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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	Docket No. 50-219-OLA
GPU NUCLEAR CORPORATION)	(Tech. Spec. 5.3.1.B)
)	
(Oyster Creek Nuclear Generating Station))	ASLBP No. 96-717-02-OLA

**GPUN'S ANSWER OPPOSING REQUEST FOR HEARING
AND PETITION FOR INTERVENTION OF
NUCLEAR INFORMATION AND RESOURCE SERVICE, OYSTER CREEK
NUCLEAR WATCH, AND CITIZENS AWARENESS NETWORK**

GPU Nuclear Corporation ("GPUN" or "Licensee") submits this Answer opposing the Nuclear Information and Resource Service ("NIRS"), Oyster Creek Nuclear Watch ("OCNW"), and Citizens Awareness Network ("CAN") request for hearing and petition for intervention on an amendment to Technical Specification 5.3.1.B of the operating license for the Oyster Creek Nuclear Generating Station ("Oyster Creek"). While petitioners claim standing as the representatives of a number of persons who have authorized this intervention, none of the individuals has demonstrated that he or she will be injured by this minor amendment, and therefore both the individuals and the petitioners lack standing to intervene in this proceeding as a matter of right. The petitioners should also be denied discretionary intervention because they have not demonstrated that they will make a contribution to a hearing or otherwise satisfied the standards for discretionary intervention.

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I. INTRODUCTION

This license amendment request involves a very narrow change to the Technical Specifications for Oyster Creek to allow the movement of a shield plug over a loaded dry shielded canister ("DSC") in the Oyster Creek spent fuel pool. Currently, Oyster Creek's Technical Specification 5.3.1.B allows only loads equal to or less than a fuel assembly to be handled over spent fuel in the fuel pool. While this technical specification was intended to prohibit movement of heavy loads over spent fuel stored in racks in the spent fuel pool, and was never intended to apply to fuel in a storage or shipping cask,¹² the technical specification could be read literally as precluding placement of the shield plug on the loaded DSC while the DSC remains in the pool. GPUN has submitted the current amendment request solely to eliminate this potential ambiguity.

Oyster Creek currently holds a general license, under 10 C.F.R. § 72.210, for the dry storage of spent fuel in an Independent Spent Fuel Storage Installation ("ISFSI") at Oyster Creek. Dry storage is necessary to provide additional storage space in the spent fuel pool. As described in the Safety Analysis Report for Oyster Creek's dry storage system (the Standardized NUHOMS Horizontal Modular Storage System), part of the operation of transferring spent fuel from the reactor building to dry storage is the loading of the DSC with spent fuel assemblies in the spent fuel pool. To reduce doses to occupational workers, the storage system design uses a metal

¹² Indeed, transportation casks of spent fuel have been loaded and sealed in the Oyster Creek spent fuel pool using a top shielding lid with a function, size, and weight analogous to the DSC shield plug. These previous cask loadings were done under the current Technical Specification which was viewed as not applicable. Similarly, transportation and storage casks have been loaded and closed at other plants with similar technical specifications which were interpreted as being inapplicable.

shield plug above the assemblies and below the top lid of the DSC. This shield plug is inserted into the canister after the assemblies are loaded into the DSC and before it has been removed from the spent fuel pool in order to take full advantage of the water shielding.

This narrow amendment only addresses the moving of one shield plug over a limited number^{2/} of cooled^{3/} spent fuel assemblies that are inside the DSC, inside the transfer cask, inside the cask drop protection system ("CDPS"),^{4/} under 20 feet of water inside the spent fuel pool, and inside the reactor building. This license amendment request does not request authority to move any other heavy loads at Oyster Creek. Other heavy load issues, such as the movement of the spent fuel transfer cask, are not included in this application and are beyond the scope of this request.

At the time this amendment would take effect, the cask itself would already be in the pool and the spent fuel assembly handling would already be completed. If the shield plug is dropped,

^{2/} The canister can only hold a maximum of 52 fuel assemblies. Certificate of Compliance for Dry Spent Fuel Storage Casks (Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel), Package Number USA/72-1004 at A-10 (1995).

^{3/} The canister design Certificate of Compliance requires that only spent fuel cooled five years or more can be loaded in the canister. Certificate of Compliance at A-10. In fact, the spent fuel that GPUN intends to place in the DSC has cooled at least 10 years.

