Scott or Ms. Bush actually live within fifty miles of the plant, standing on the basis of their residence has not been established.

Furthermore, Mr. Scott's claim that he engages in recreational activities near the station is not sufficient to establish standing. While it is true that recreation close to the site has been a factor contributing to standing in some cases, in those instances the petitioner's residence has been less than fifty miles from the facility in question. *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1448 n. 22 (1982). The fact that one has engaged in occasional recreational activities in proximity to a site is, by itself, insufficient to confer standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 456-57 (1979); *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977).

However, the Petitioners also state that Mr. Scott and Ms. Bush are members, directors and present or past officers of CREE. Further, they state that several members of CREE, for whom affidavits were submitted, live and/or own property well within fifty miles of the station and indicate that they wish to have CREE represent them in this proceeding. These statements, and the supporting affidavits, are sufficient to establish the standing of CREE on the basis of the proximity of its members.[4]

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[4]In reaching this conclusion, the Staff has accepted the representations of the affiants that they are members of CREE. While it is true, as Licensee states, that (continued...)

II. Response to Contentions

In order for a proposed contention to be found admissible, it must comply with the requirements of 10 C.F.R. § 2.714(b). Subpart (2) of that regulation, which sets forth the substantive requirements for admissible contentions, was amended by the Commission on August 11, 1989, to provide:

> (2) Each contention must consist of a specific statement of the issue of law or fact of be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:
>
> (i) A brief explanation of the bases of the contention.
>
> (ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.
>
> (iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. . .

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[4](...continued)
Petitioners have not provided a detailed description of the nature of CREE as an organization or any "indicia of membership" in CREE on behalf of the affiants, such showings are beyond what is generally required to gain admission into NRC licensing proceedings. *See Consolidated Edison Co. of N.Y. et al.* (Indian Point, Unit Nos. 2 and 3), LBP-82-25, 15 NRC 715, 728-29, 734-36 (1982). The Staff believes that the information submitted is adequate to show that Mr. Scott and Ms. Bush are authorized to act in this proceeding on behalf of members of CREE.

10 C.F.R. § 2.714(b)(2). Subsection (d)(2) further provides that a Licensing Board ruling on the admissibility of a contention shall refuse to admit it if (1) the contention and supporting material fail to satisfy the requirements of 10 C.F.R. § 2.714(b)(2), or (2) the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief. 10 C.F.R. § 2.714; *see also* "Rules of Practice for Domestic Licensing Proceedings-Procedural Changes in the Hearing Process" 54 Fed. Reg. 33168 (August 11, 1989).

The changes to 10 C.F.R. § 2.714 raised the threshold showing for the admission of contentions by requiring the proponent to supply information showing the existence of a genuine dispute of law or fact. 54 Fed. Reg. 33168. As the Commission explained:

> Under these new rules an intervenor will have to provide a concise statement of the alleged facts or expert opinion which support the contention and on which, at the time of filing, the intervenor intends to rely in proving the contention at hearing, together with references to the specific sources and documents of which the intervenor is aware and on which the intervenor intends to rely in establishing the validity of its contention. This requirement does not call upon the intervenor to make its case at this stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for . . contention.
>
> In addition to providing a statement of facts and sources, the new rule will also require intervenors to submit with their list of contentions sufficient information (which may include the known significant facts described above) to show that a genuine dispute exists between the petitioner and the applicant or licensee on a material issue of law or fact. This will require the intervenor to read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, and to state the applicant's position and the petitioner's opposing view. When the intervenor believes the application and supporting material do not address a relevant matter, it will be sufficient to explain why the application is deficient.

