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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC)	Docket Nos. 50-275 OLA
COMPANY)	50-323 OLA
)	
(Diablo Canyon Nuclear Power Plant)	
Units 1 and 2))	

RESPONSE OF THE NRC STAFF TO THE PETITIONS
FOR LEAVE TO INTERVENE FILED BY CONSUMERS ORGANIZED
FOR DEFENSE OF ENVIRONMENTAL SAFETY AND THE SIERRA CLUB

I. INTRODUCTION

On January 13, 1986, the Nuclear Regulatory Commission published in the Federal Register (51 Fed. Reg. 1451) a notice entitled "Consideration of Issuance of Amendments to Facility Operating Licenses DPR-80 and DPR-82 for Diablo Canyon Nuclear Power Plant, Units 1 and 2, Respectively, and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" concerning the request by Pacific Gas and Electric Company (Licensee) for amendments to Facility Operating License Nos. DPR-80 and DPR-82 which would authorize the Licensee to increase the Diablo Canyon Nuclear Power Plant, Unit 1 and Unit 2, spent fuel storage capacity from 270 to 1324 storage locations for each unit. In response to this notice Consumers Organized for Defense of Environmental Safety (CODES) and the Sierra Club, Santa Lucia Chapter (Sierra Club) filed timely petitions for leave to intervene. The Staff's response to these petitions is set forth below.

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II. DISCUSSION

A. The Standards for Intervention

I. Petitioners Must Meet the "Interest" Requirements of 10 C.F.R. § 2.714

Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a), provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Section 2.714(a)(2) of the Commission's Rules of Practice, 10 C.F.R. § 2.714(a)(2), requires that a petition to intervene in a Commission proceeding set forth with particularity:

- (1) the interest of the petitioner in the proceeding;
- (2) how that interest may be affected by the results of the proceeding; and
- (3) the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

In order for intervention to be granted, the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing must find that the petition satisfies these standards. ^{1/}

In determining whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the Commis-

^{1/} Intervention may also be granted as a matter of discretion to a petitioner who is not entitled to intervention as a matter of right if the petitioner can show that the Commission's specific criteria weigh in favor of discretionary intervention. See Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Since, the instant petitioners have not addressed these criteria, which is their burden (Nuclear Engineering Company (Sheffield, Illinois, Low-Level Radiation Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978)), discretionary intervention will not be discussed further.

sion's Rules of Practice is present, the Commission has held that contemporaneous judicial concepts of standing are controlling. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Thus, there must be a showing (1) that the action being challenged could cause "injury-in-fact" to the person seeking to intervene ^{2/} and (2) that such injury is arguably within the "zone of interests" protected by the Atomic Energy Act ^{3/} of the National Environmental Policy Act. ^{4/} Id. See also Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970). Close proximity of a petitioner's residence, standing alone, is sufficient to satisfy the interest requirements. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

An organization may gain standing to intervene based on injury to itself. Edlow International Company, CLI-76-6, 3 NRC 563, 572-74 (1976). If the organization seeks standing on its own behalf, it must

^{2/} "Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on a petitioner will not confer standing. See In the Matter of Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC 525, 531 (1977); Pebble Springs, CLI-76-27, supra, 4 NRC at 613. Rather the asserted harm must have some particular effect on a petitioner, Ten Applications, CLI-77-24, supra, and a petitioner must have some direct stake in the outcome of the proceeding. See Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

^{3/} 42 U.S.C. § 2011 et seq.