^{4/} The cask drop protection system (CDPS) is a series of steel funnels forming a cylinder which isolates the cask from the rest of the pool and mitigates the effect of any drop. A plate attached to the bottom of the cask acts as a piston within this cylinder. The effectiveness of this system is included in Oyster Creek's safety analysis report, which shows that with this system Oyster Creek's spent fuel pool can withstand a drop of a 100-ton cask. Oyster Creek Updated FSAR at §§ 9.1.2.2.3 and 9.1.2.3.10.

it will fall within the CDPS, and will not fall in the spent fuel storage area of the fuel pool.^{5/} In any event, a drop of the shield plug is not a credible event because the shield plug is supported at all times in the pool by four steel cables bolted at four separate locations to the shield plug and at four separate locations on the transfer cask lifting yoke^{6/}, and each of these cables is independently capable of supporting the shield plug.^{7/} Thus, there is no reasonable possibility that the shield plug could be dropped as a result of mis-rigging, or as a result of rigging failure absent multiple independent failures. Further, the overall capacity of the crane (100 tons) far exceeds the weight of the shield plug and lifting devices (7 tons).^{8/}

II. BACKGROUND

On May 8, 1996, notice was published in the Federal Register of GPUN's application to amend Specification 5.3.1.B of the Oyster Creek Technical Specifications. 61 Fed. Reg. 20,842, 20,848 (1996). The amendment will explicitly allow the shield plug and associated lifting hardware to be moved over the irradiated spent fuel that has been loaded into the DSC within the transfer cask located in the CDPS. The Federal Register notice proposed a finding of no

^{5/} Mechanical rail stops are installed to prevent travel of the crane outside the analyzed load path over the CDPS. Oyster Creek Nuclear Generating Station Technical Specification Change Request ("Tech. Spec. Change Request") No. 244 at III (Apr. 15, 1996).

^{6/} Eyebolts are used as the cable attachment points for both the shield plug and the lifting yoke. Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 3A at 4.2-24, 5.1-4 (1995).

^{7/} The steel cable assemblies are redundant and each of the four has sufficient capacity to support the total weight of the shield plug. Tech. Spec. Change Request at III.

^{8/} The shield plug weighs approximately 4 tons and the lifting yoke weighs approximately 3.1 tons. *Id.*

significant hazards consideration and afforded interested parties until June 7, 1996 to request a hearing and petition for leave to intervene. *Id.* at 20,842. On June 6, 1996, NIRS, OCNW, and CAN filed a Request for Hearing and Petition for Leave to Intervene ("Petition").

The Commission's requirements for a petition for leave to intervene are set forth in 10 C.F.R. § 2.714 and the Federal Register notice for the application. The petition must state:

(1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

61 Fed. Reg. at 20,843.

The Commission has held that it will apply "'contemporaneous judicial concepts' of standing to determine whether a petitioner has a sufficient interest in a proceeding to be entitled to intervene as a matter of right." Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329 (1989), citing Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 614 (1976). Judicial concepts of standing require the petitioner to make a showing that "(a) the action will cause 'injury in fact,' and (b) the injury is arguably within the 'zone of interests' protected by the statutes governing that proceeding [the Atomic Energy Act]." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 N.R.C. 327, 332 (1983). Specifically, petitioners must establish (1) that they have personally suffered, or will suffer a distinct and palpable harm that

constitutes injury-in-fact; (2) that the injury fairly can be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision granting the relief sought. Del-lums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 N.R.C. 179, 185-86 (1991).

An organization may derive standing from its members. To do so, however, the organization must demonstrate that the members who have authorized representation have the requisite personal interest in the matter, *i.e.*, that the members have or will suffer injury in fact causally related to the license amendment.²¹

For license amendments that do not have a clear potential for offsite consequences affecting the general population, a person cannot establish standing based on geographic proximity alone. St. Lucie, CLI-89-21, *supra*, at 329-30; Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 N.R.C. 153, 156-57 (1991); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 N.R.C. 15, 22 (1991).

Where there is no obvious potential for offsite consequences, a petitioner (or in the case of an organization, its members) must allege some specific "injury in fact." St. Lucie, CLI-89-21, *supra*, 30 N.R.C. at 329.

²¹ An organization may invoke representational standing when (1) its members have standing in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). See also Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 396-97 (1979).