54 Fed. Reg. 33170.

While the regulation as amended imposes additional requirements on the proponents of contentions, much of the Commission case law under the old rule remains applicable to determinations of adjudicatory boards as to whether a proposed contention is admissible. *See* 54 Fed. Reg. 33169-71. For example, the new amendments are fully consistent with longstanding case law holding that the purposes of the basis requirements of 10 C.F.R. § 2.714(b)(2) are (1) to assure that the contention in question raises a matter appropriate for adjudication in a particular proceeding, (2) to establish a sufficient foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion, and (3) to put the other parties sufficiently on notice of the issues so that they know generally what they will have to defend against or oppose. *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1976). A proffered contention must therefore be rejected whenever (1) it constitutes an attack on applicable regulatory requirements, (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations, (3) it is nothing more than a generalization regarding the intervenor's view of what applicable policies ought to be, (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question, or (5) it seeks to raise an issue which is not concrete or litigable. *Id.*

Changing the threshold showing necessary for the admission of contentions would also have no effect on the longstanding rule that proposed contentions must fall within the scope of the issues set forth in the notice of hearing. *Public Service*

Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). When a Licensing Board is considering a license amendment it has jurisdiction only of matters germane to that amendment, and may not consider other safety improvements which petitioners may wish to have imposed on the licensed facility. *Wisconsin Electric Co.* (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983). Thus, contentions relating to general adequacy of the steam generator tubes and the public health and safety were rejected as beyond the jurisdiction of a Licensing Board considering a proposed amendment providing for the repair of steam generator tubes by sleeving and the operation of the facility with sleeved tubes. *Id.*

The Commission, however, by amending 10 C.F.R. § 2.714, specifically overturned the Appeal Board's holding that the regulation did not require a petitioner to describe facts which would be offered in support of a proposed contention. 54 Fed. Reg. 33170; *see Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 (1973); *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546-49 (1980). The amended rule requires the submission of alleged facts sufficient to demonstrate that a genuine dispute of law or fact exists; the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant was rejected even before the Commission revised Section 2.714. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982); *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983).

The Commission's holding that a member of the public has no absolute or unconditional right to intervene in a nuclear plant licensing proceeding under the Atomic Energy Act remains unchanged under the new regulations. 54 Fed. Reg. 33170; Section 189a of the Atomic Energy Act (42 U.S.C. § 2239); *see BPI v. AEC*, 502 F.2d 424, 428-29 (D.C Cir. 1974). Pursuant to 10 C.F.R. § 2.714, "a 'proper request' by a member of the public shall include a statement of the facts supporting each contention together with references and documents on which the intervenor relies to establish those facts." 54 Fed. Reg. 33170. No independent right to intervene in nuclear licensing proceedings is established by the Administrative Procedure Act. *See* 5 U.S.C. §§ 551 et. seq.; *Easton Utilities Commission v. AEC*, 424 F.2d 847, 852 (D.C. Cir. 1970) (en banc).

In sum, to set forth an admissible contention under the new rule, a petitioner must provide some factual basis for its position and demonstrate that there exists a genuine dispute between it and the licensee. 54 Fed. Reg. 33171. The Commission's regulations preclude "a contention from being admitted where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." *Id.*; *see also BPI v. AEC*, 502 F.2d at 429. A person or organization seeking admission to a licensing proceeding is expected to have read "the portions of the application (including the applicant's safety and environmental reports) that address any issues of concern to it and demonstrate that a dispute exists between it and the applicant on a material issue of fact or law."

54 Fed. Reg. 33171. The admissibility of each of the petitioners' proposed contentions under these standards is discussed below.

A. Scott/Bush/CREE Contentions

In their Supplemental Petition, Petitioner CREE asks that the contentions raised by the Mitchell Petitioner be admitted as joint contentions. Petitioners Scott, Bush and CREE also set forth three additional contentions which are, in essence, brief recitations of matters raised in detail in the Mitchell Petition and which they state are being raised jointly with the Mitchell Petitioners. While Petitioners' statements are somewhat ambiguous, at least CREE appears to be adopting the Mitchell contentions. The NRC Staff response to those contentions is set forth in detail below. The brief statements contained in the Scott/Bush/CREE Supplemental Petition are clearly inadmissible as contentions under the criteria set forth above. The Petitioners have provided absolutely no explanation of the bases for their allegations as required by 10 C.F.R. § 2.714(b)(2)(i), much less any statement of supporting facts or expert opinion as required by (b)(2)(ii).