^{4/} 42 U.S.C. § 4321 et seq.

establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. Ten Applications, CLI-77-24, supra, at 531. On the other hand, an organization may establish standing through members of the organization who have an interest which may be affected by the outcome of the proceeding. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). When an organization claims that its standing is based on the interests of its members, the organization must identify one or more individual members (by name and address) whose interests may be affected and give some concrete indication that such members have authorized the organization to represent their interests in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973); Duquesne Light Company, et al. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 at n.2 (1973). Specific representational authorization of a member with personal standing is not required where the sole or primary purpose of the petitioning organization is to oppose nuclear power in general or the particular facility at bar. Allens Creek, ALAB-535, supra, at 396. ^{5/}

^{5/} Further, under Section 2.713 of the Commission's Rules of Practice, a "partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law." 10 C.F.R. § 2.713(b) (emphasis added). Thus, where an organization is represented by one of its members, the member must demonstrate authorization by that organization to represent it.

2. Petitioners Must Meet the "Aspect" Requirements of 10 C.F.R. § 2.714

In addition to demonstrating "interest", a petitioner must set forth "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). ^{6/} While there is little guidance in NRC case law as to the meaning of "aspect" as the term is used in 10 C.F.R. § 2.714, it appears that a petitioner may satisfy this requirement by identifying general potential effects of the licensing action or areas of concern which are within the scope of matters that may be considered in the proceeding. ^{7/} See

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

It is clear that groups may not represent persons other than their own members, and individuals may not assert the interest of other persons. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483 (1977); Watts Bar, ALAB-413, supra at 1421; Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474 n.1 (1978). There is, under the Atomic Energy Act and the Commission's regulations, no provision for private attorneys general. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976); Long Island Lighting Company, LBP-77-11, supra, at 483.

^{6/} 10 C.F.R. § 2.714 also requires the petitioner to file ". . . a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." This section further provides: "A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party." The NRC staff will respond to the contentions set forth in the supplements after their receipt. Accordingly, nothing said herein by the Staff regarding a petitioner's "aspects" is intended to apply in any way to a petitioner's satisfaction of the 10 C.F.R. § 2.714 contention requirements.

^{7/} The subject matter of the proceeding, for purposes of identification of "aspects" relates to the question of public health and safety of

(FOOTNOTE CONTINUED ON NEXT PAGE)

North Anna, ALAB-146, supra, at 633; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), Licensing Board "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference", dated September 21, 1979, slip. op. at 6 (unpublished Order).

B. Evaluation of CODES Petition
1. CODES Interest and Standing

Consumers Organized for Defense of Environmental Safety (CODES) has petitioned for leave to intervene on its own behalf and on behalf of its members. The injury alleged by CODES on its own behalf is based on its ". . . long term interest in the safety and costs of Diablo Canyon to the ratepayers, members of the community, residents and business of the San Luis Obispo area." Petition at 1. As to its members, CODES asserts that the proposed action could cause personal and property damage to its members "[a]s residents, property owners, ratepayers, taxpayers and workers in an area impacted by the facility." Petition at 1. These generalized assertions of injury are insufficient to satisfy the criteria, identified above, for establishing the interest and standing of organizations. Edlow International Company, CLI-76-6, supra, at 572-74; Ten Applications, CLI-77-24, supra, at 531. Further, the petition does not demonstrate standing through its members since it does not identify the address of at least one member who resides within close proximity to the Diablo Canyon Nuclear Power Plant (North Anna, ALAB-522, supra) and

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

the proposed action (issuance of the amendments) and not the procedural determination made by the Commission staff concerning whether or not the proposed action involves a "significant hazards consideration." See 48 Fed. Reg. 14864, 14865 (April 6, 1983).

who has authorized CODES to represent his or her interest in the proceeding. Allens Creek, ALAB-535, supra, at 393-97.

The Petitioner can remedy these deficiencies by amending its petition to demonstrate standing either based on injury to the organization itself or based on the standing of one of its members (e.g. the identification of the address of at least one member indicating residence within close proximity to the Diablo Canyon facility, see North Anna, ALAB-522, supra, as well as the requisite authorization by such individual that the organization represent his or her interest, see Allens Creek, ALAB-535, supra). Until such showing is made, CODES petition is defective.