A petitioner who lacks standing may yet be permitted discretionary intervention. GPUN submits, however, that discretionary standing cannot be granted to any of the petitioners unless at least one of those petitioners is first determined to be entitled to a hearing (i.e. has standing and has pleaded at least one admissible contention).^{10/}

If the Board decides that a least one of the petitioners is entitled to a hearing and proceeds to consider whether discretionary intervention should be permitted for the others, the Board should be guided by the following factors:

(a) Weighing in favor of allowing intervention-

- (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention-

- (4) The availability of other means whereby petitioner's interest will be protected.
- (5) The extent to which the petitioner's interest will be represented by existing parties.

^{10/} The concept of discretionary standing was developed in construction permit proceedings, where hearings are mandatory and a Licensing Board has substantive jurisdiction over all issues even in the absence of intervention. See generally Pebble Springs, CLI-76-27, supra, 4 N.R.C. at 616. In that setting, where a hearing is mandatory, a Licensing Board can certainly allow a party to participate despite the party's failure to meet formal standing requirements. But in a license amendment proceeding, until the Board finds that a hearing has been requested by an intervenor with standing and at least one admissible contention, the Board has no substantive jurisdiction -- i.e. no authority to proceed with a hearing.

- (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Pebble Springs, CLI-76-27, supra, 4 N.R.C. at 616.

The primary factor to be considered is the significance of the contribution that a petitioner might make. Pebble Springs, CLI-76-27, supra, 4 N.R.C. at 616. Thus, the foremost factor is whether the petitioner's intervention would produce a valuable contribution to the Board's decision making process on a significant safety or environmental issue included in the proceeding at hand. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 N.R.C. 1418 (1977). The burden of convincing the Board that a petitioner could make a valuable contribution if allowed discretionary intervention lies with the petitioner. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 745 (1978). Factors to consider in determining petitioner's ability to provide a valuable contribution to the record include:

- (1) a petitioner's showing of significant ability to contribute on substantial issues of law or fact which will not be otherwise properly raised or presented;
- (2) the specificity of such ability to contribute on those substantial issues of law or fact;
- (3) justification of time spent on considering the substantial issues of law or fact;
- (4) provision of additional testimony, particular expertise, or expert assistance;
- (5) specialized education or pertinent experience.

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 N.R.C. 27, 33 (1981) (and cases cited therein).

The fact that petitioner wishes to protect himself from adverse precedent in the subject proceeding for use in intervention with respect to the same issue in another proceeding does not give petitioner standing. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Power Station, Units 1, 2 & 3), ALAB-304, 3 N.R.C. 1, 4 (1976). See also Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 1), LBP-96-1, 43 N.R.C. 19, 23 n.21 (1996). The alleged injury must be concrete and particularized, not "conjectural" or "hypothetical"; standing will be denied if the threat of injury is too speculative. Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994).

III. STANDING ON GEOGRAPHIC PROXIMITY ALONE IS NOT SUFFICIENT FOR THIS NARROW LICENSE AMENDMENT

As stated earlier, for license amendments that do not have a clear potential for offsite consequences affecting the general population, petitioners cannot establish standing based on geographic proximity of their members alone. St. Lucie, CLI-89-21, supra, 30 N.R.C. at 329-30; Palo Verde, LBP-91-4, supra, 33 N.R.C. at 156-57. Clearly, this is not the type of significant license amendment proceeding with such clear potential for offsite consequences as to warrant a presumption of standing based on proximity. For example, while spent fuel pool expansion cases have typically been deemed significant enough to support a presumption of

standing for those residing in close proximity to the plant,¹¹⁷ the amendments in those proceedings involved obvious criticality considerations and revision to significant accident analyses in the FSARs for the affected facilities. In contrast, the amendment to Technical Specification 5.3.1.B involves no criticality considerations or significant accident analyses.

