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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Vermont Yankee Nuclear Power)	Docket No. 50-271-OLA
Power Corporation)	
)	
(Vermont Yankee Nuclear Power)	
Station))	

NRC STAFF RESPONSE TO PETITION
TO INTERVENE FILED BY THE STATE OF VERMONT

I. INTRODUCTION

On December 31, 1986, the Nuclear Regulatory Commission published in the Federal Register (51 Fed. Reg. 47,324) a notice entitled, "Vermont Yankee Nuclear Power Corp.; Consideration of issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The notice concerned Vermont Yankee Nuclear Power Corporation's (the Licensee) April 26, 1986 application for an amendment to its operating license for the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont. The proposed amendment would revise the Vermont Yankee Technical Specifications to authorize the Licensee to increase the storage capacity of the spent fuel pool from 2000 fuel assemblies to 2870 assemblies.

The notice also stated that on June 18, 1986, the Commission had issued a Bi-weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations (51 Fed. Reg. 22,226), which included notice concerning the proposed amendment of the

Vermont Yankee license. The notice of June 18, 1986 included the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination and offered an opportunity for the Licensee to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene. It failed, however, to provide the notice required by the Commission's regulation implementing Section 134 of the Nuclear Waste Policy Act of 1982, i.e. 10 C.F.R. § 2.1107. Section 2.1107 requires that the notice of proposed action published in the Federal Register concerning an application for an amendment to allow expansion of spent fuel pool storage capacity identify the availability of hybrid hearing procedures. The Commission's notice of December 31, 1986 supplied the information regarding hybrid hearing procedures required by 10 C.F.R. § 2.1107 and stated that any person whose interest might be affected and who wished to invoke the hybrid hearing procedures should file a written petition for leave to intervene.

On January 29, 1987, the State of Vermont filed a "Petition to Intervene" (petition). The NRC staff's response to the State's petition is set forth below.

II. DISCUSSION

The State of Vermont requests a hybrid hearing. The requirements of 10 C.F.R. § 2.714 are applicable to hybrid hearings. 10 C.F.R. § 2.1107. Only parties may request the hybrid procedures. However, Vermont's request is pursuant to the Commission's renote of

December 31, 1986, limiting timely petitions to those seeking to invoke the hybrid procedures.

A. The Standards for Intervention

1. 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/}

^{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 (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Since the State of Vermont has not ad-

In determining whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the Commission'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 v. Camp, 397 U.S. 150, 153 (1970).

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

dressed these criteria, which is its 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.

^{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, Exxon Nuclear Company (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 (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.

2. 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). ^{5/} While there is little guidance in NRC case law concerning 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. ^{6/} See, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973); 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).

^{5/} 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 here by the Staff regarding the petition's "aspects" is intended to apply in any way to satisfaction of the 10 C.F.R. § 2.714 contention requirements.

^{6/} The subject matter of the proceeding for purposes of identification of "aspects" relates to the question of public health and safety of the proposed action (issuance of the amendment) and not the procedural determination made by the Commission staff concerning whether or not the proposed action involves a "significant hazards consideration." See, 5148 Fed. Reg. 7747 (March 6, 1986).

B. The State of Vermont's Petition

1. Interest and Standing

The State of Vermont states that it has a clear responsibility to insure that the health, welfare and safety of its people is not compromised by an improvident granting of the proposed license amendment. Petition at 2. It further states that an increase in storage capacity of the spent fuel pool and the subsequent filling of that capacity could create increased risk to the public in the event of an accident involving the pool. Petition at 2-3. Thus, the Staff believes that the State has adequately set forth its interest and has shown how its interest might be affected by the outcome of the proceeding. Accordingly, the State has made the showing necessary to a finding that it has standing to intervene.

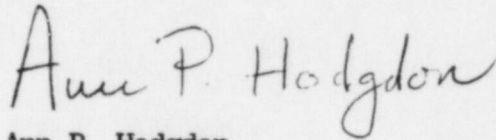
2. Specific Aspects of the Subject Matter of the Proceeding

The State of Vermont has identified eight aspects on which it wishes to intervene. At least one of the aspects that the State identifies, "questions concerning the extent to which increased spent fuel storage would exacerbate the effect of a severe accident," (Petition at 4) is within the scope of the notice and thus of any proceeding that might be conducted pursuant to that notice. Accordingly, in the Staff's view, the State of Vermont has properly identified at least one aspect on which it wishes to participate.

III. CONCLUSION

As discussed above, the NRC staff believes that the State of Vermont's petition satisfies the standing and "aspect" requirements of § 2.714.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ann P. Hodgdon". The signature is written in dark ink and is positioned above the printed name and title.

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 18th day of February, 1987