Further, given the failure of the Scott/Bush/CREE Petitioners to provide any support for their contentions, or the contentions offered by the Mitchell Petitioners, they should not be admitted as separate intervenors simply to adopt on the positions taken by the Mitchell Intervenors. By raising the threshold showing for gaining admission of contentions, the Commission placed an additional burden on Petitioners, 54 Fed. Reg. 33171, requiring them to read the relevant information and show that they have a genuine dispute with the licensee over a material issue, *Id.*

at 33170. Some showing on these points should be required of Petitioners even if they intend to join in certain contentions with others. Otherwise, intervenors with no knowledge of the licensing action would be permitted to intervene, contrary to the intent of the Commission. Having failed to make even a minimal showing that they have read the relevant information and have a genuine dispute with the Licensee over a material issue, the Scott/Bush/CREE Petitioners should not be permitted to intervene as a separate party. 54 Fed. Reg. 33170-71.

B. Mitchell Contentions

Proposed Contention 1.

Petitioners' Proposed Contention 1 states:

> The request to amend the setpoint tolerances for the Main Steam Safety Valves (MSSVs) and the Pressurizer Safety Valves (PSVs) would cause a safety limit violation in the event of a loss of condenser vacuum (LOCV). Setpoint drift in the increasing direction of the pressurizer safeties setpoint with a setting high in the band would exceed the safety limits.

Mitchell Supplemental Petition at 2.

In support of this contention, Petitioners point out that the margin of error between the safety limit of 2750 psia and the peak pressure of 2740.9 psia as shown in the amendment application is only approximately 9.1 psia. Given the fact that the Licensee has exceeded the plus or minus 1% setpoint for the Main Steam Safety Valves (MSSVs) and the Pressurizer Safety Valves (PSVs), as shown by the Application, petitioners claim that a drift of even 1% would result in a safety limit violation. Petitioners also claim that the requested amendment would result in a reduction in the frequency of testing of the MSSVs and PSVs and, consequently, an

increase in setpoint drift. To the extent that Petitioners' contention is premised on this basis, the Staff has no objection to its admission.

Petitioners also have set forth additional bases for this contention which should not be admitted for litigation.[5] First, Petitioners claim that the Licensee has not provided adequate justification for the amendment because there is no evidence of an adverse impact on restart schedules or any other economic interest, or of any increase in man-rem exposure to testing personnel since the MSSVs are not located in radiologically controlled areas and the PSVs are not tested on site by Palo Verde personnel.

Petitioners' allegations on this point are not germane to the subject of this proceeding, which is to determine whether the proposed amendment would compromise safety. Moreover, they have no factual support. According to the Application, the amendment is being requested because the setpoint limits have been exceeded several times, necessitating the issuance of several Licensee Event Reports. In addition, the Licensee states that since testing of safety valves normally occurs during refueling outages, multiple test failures could potentially affect restart schedules and result in significant economic consequences. Petitioners do not

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[5]To the extent that the affidavit of Linda E. Mitchell has been submitted to support this contention, and the succeeding three contentions, it is insufficient to lend any factual support for the Petitioners' allegations. Ms. Mitchell only states that others have given her information without describing the nature of the information, how it was obtained, or the expertise of the individuals from whom it was received. Even if the names of those individuals cannot be revealed, more specific information could be provided, for example, by providing direct statements of unnamed sources.

dispute any of these facts; rather, they focus on the fact that the potential for affected restart schedules has not been proven.

As discussed above, the Staff has no objection to litigating the question of whether the proposed amendment would compromise plant safety requirements. But Petitioners have not presented any genuine dispute over the need for the amendment. Because the Licensee has expressed concern only with the potential for affecting restart schedules it stands to reason that such problems have not yet occurred. While Petitioners take issue with the Licensee's statement that additional testing will result in additional man-rem exposure, their objections are facially invalid. Obviously, there will be some increase in man-rem exposure to Palo Verde personnel from the packaging and shipping of contaminated PSVs, and to the individuals who perform the testing for the outside vendor.

Finally, Petitioners allege that the Licensee has been cited by NRC Region V for problems with the Surveillance Test (ST) program which should preclude granting of the proposed amendment. This matter is the subject of Contention 3 and is fully addressed in our response to that contention.

Thus, Mitchell Contention 1 should be admitted only to the extent that it is premised upon the basis that the change in the setpoint tolerances for the MSSVs and PSVs could result in an increase in setpoint drift due to reduced testing and a possible safety limit violation in the event of a LOCV. To the extent that Petitioners premise this contention upon the claim that the Licensee has not justified the need for the amendment, litigation should not be permitted. Petitioners' allegation concerning the ST program is actually a very brief summary

of the concerns they raise in Contention 3. That contention is inadmissible for the reasons discussed below.