As previously discussed, the subject license amendment addresses only the moving of one shield plug over a limited number of cooled spent fuel assemblies that are inside the DSC, inside the transfer cask, inside the CDPS, inside the spent fuel pool, and inside the reactor building. The shield plug handling in this amendment request does not implicate reactor safety in any way. Nor is a spent fuel accident credible, given the redundancy of cables used to lift the shield plug. And even if the shield plug were somehow dropped, it would fall only within the CDPS, and can not fall in the spent fuel storage area of the fuel pool. Based on the extremely narrow

¹¹⁷ See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 N.R.C. 54 (1979); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 1), LBP-88-10A, 27 N.R.C. 452, aff'd on other grounds, ALAB-893, 27 N.R.C. 627 (1988); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 N.R.C. 116, 118, and LBP-87-17, 25 N.R.C. 838, 842, aff'd in part and rev'd in part on other grounds, ALAB-869, 26 N.R.C. 12, reconsid. denied, ALAB-876, 26 N.R.C. 277 (1987). See also Consumers Power Co. (Big Rock Point Nuclear Plant), LBP-80-4, 11 N.R.C. 117, 120 (1980). Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 N.R.C. 97 (1985), aff'd on other grounds, ALAB-816, 22 N.R.C. 461 (1985). Even in these cases, there must be closer proximity than is required in initial licensing cases. In Pilgrim, the Licensing Board held that 43 miles was insufficient to establish standing in an amendment to increase the criticality constant for the spent fuel pool, reasoning that:

This case concerns a request for a license amendment and it is not controlled by the same standing considerations that govern standing when an operating license is sought. Whatever the risk to the surrounding community from a reactor and its associated pool, the risk from the fuel pool alone is less and the distance of residence from the fuel pool for which standing would be appropriate would, accordingly, be less. Consequently, we do not consider residence 43 miles from this plant to be adequate for standing.

22 N.R.C. at 99 (emphasis in original).

scope of the amendment, the limited number of cooled fuel assemblies involved, its well understood consequences based on Applicant's experience handling analogous loads, and the extensive safety systems and barriers in place to mitigate accidents for more significant than a drop of the shield plug, this amendment does not have a clear potential for offsite consequences affecting the general population.

Accordingly, petitioners may not establish standing based on geographic proximity of members alone, but rather must identify some specific injury-in-fact that will result from the action taken. The petitioners must allege some threatened or actual injury resulting from the action. Warth v. Seldin, 422 U.S. 490, 499 (1975). The threat of injury must be real and immediate, not conjectural or hypothetical. Los Angeles v. Lyons, 461 U.S. 95, 101-03 (1983); California Bankers Ass'n v. Shultz, 416 U.S. 21, 69 (1974). Where there is no current injury and a party relies wholly on the threat of future injury, the fact that one can imagine circumstances where a party could be affected is not enough. The petitioner must demonstrate a realistic danger -- an injury that is certainly impending. Northwest Airlines Inc. v. FAA, 795 F.2d 195, 201 (D.C. Cir. 1986).

IV. STANDING FOR NIRS SHOULD BE DENIED BECAUSE NIRS HAS NOT DEMONSTRATED SUFFICIENT PALPABLE INJURY-IN-FACT TO ESTABLISH STANDING

NIRS has not alleged any palpable, particularized injury-in-fact that is causally related to the subject license amendment and sufficient to demonstrate standing. NIRS bases its claim of standing entirely on the representations of one affiant, William deCamp, but his concerns are

largely unrelated to the specific amendment request and do not demonstrate a distinct and palpable injury-in-fact causally related to amendment at issue.

Mr. deCamp's affidavit expresses concerns relating to (1) containment failure due to a load drop at Oyster Creek and (2) a load drop at Oyster Creek causing a failure of the fuel pool cooling system leading to melted nuclear fuel. Aff. of deCamp at 1. As discussed above, because the narrow scope of this amendment is limited to whether the shield plug may be placed over spent fuel in a DSC (while it resides in a transfer cask in the CDPS), neither the fuel pool cooling system nor the reactor containment could be affected by this amendment. Mr. deCamp's allegations relate to the broader issue of moving heavy loads in other parts of the containment building, which is beyond the scope of this amendment request and proceeding.

Mr. deCamp also asserts that he is concerned that a load drop which releases radiation from a fuel transfer canister could have adverse effects on his health and safety. Mr. deCamp, however, provides no explanation how such a drop might occur, what multiple failures are necessary for such an accident to occur, what consequences might result from such an accident, or why such an accident would exceed the consequences of the numerous other accident scenarios evaluated in the FSAR for Oyster Creek and the SAR for its ISFSI. His assertion is vague and conjectural, and certainly does not satisfy his burden of demonstrating a realistic danger.