2. Specific Aspects of the Subject Matter of the Proceeding

CODES petition has expressed two concerns that fall within the scope of this proceeding; they are whether the seismic design of the spent fuel pool as modified by the proposal is adequate and whether adequate consideration has been given to the possibility of human error and its consequences. Petition at 1, 2. Accordingly, the Staff finds that CODES petition does properly set forth a specific aspect of the proposed amendments on which it wishes to intervene.

C. Evaluation of the Sierra Club Petition

1. Sierra Club Interest and Standing

The Santa Lucia Chapter of the Sierra Club ("Sierra Club") has also petitioned for leave to intervene on its own behalf and on behalf of its members. With respect to injury to itself, the Sierra Club asserts its ". . . long-standing concern with the safety of the power plant facilities." Petition at 1. With respect to its members, the Sierra Club alleges that the personal health and safety of its members and their families is endangered and that its members, as property owners and business

operators in San Luis Obispo County, would suffer considerable financial losses if the amendments were approved. Id. These generalized assertions of injury are insufficient to satisfy the criteria, identified above, for establishing the interest and standing of organizations. Edlow International Company, CLI-76-6, supra, at 572-74; Ten Applications, CLI-77-24, supra, at 531. Further, the petition does not demonstrate standing through its members since it does not identify the address of at least one member who resides in within close proximity to the Diablo Canyon Nuclear Power Plant (North Anna, ALAB-522, supra) and who has authorized the Sierra Club to represent his or her interest in the proceeding. Allens Creek, ALAB-535, supra at 393-97.

The Petitioner can remedy these deficiencies by amending its petition to demonstrate standing either based on injury to the organization itself or based on the standing of one of its members (e.g. the identification of the address of at least one member indicating residence within close proximity to the Diablo Canyon facility, see North Anna, ALAB-522, supra, as well as the requisite authorization by such individual that the organization represent his or her interest, see Allens Creek, ALAB-535, supra). Until such showing is made, Sierra Club's petition is defective.

2. Specific Aspects of the Subject Matter of the Proceeding


Sierra Club's petition has expressed two concerns that fall within the scope of this proceeding; they are whether adequate consideration has been given to the consequences of a "seismic event" in light of the proposed amendments and whether adequate consideration has been given to the consequences of a loss of spent fuel cooling in light of the proposed amendments. Petition at 1. Accordingly, the Staff finds that the Sierra

Club petition does properly set forth a specific aspect of the proposed amendments on which it wishes to intervene.

III. CONCLUSION

For the reasons stated above, the NRC staff believes that the petitions for leave to intervene filed on behalf of CODES and the Sierra Club satisfy the "aspect" requirements of 10 C.F.R. § 2.714 but have failed to satisfy the standing requirements of 10 C.F.R. § 2.714. The Staff notes that these organizations may seek to cure these deficiencies consistent with 10 C.F.R. § 2.714(a)(3).

Respectfully submitted,


Henry J. McGurran
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 3rd day of March, 1986

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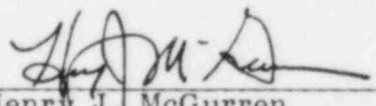
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

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Respectfully submitted,


Henry J. McGurren
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Dated at Bethesda, Maryland
this 3rd day of March, 1986

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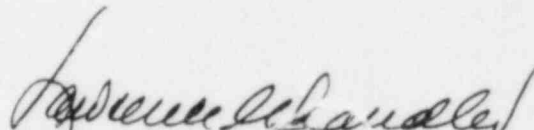
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Special Litigation Counsel

Dated at Bethesda, Maryland
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Docket Nos. 50-275 OLA
50-323 OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF THE NRC STAFF TO THE PETITIONS FOR LEAVE TO INTERVENE FILED BY CONSUMERS ORGANIZED FOR DEFENSE OF ENVIRONMENTAL SAFETY AND THE SIERRA CLUB" and "NOTICES OF APPEARANCE" for Henry J. McGurran and Lawrence J. Chandler 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 3rd day of March, 1986:

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