Proposed Contention 2.

Petitioners' Proposed Contention 2 states:

> During a Steam Generator Tube Rupture (SGTR) event the offsite radiological releases would exceed acceptable limits if the proposed changes in Technical Specifications for auxiliary feedwater flow (AFW), High Pressurizer Pressure Trip (HPPT) response time, PSVs and MSSVs are permitted.

Mitchell Supplemental Petition at 5.

While Petitioners claim that the Application is deficient in several respects regarding the analysis of the proposed changes during a SGTR event, they do not provide a statement of facts to support their claim. Since the SGTR analysis presumes a rupture in the steam generator tubes, Petitioners' claim that the analysis is dependent upon the assumption that all the tubes are in good condition is not supported by the information cited (Application at 43-44). Thus, Petitioners have failed to link their desire for additional testing of the steam generator tubes with the proposed amendment.[6]

Further, the Petitioners have provided no basis on which to conclude that the SGTR analysis performed by the Licensee is inadequate. Their claims that

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[6]Recently, the Commission noticed consideration of an amendment which extended the date for the next regular inspection of steam generator tubes. 55 Fed. Reg. 50066 (December 4, 1990). Petitioners' concerns about the adequacy of the Licensee's testing of those tubes are germane to, and should have been raised in connection with, the Commission's consideration of that amendment. However valid those concerns may be, they are simply not directly related to the amendment which is the subject of this licensing proceeding.

the analysis lacks data on heat exchange and iodine spike, fails to incorporate all necessary variables, and utilizes calculation summaries which are not based on a worst case scenario are not supported by any explanation of the alleged deficiencies, much less the concise statement of supporting facts required by 10 C.F.R. § 2.714(b)(2)(ii). Petitioners' claim that the radiological dose calculations in Licensee's application are suspect and subjective is also completely unsupported by any statement of facts or citation to supporting sources or documents.

Petitioners also state that the estimated increase in off-site radiological exposure from the postulated SGTR event is alarming, particularly since the Licensee has not specified the geographical area upon which the estimate is based. In support of this claim they cite to the Application and 10 C.F.R. § 100.11(a). The documentation Petitioners rely upon, however, does not support their claim.

The Licensee's Application does in fact specify the geographical areas for the radiation estimates. The Licensee's Safety Evaluation shows that the projected radiological dose was based on the combined effects of the increase in PSV and MSSV setpoint tolerances and the reduction of the AFW flow rate. Application at 43. In that Evaluation, the Licensee indicates that the projected increase resulting from the increase in PSV and MSSV setpoint tolerances is for the site boundary. *Id.* at 44. While that portion of the Application does not specify the area for which radiological exposure due to the reduction of the AFW flow rate was estimated, the accompanying No Significant Hazards Consideration shows that the two-hour thyroid inhalation dose was calculated for the exclusion area boundary. Application, Attachment 2 at 5.

The regulation Petitioners cite to support their claim that the projected radiological release for a SGTR event is excessive pertains to site evaluation factors. Under that regulation an exclusion zone must be determined in which the total radiation dose to the thyroid from iodine exposure would not exceed 300 rem for a postulated fission release and containment leak. 10 C.F.R. § 100.11(a). Since the actual two-hour thyroid radiation dose projected by the Licensee of 260 rem is well within the regulatory limit of 300 rem, Petitioners have provided no documentary or factual support for their challenge to the proposed amendment.[7] The contention must therefore be rejected.

Proposed Contention 3

Petitioners' Proposed Contention 3 states:

> The Surveillance Test (ST) program procedures are deficient and some licensee engineers have not been adequately trained. In addition, qualified personnel have been replaced by personnel who are unqualified to perform and/or direct Section XI Testing on MSSVs and PSVs.

Mitchell Supplemental Petition at 6.

This contention should be rejected for the reason that it raises issues which are not germane to the license amendment being considered by the Commission.