Aside from the few assertions in Mr. deCamp's affidavit, the petition itself contains some general allegations, but these too are insufficient to establish standing. Petitioners recite the generic factors for evaluating a no significant hazards consideration from 10 C.F.R. §

50.92(c) as one basis for demonstrating injury-in-fact.^{12/} Petition at 2. Such a generalized allegation is not sufficiently particularized to demonstrate standing. Sequoyah Fuels, CLI-94-12, supra, 40 N.R.C. at 72. Since none of allegations made by NIRS is sufficient to establish any palpable, particularized injury-in-fact directly related to this license amendment that is sufficient to demonstrate standing, NIRS should be denied intervention in this proceeding.

V. STANDING FOR OCNW SHOULD BE DENIED BECAUSE OCNW HAS NOT DEMONSTRATED SUFFICIENT PALPABLE INJURY-IN-FACT TO ESTABLISH STANDING

OCNW also relies on the affidavit of Mr. deCamp, and in addition, on the affidavits of three other persons.^{13/} Like the affidavit of Mr. deCamp, however, OCNW's additional affidavits relate mainly to concerns unrelated to the instant amendment and fail to demonstrate a distinct and palpable injury causally related to this amendment.

^{12/} Petitioner states that:

the proposed license amendment . . . is inadequate to protect [petitioner's] health and safety and the health of the environment in so much that it: 1) would increase the probability of an accident; 2) creates the possibility of an accident not previously identified in the Safety Analysis Report and; 3) constitutes a significant reduction in the margin of safety at operating boiling water reactors.

Petition at 2. Compare 10 C.F.R. § 50.92. The evaluation of no significant hazards consideration for this amendment request is outside the scope of this proceeding. Under the Commission's regulations at 10 C.F.R. § 50.58(b)(6), a no significant hazards consideration determination, and therefore the timing of a hearing vis-a-vis the issuance of the license amendment, are up to the Staff and the Commission. Contentions on this matter will not be entertained by Licensing Boards. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-26, 33 N.R.C. 537, 545 (1991) and LBP-91-23, 33 N.R.C. 430, 442 (1991); Sacramento Municipal Utility Dist. (Rancho Seco Nuclear Generating Station), LBP-91-17, 33 N.R.C. 379, 381 (1991); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 N.R.C. 85, 90-91 (1990); Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-89-15, 29 N.R.C. 493, 499-500 (1989).

^{13/} It is not clear from the affidavits whether OCNW representatives Maria Szczech and Shirley R. Schmidt are, in fact, members of OCNW. Neither the affidavit of Ms. Szczech nor the affidavit of Ms. Schmidt states that the affiant is a member of OCNW.

The affidavit of Jean Burnett alleges concern that: (1) moving heavy loads over the fuel pool and containment area during plant operation will affect her health and safety; (2) an accident involving unstable strapping will affect her health and safety; and (3) the recent gas burn which jarred loose the cover of a canister at the Point Beach nuclear plant could have implications on safety at Oyster Creek. Aff. of Burnett at 1. The first allegation is a generalized statement that does not allege a particularized injury-in-fact. Further, this amendment proceeding involves only moving the shield plug over the loaded DSC, and Ms. Burnett's broader concerns about loads over fuel in general and heavy loads in the containment area exceed this scope. The second allegation concerning unstable strapping is not applicable to this amendment request because the shield plug is supported by redundant eyebolts and steel cables, and will not use straps. The third allegation regarding the gas burn that occurred during the welding of a canister cover at Point Beach is not applicable to this amendment request because the narrow scope of this amendment includes only the movement of the shield plug over fuel in a DSC while it is under 20 feet of water; and issues of canister welding are beyond the scope of this amendment. Thus, the affidavit of Jean Burnett produces no palpable, particularized allegations of injury-in-fact sufficient to demonstrate standing.

The affidavit of Shirley R. Schmidt alleges: (1) reservations about Oyster Creek moving spent fuel rods over the fuel pool and (2) a distinct possibility of a containment failure should the heavy load be dropped. Aff. of Schmidt at 1. The movement of spent fuel rods over the spent fuel pool is explicitly allowed under Technical Specification 5.3.1.B of Oyster Creek's current licensing basis and, in any event, has no bearing on the instant amendment request. The second

allegation, regarding containment failure, is beyond the scope of this amendment because the amendment only includes movement of the shield plug in the CDPS and does not raise any possibility of a containment failure. Thus, the affidavit of Shirley R. Schmidt produces no palpable, particularized allegations of injury-in-fact sufficient to demonstrate standing.

