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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '92 SEP -9 P3:06

BEFORE THE COMMISSION

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SECTION

In the Matter of)	
)	Docket No. 50-275 OLA - 2
)	Docket No. 50-323 OLA
PACIFIC GAS & ELECTRIC CO.)	
(Diablo Canyon Nuclear Power Plant,)	(Construction Period Recapture)
Units 1 & 2))	

NRC STAFF RESPONSE TO SAN LUIS OBISPO MOTHERS
FOR PEACE'S LETTER REQUEST FOR HEARING

Ann P. Hodgdon
Counsel for NRC Staff

September 8, 1992

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PDR ADOCK 05000275
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OFFICE OF THE CLERK
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WASHINGTON, D.C.

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INTRODUCTION

On July 22, 1992, the Nuclear Regulatory Commission (NRC) Staff published in the *Federal Register* a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing, 57 Fed. Reg. 32571, regarding, among other things, Pacific Gas and Electric Company's (PG&E) application to revise its facility operating licenses for its Diablo Canyon Nuclear Power Plant, Units 1 and 2, to change the expiration date of the Unit 1 license from April 23, 2008 to September 22, 2021, and for the Unit 2 license from December 9, 2010, to April 26, 2025, so as to allow for 40 years of operation as permitted by 10 C.F.R. § 50.51. 57 Fed. Reg. 32575. The notice included a proposed no significant hazards consideration determination, *id.*, and specified that any person whose interest might be affected by this proceeding and who wished to participate

as a party in the proceeding "must file a written request for a hearing and a petition for leave to intervene" by August 21, 1992. 57 Fed. Reg. 32571. The notice further described the requirements of 10 C.F.R. § 2.714 applicable to petitions for leave to intervene. 57 Fed. Reg. 32571-72.

By letter to the Secretary of the Commission, dated August 18, 1992 (letter), the San Luis Obispo Mothers of Peace (Mothers for Peace) requested a hearing.¹ As discussed below, the letter does not fully satisfy the requirements for a petition to intervene pursuant to 10 C.F.R. § 2.714.

DISCUSSION

A. Standards Applicable To Intervention Petitions

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

In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control,...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]. Under NRC regulations implementing the AEA, "any person whose interest may be affected by a proceeding and who desires to participate as a party shall

¹ Although the letter dated August 18, 1992, the envelope carries a postmark of August 19, 1992. In its answer, dated September 4, 1992, PG&E indicates that its copy arrived in an envelope postmarked August 20, 1992.

file a written petition for leave to intervene." 10 C.F.R. § 2.714(a)(1). Such petition must satisfy the following requirements:

The petition shall set forth *with particularity* the interest of the petitioner in the proceeding, *how that interest may be affected by the results of the proceeding*, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section, and the *specific aspect* or *aspects* of the subject matter of the proceeding as to which petitioner wishes to intervene.

10 C.F.R. § 2.714(a)(2) (emphasis added).²

In determining whether a person or organization has sufficiently established an interest, protected by the AEA, that may be affected by the proceeding, the Commission applies contemporaneous judicial concepts of standing. *See, e.g., Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 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, 614 (1976). These judicial concepts require a petitioner to "establish that he or she will suffer a distinct and palpable

² 10 C.F.R. § 2.714(d)(1) provides that, in considering petitions for leave to intervene or requests for hearing, the Commission or presiding officer shall consider, among other matters, the following factors:

- (i) The nature of the petitioner's right under the AEA to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

harm that constitutes the injury in fact, that the injury can be traced fairly to the challenged action, and that the injury is likely to be redressed by a favorable decision in the proceeding." *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-67 (1991). *Accord*, *Foundation on Economic Trends v. Lyng*, 943 F.2d 79, 82 (D.C. Cir. 1991) ("Lyng"); *Nuclear Engineering Co.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978) (there must be a concrete demonstration that harm could flow from the result of a proceeding).

Regardless of whether it is an organization or an individual seeking a hearing, the same showing of injury is required. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 529 (1991). An organization seeking intervention must establish injury to its organizational interests, and that those interests are protected by the AEA. *Id.* at 528-30. Absent injury to itself, an organization has standing only if it alleges "that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). *See also Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 647 (1979). Without a "particularization of how the interests of one or more members . . . might be adversely affected" by the licensing action, an organization lacks standing. *Allied-General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976). In addition, the petitioning organization that seeks to represent the interest of

its members must identify one or more of its members by name and address, identify any member activities that are carried out in close proximity to the plant site, and show that it is authorized to request a hearing on its members' behalf. *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 392-96 (1979); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 NRC 153, 158 (1991).