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[7]In response to the Licensing Board's March 22, 1991 Order, the Staff does not believe that this contention, on its face, constitutes a challenge to 10 C.F.R. § 100.11(a). However, Petitioners do state that the projected radiation dose of 260 rem is "alarming." Conceivably, on this basis, they could intend to litigate the question of whether a projected radiation dose of 260 rem is excessive for any of the geographical zones designated in 10 C.F.R. § 100.11(a). In that case, they would be attempting an impermissible challenge to the regulation. *See* 10 C.F.R. § 2.758(b).

The proposed amendment would have no effect on the surveillance test program procedures, the training of Licensee's engineers or the qualifications of the individuals performing the surveillance tests. While the adequacy of the Licensee's surveillance program is certainly important to plant safety, the proper avenue to pursue concerns about that program is a petition under 10 C.F.R. § 2.206, not intervention in this proceeding.

The proposed contention also fails to meet the basis requirements of 10 C.F.R. § 2.714. Petitioners premise their allegation concerning the surveillance test program upon Region V Inspection Report Nos. 50-528/90-28, 50-529/90-28, and 50-530/90-28, dated September 25, 1990, ("Inspection Report No. 90-28"), allegedly showing deficiencies in the program procedures. That report, however, only shows that the Licensee is in the process of incorporating recommendations contained in a report of a complete programmatic review of the surveillance program which was conducted by an outside contractor. Petitioners have not alleged, much less made any factual showing, that the Licensee's surveillance program, with the incorporation of those changes, is inadequate.

In support of their allegation concerning training Petitioners cite Inspection Report No. 90-28 at 16 for the proposition that the NRC Staff has cited the Licensee for inadequate training of engineers assigned to perform surveillance testing of the MSSVs and for assigning unqualified personnel to perform and direct such tests. That report, however, shows that the problem identified by the inspector actually involved the lack of instructions on how to actually perform a particular test. While the Licensee stated that instructions were not necessary because the test

technicians were trained in the procedure, the inspector found that one of the lead engineers had been given only oral briefings of test methodology and procedures. *Id.* Given the limited extent of the training, the inspector determined that the surveillance test procedure should be revised to include additional details. *Id.* In order to correct the problem, the Licensee committed to revise the procedure involved. *Id.* At this time the recommendations have been incorporated and reviewed by the NRC and the item has been closed. Inspection Report Nos. 50-528/90-39, 50-529/90-39, and 50-530-39, (Nov. 2, 1990) at 3-4.

Thus, the problem identified by the inspector was a deficiency in a test procedure which was not overcome by training of the testing engineers in the performance of that test. Petitioners do not allege, or provide reason to believe, that any of the Licensee's engineers are not adequately trained to perform the test now that additional procedural details have been added. Nor have they provided any evidence showing that the engineers are inadequately trained in any other respect. Petitioners' claim that a qualified lead engineer was replaced by personnel deemed to be unqualified by NRC personnel at Region V is completely unsupported by any specific factual statements or documentation and is not shown to bear any relationship to the Licensee's surveillance test program.[8] This contention therefore should be rejected for lack of basis.

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[8]Single examples of a failure in a program, such as the one alleged here, do not show that an entire program is flawed. *See Union Electric Co.* (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-903, 28 NRC 499, 507 (1988).

Proposed Contention 4

Petitioners' Proposed Contention 4 states:

> The licensee has failed to maintain a Quality Assurance program in accordance with 10 C.F.R. Part 50, Appendix B.

Mitchell Supplemental Petition at 7.

Petitioners' claim that the Licensee has numerous Quality Assurance procedural deficiencies does not raise an issue which is litigable before this Licensing Board. The scope of this proceeding is limited to consideration of the proposed amendment which does not affect the Licensee's Quality Assurance program in any respect.