The affidavit of Maria Szczech alleges concern with: (1) the evacuation plan for the residents of Ocean Township in the event of an accident, (2) the crane capacity for moving bundles of spent fuel rods over the fuel pool and containment, and (3) the intent to move fuel rods while Oyster Creek is operating. Aff. of Szczech at 1-2. None of these allegations are related to the narrow scope of the subject amendment request to move the shield plug in the CDPS. The first allegation, relating to the evacuation plan for Oyster Creek, is beyond the scope of this amendment request. The second and third allegations relate to the handling of fuel assemblies over the spent fuel pool, an activity that is explicitly allowed under Technical Specification 5.3.1.B of Oyster Creek's current licensing basis and has no relationship to the requested amendment. Thus, the affidavit of Maria Szczech produces no palpable, particularized allegations of injury-in-fact sufficient to demonstrate standing.

In sum, none of the allegations of OCNW in the petition or the four accompanying affidavits is sufficient to establish any palpable, particularized injury-in-fact directly related to this license amendment that is sufficient to demonstrate standing. Thus, petitioner OCNW should be denied intervention in this proceeding.

VI. STANDING FOR CAN SHOULD BE DENIED BECAUSE CAN HAS NO MEMBER RESIDING NEAR OYSTER CREEK AND HAS NOT DEMONSTRATED SUFFICIENT PALPABLE INJURY-IN-FACT TO ESTABLISH STANDING

CAN and its representative member are located in central Massachusetts, over 200 miles from Oyster Creek in central New Jersey. Even in an initial operating license proceeding, petitioners located very far from a plant are generally denied standing. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1447 (1982), citing, Dairyland Power Coop. (LaCrosse Boiling Water Reactor), ALAB-497, 8 N.R.C. 312, 313 (1978); Public Service Co. of Oklahoma (Black Fox Units 1 and 2), ALAB-397, 5 N.R.C. 1143, 1150 (1977).

Further, CAN has not alleged any palpable, particularized injury-in-fact related to the subject license amendment that is sufficient to demonstrate standing. The affidavit of Deborah Katz, the representative member of CAN, expresses concerns about: (1) the experimental transfer of fuel over the operating reactor vessel while the reactor is operational, and (2) fuel handling accidents at Vermont Yankee Nuclear Power Station ("Vermont Yankee"). Aff. of Katz at 1. The first allegation, relating to handling fuel at Oyster Creek, is beyond the scope of this narrow amendment which addresses only the movement of the shield plug in the CDPS. The second allegation, relating to handling of fuel at Vermont Yankee, is beyond the scope of this amendment because it relates to a different reactor located over 200 miles away.

Ms. Katz also alleges that the precedent set by the process at Oyster Creek will have a direct effect on her. The potential for establishing adverse legal precedent is not a legitimate injury

sufficient to establish standing. The fact that petitioner wishes to protect herself from adverse precedent in the subject proceeding for use in intervention with respect to the same issue in another proceeding does not give petitioner standing. Indian Point, ALAB-304, supra, 3 N.R.C. at 4; see Millstone, LBP-96-1, supra, 43 N.R.C. at 23 n.21. The alleged injury must be concrete and particularized, not "conjectural" or "hypothetical"; standing will be denied if the threat of injury is too speculative. Sequoyah Fuels, CLI-94-12, supra, 40 N.R.C. at 72.

In sum, neither the factual allegations nor the adverse legal precedent allegations made by Ms. Katz are sufficient to establish any palpable, particularized injury-in-fact directly related to this license amendment that is sufficient to demonstrate standing. Thus, CAN should be denied intervention in this proceeding.