Further, the petition to intervene of an organization must show that the person signing it has been authorized by the organization to do so. *Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 72, 77 (1979). An organization has sufficiently demonstrated its standing to intervene if its petition is signed by a ranking official of the organization who himself has the requisite personal interest to support the intervention. *Duke Power Company* (Amendment to Materials License SNM-1773-- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979).

For any licensing action, the matters outlined in the *Federal Register* notice of opportunity for hearing define the scope of the proceeding on the action. See *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983); *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-619, 12 NRC 558, 565 (1980). Thus, parties may not seek to litigate issues that are not within the scope of the notice of opportunity for hearing.

B. Mothers for Peace's Letter Fails To Satisfy The Requirements for
Intervention _____

Mothers for Peace's letter, notes, in general terms, the organization's longstanding interest in the Diablo Canyon Nuclear Power Plant and reminds the Secretary of petitioner's intervention in the proceeding on PG&E's application for an operating license for Diablo Canyon. Nevertheless, although the letter states that the majority of San Luis Obispo Mothers for Peace's membership lives and owns property in the county where the plant is located, it does not reveal the names and addresses of any of those members and what their interest is, much less provide statements from those members that they authorize the organization to represent their interests.

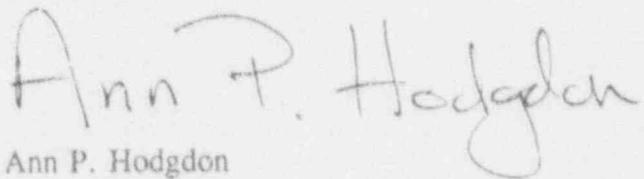
Mothers for Peace's letter is also deficient in that it fails to show how its interests or the interests of its members will be injured by the proposed action. The letter simply does not address the manner in which Mothers for Peace believes that it would suffer injury if the license amendment is granted or how its interests are protected by relevant statutes, as required by the Commission decisions that are discussed above. Mothers for Peace's mere recitation that it has intervened in the past is not enough to fulfill the requisite showing of standing pursuant to the regulations in 10 C.F.R. § 2.714. See *Consolidated Edison Co.* (Indian Point Station, Units 1, 2 and 3), ALAB-304, 3 NRC 1, 4 (1976); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114 (1992); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451 (1975). The petitioner, thus, does not make a sufficient showing of standing.

As regards "aspect," Mothers for Peace's letter identifies its concerns relating to PG&E's application to amend its license so as to be able to operate the plant for a full 40 years. In the second paragraph of its letter, Mothers for Peace discusses aging of components as an item of particular concern to the organization. This is a subject that PG&E addresses in its application. Thus, Mothers for Peace has identified the aspect of the proceeding on which intervention is sought.

CONCLUSION

As discussed above, Mothers of Peace has failed to satisfy the requirements of 10 C.F.R. § 2.714. However, because the Commission's regulations in 10 C.F.R. § 2.714(a)(3) and (b)(1) permit a petitioner to amend the pleading until 15 days before the first prehearing conference, the presiding officer should defer ruling on standing pending receipt of any amendment Mothers for Peace may file.

Respectfully submitted,



Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 8th day of September, 1992

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WASHINGTON, D.C.

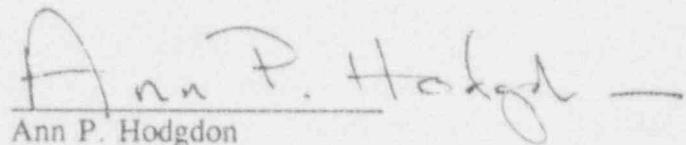
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 Units 1 & 2)

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: Ann P. Hodgdon
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Admissions: U.S. Court of Appeals, District of
Columbia
Name of Party: NRC Staff

Respectfully submitted,


Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 8th day of September, 1992

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE'S LETTER REQUEST FOR HEARING" and "NOTICE OF APPEARANCE" for Ann P. Hodgdon 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 through deposit in the Nuclear Regulatory Commission's internal mail system, this 8th day of September, 1992:

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President, Board of Directors
San Luis Obispo Mothers
for Peace
192 Luneta Street
San Luis Obispo, CA 93401

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

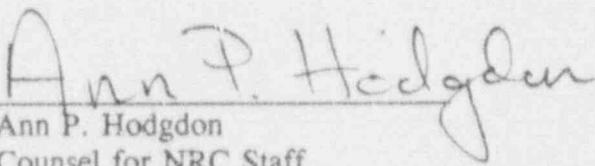
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Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 8th day of September, 1992