The lack of any direct connection between Petitioners' contention and the proposed amendment is evidenced by their statement of supporting facts. Aside from the information they incorporated from their third contention, they cite the Systemic Assessment of Licensee Performance Report of January 31, 1991 ("SALP Report"), showing that Safety Assessment/Quality Verification was assigned a Category 2 rating, meaning that the Licensee's overall performance in this area was good. While the Board recommended additional attention to Quality Assurance in the form of better reviews, this was based on the failure to identify problems with operator licensing medical records and emergency lighting, matters unrelated to the proposed amendment. SALP Report at 21. The remaining information cited by Petitioners refers to correspondence concerning a Notice of Violation involving the Quality Assurance program relating specifically to fire protection, a matter which is also unrelated to the proposed amendment. Because the adequacy of the Licensee's Quality Assurance program as it pertains to medical records, emergency

lighting and fire protection is beyond the scope of this license amendment proceeding, the proposed contention should be rejected. *see Wisconsin Electric Co., supra.*

Proposed Contention 5

Petitioners' Proposed Contention 5 states:

> The licensee has harassed and intimidated and otherwise retaliated against personnel for raising safety concerns related to the testing of MSSVs and PSVs.

Mitchell Supplemental Petition at 9.

The claim that the Licensee . harassed and intimidated personnel for raising safety concerns is not a matter which is within the jurisdiction of this Licensing Board. Petitioners' allegations of harassment and intimidation are not germane to the subject of this proceeding, a license amendment to increase in allowable setpoint tolerances and reduce auxiliary feedwater flow and High Pressurizer Pressure Trip response time. Furthermore, the resolution of allegations concerning harassment and intimidation could not be accomplished by this Licensing Board even if they were admitted for litigation. Instead, such matters are more appropriately handled by entities such as those before which Petitioners have already raised these allegations--the U.S. Department of Labor, the NRC Office of Investigations, and the NRC Office of Inspector General.

This contention also lacks an adequate basis. To support their allegation of harassment and intimidation of personnel raising safety concerns, Petitioners cite two Department of Labor cases, one of which invalidated a settlement agreement

with a contractor of the Licensee which restricted communication with federal or state enforcement officials. While the other case involved retaliation against a Licensee employee, this does not evidence widespread harassment resulting in "numerous" sanctions as alleged by the Petitioners. Petitioners' claim that other employees have also been retaliated against is completely unsupported.

The affidavit submitted by Linda Mitchell provides no factual support for this contention in that she simply states that she is aware of other employees who have provided her with information. Mitchell Supplemental Petition, Exhibit 1. This Licensing Board is not provided with any idea of what that information might be or whether any of those individuals would provide testimony in this proceeding. This information could be provided while protecting the confidentiality of those individuals by the use of John Doe and Jane Doe affidavits or by other means. Further, the fact that investigations of issues related to harassment and intimidation are being conducted by the NRC Office of Inspector General and NRC Office of Investigations does not lend any credence to Petitioners' allegations since the facts and circumstances surrounding the investigations are unknown. *See generally*, *Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986) (pendency of a NRC investigation does not evidence a problem). Because Petitioners have not provided an adequate foundation for this contention, it should be rejected.

CONCLUSION

While Mr. Scott and Ms Bush have not established individual standing to intervene, standing of the organization CREE has been established by virtue of the fact that certain members live within 50 miles of the generating station.

The contentions contained in the Scott/Bush/CREE Supplemental Petition are inadmissable, as are contentions 2 through 5 in the Mitchell Supplemental Petition. Contention 1 in the Mitchell Supplemental Petition is admissible to the extent that it is premised upon the basis that the amendment could result in setpoint drift and a safety limit violation in the event of a LOCV. To the extent that the contention is premised upon the Licensee need for the amendment or allegations regarding the ST program, the contention is inadmissible.

Respectfully submitted,

Lisa B Clark

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th day of March, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'91 MAR 27 P3:55

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SUPPLEMENTAL PETITIONS TO INTERVENE FILED BY MYRON L. SCOTT, BARBARA S. BUSH AND THE COALITION FOR R ESPONSIBLE ENERGY EDUCATION AND ALLAN L. AND LINDA E. MITCHELL" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisks, by express mail. Parties indicated by three asterisks have also been served by facsimile transmission this 26th day of March, 1991:

Atomic Safety and Licensing Board Panel*
Adjudicatory File
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ivan W. Smith, Chairman***
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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881 W. Outer Drive
Oak Ridge, TN 37830

Jerry R. Kline,***
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary*
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Washington, DC 20555

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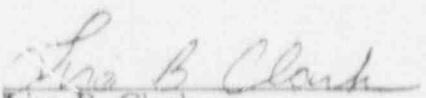

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