VII. DISCRETIONARY INTERVENTION FOR CAN SHOULD NOT BE GRANTED BECAUSE CAN HAS NOT DEMONSTRATED IT WOULD BRING A VALUABLE CONTRIBUTION TO THE BOARD'S DECISION MAKING PROCESS IN THIS MATTER

Petitioner CAN should not be granted discretionary intervention because: (1) discretionary intervention can not be granted when there otherwise would be no hearing, and (2) CAN has not demonstrated that it would make a valuable contribution to the Board's decision-making process in this matter. CAN has the burden of convincing the Board that its intervention would produce a valuable contribution to the Board's decision making process on a significant safety or environmental issue included in the proceeding at hand. Nuclear Engineering, ALAB-473, supra, 7 N.R.C. at 745. CAN's concerns, however, relate to the "experimental transfer" of fuel over the reactor vessel while the reactor is operational. Aff. of Katz at 1. Since these issues are

unrelated to the amendment request before the Board, they contribute nothing. Further, CAN has not identified the provision of any helpful witnesses or additional testimony they would bring to the proceeding. Nor has CAN identified any specialized education, particular expertise, or any other qualifications that would contribute to the Board's decision.

The other factors considered with respect to discretionary intervention (see discussion on pages 7-8, supra) also militate strongly against discretionary intervention. Located over 200 miles from Oyster Creek, CAN has an extremely remote interest, and there is in fact no indication that any decision by the Board in this narrow license amendment proceeding would prejudice CAN's ability to intervene in subsequent proceedings involving a neighboring plant where a direct interest might be demonstrated. Further, if the Board finds that one or both of the other petitioners has standing and orders a hearing, the participation of the Staff and the other intervenor(s) with standing would adequately protect CAN's interest.

VIII. ASPECTS IDENTIFIED BY PETITIONERS

Many of the aspects with respect to which petitioners indicate they seek to intervene, (Petition at 5-7), are beyond the scope of GPUN's amendment request and this proceeding. The Staff's proposed finding of no significant hazards consideration, for example, cannot be raised in this hearing. See note 12, supra. GPUN will address this matter further when responding to specific contentions.

IX. SERVICE

Pursuant to 10 C.F.R. § 2.708, Licensee requests that service upon Licensee be made at the following addresses:

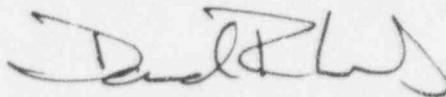
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Michael Laggart
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X. CONCLUSION

For the reasons stated above, Licensee respectfully submits that the Petition should be dismissed because NIRS, OCNW and CAN lack standing.

Respectfully submitted,



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Counsel for Licensee

Dated: June 21, 1996

DOCKETED
USNRC
June 21, 1996

'96 JUN 24 A11:05

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the matter of)
GPU NUCLEAR CORPORATION) Docket No. 50-219-OLA
(Oyster Creek Nuclear Generating Station)) (Tech. Spec. 5.3.1.B)
ASLBP No. 96-717-02-OLA

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and the State of Colorado, as well as various federal courts including the United States Supreme Court, hereby enters his appearance as counsel on behalf of licensee GPU Nuclear Corporation, in any proceeding related to the above-captioned matter.

Ernest L. Blake, Jr.

Ernest L. Blake, Jr.
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2300 N. St. N.W.
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(202)663-8000

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NUCLEAR REGULATORY COMMISSION

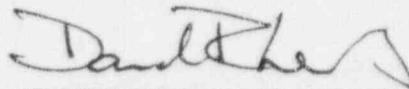
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(Oyster Creek Nuclear Generating Station)) (Tech. Spec. 5.3.1.B)
ASLBP No. 96-717-02-OLA

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia hereby enters his appearance as counsel on behalf of licensee GPU Nuclear Corporation, in any proceeding related to the above-captioned matter.



David R. Lewis
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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GPU NUCLEAR CORPORATION) (Tech. Spec. 5.3.1.B)
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(Oyster Creek Nuclear Generating Station)) ASLBP No. 96-717-02-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "GPUN's Answer Opposing Request for Hearing and Petition for Intervention of Nuclear Information and Resource Service, Oyster Creek Nuclear Watch, and Citizens Awareness Network," dated June 21, 1996, and Notices of Appearance for Ernest L. Blake, Jr. and David R. Lewis, dated June 21, 1996, were served upon the persons listed below by deposit in the United States mail, first class, postage prepaid, this 21st day of June, 1996.

G. Paul Bollwerk, Chairman
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Peter S. Lam
Administrative Judge
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Charles N. Kelber
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Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

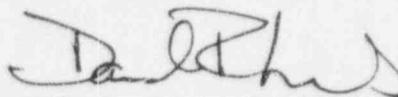
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