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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Presiding Officer

In the Matter of DUKE COGEMA STONE & WEBSTER	)	Docket No. 070-03098
Mixed Oxide Fuel Fabrication Facility (Construction Authorization Request)	)	

Duke Cogema Stone & Webster's Answer to Environmentalists, Inc. Request for Hearing and Petition to Intervene Regarding the Mixed Oxide Fuel Fabrication Facility Construction Authorization Request

I. INTRODUCTION

Duke Cogema Stone & Webster ("DCS") hereby submits its Answer to Environmentalists, Inc.'s ("EI") Request for Hearing and Petition to Intervene regarding the Mixed Oxide Fuel Fabrication Facility ("MOX Facility") Construction Authorization Request ("CAR"). DCS, pursuant to 10 CFR § 70.22(f), has submitted to the Nuclear Regulatory Commission ("NRC") a CAR for a proposed MOX Facility to be located on the U.S. Department of Energy's ("DOE") Savannah River Site ("SRS") in South Carolina.[1] DCS is the contractor that has been selected by the DOE to design, construct, operate and deactivate the MOX Facility

[1] Letter from Robert H. Idhe to William F. Kane, February 28, 2001.

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as part of the U.S. government's overall program to disposition surplus weapons-grade plutonium in the wake of the ending of the Cold War.

On April 18, 2001, the NRC published in the Federal Register a "Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application for Authority to Construct a Mixed Oxide Fuel Fabrication Facility" ("Notice").[2] On May 18, 2001, EI requested an NRC hearing on the CAR ("Request for Hearing" or "Request").

Under the Atomic Energy Act of 1954, as amended ("AEA"), and NRC regulations, a hearing on the MOX Facility CAR is not mandatory. Rather, a hearing will only be held upon the request of a person or organization "*whose interest may be affected*" if the CAR is approved.[3] The person requesting the hearing bears the burden of demonstrating the need for a hearing.[4] In this case, such a demonstration will entail two separate but essential showings: first, that EI has legal standing to request a hearing regarding the MOX Facility CAR; and second, that EI has at least one admissible contention related to the MOX Facility CAR.[5]

Pursuant to the NRC's Notice, only the first showing was to be addressed at this stage of the proceeding.[6] However, EI chose to combine its standing argument and its presentation of contentions in a single pleading, while at the same time attempting to "reserve the right to amend this document, particularly in regard to adding contentions."[7] Nothing in the NRC Notice or

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[2] 66 *Fed. Reg.* 19,994 (2001).

[3] Atomic Energy Act of 1959, as amended, § 189(a), 42 U.S.C. § 2239(a) (emphasis supplied); *see also* 10 CFR § 2.1205.

[4] *See e.g., Babcock & Wilcox* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 48 (1994).

[5] *See* 66 *Fed. Reg.* 19,996.

[6] *Id.*

[7] *See* Request at 9.

NRC regulations allows it to do so, however.[8] Accordingly, DCS responds to both EI's standing argument and its contentions in this Answer.

II. ENVIRONMENTALISTS, INC. HAS NOT DEMONSTRATED STANDING

The NRC applies basic judicial concepts of standing.[9] Accordingly, EI must demonstrate that if the CAR is approved by the NRC:

(1) it will likely suffer a direct, palpable injury that is within the zone of interests protected by the AEA or the National Environmental Policy Act of 1969 ("NEPA")[10];

(2) the injury is traceable to the NRC's approval of the MOX Facility CAR (*i.e.*, causation); and

(3) the injury can be redressed by a decision in this proceeding.[11]

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[8] *See* 10 CFR § 2.1205. While 10 CFR § 2.714(a)(3) enables a petitioner to amend its petition at any time 15 days prior to the first prehearing conference, this provision is contained in Subpart G to Part 2. The current proceeding is being conducted under Subpart L, which has no similar provision. *See* 66 *Fed. Reg.* at 19,995. The NRC's Notice specifies only that the Presiding Officer will "evaluate [contentions] using the standards set forth in 10 CFR 2.714(b)(2)." It does not make all of Section 2.714 applicable to this proceeding. Therefore, in this proceeding, EI does not have the right to amend its Request in order to cure its defects. *See also Babcock and Wilcox*, 39 NRC at 48, 49 (noting that Subpart L proceedings do not provide an opportunity for intervenors to amend their petitions without leave of the Presiding Officer). Although a Presiding Officer may exercise discretion to allow amendment of Subpart L hearing requests, *see id.*, no such privilege is warranted in this case. EI – and Ms. Ruth Thomas – have participated in NRC proceedings in the past, and are therefore well aware of the essential pleading requirements in such proceedings. *See, e.g., Allied General Nuclear Services* (Barnwell Nuclear Fuel Plant), LBP-74-50, 8 AEC 101 (1974); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95 (1994).

[9] *See, e.g., Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *Portland General Elec. Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976).

[10] 42 USC §§ 4321 to 4370f.

[11] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Westinghouse Elec. Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 258-59 (1980).

These elements constitute the "irreducible constitutional minimum" requirements for standing in NRC proceedings.[12]

As discussed below, EI has failed to demonstrate standing, either as the representative of its members (representational standing), or in its own capacity (organizational standing).

A. ENVIRONMENTALISTS, INC. HAS NOT DEMONSTRATED REPRESENTATIONAL STANDING

In order to establish standing to represent its members, a petitioning organization must show:

(1) its members have standing in their own right;

(2) the interests the organization seeks to protect are germane to its purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members.[13]

The injury in fact showing required for standing "requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured."[14] To demonstrate representational standing, EI must show that the approval of the MOX Facility CAR is likely to cause its members to suffer distinct and palpable injury:[15]

> [T]he asserted injury must be 'distinct and palpable,' and 'particular [and] concrete,' as opposed to being 'conjectural...[,] hypothetical,' or 'abstract'... [W]hen future harm is asserted, it

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[12] *Bennett v. Spear*, 520 U.S. 154, 167 (1997); *Department of the Army* (Aberdeen Proving Ground, Maryland), LBP-99-38, 50 NRC 227, 229 (1999).

[13] *See Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *see also Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396-97 (1979).

[14] *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972).

[15] *See e.g., Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353 (1999).

must be 'threatened,' 'certainly impending,' and 'real and immediate.'[16]

In addition, to invoke representational standing, EI must identify at least one member whose interests it is authorized to represent, and provide the member's place of residence and the extent of the member's activities near the facility.[17] EI lists six members upon whom it bases its representational standing. However, there is no indication that any of those individuals has expressly authorized EI to represent his or her interests. Moreover, EI has failed to sufficiently particularize any injury to those individuals that might result from NRC's approval of the MOX Facility CAR.

EI's Request first contains a large number of general, unparticularized claims of injury as bases for standing in this proceeding.[18] In particular, in paragraphs 2-4 of the Request, EI alleges that it has members "who live or own property" or who "work[] or tak[e] part in recreational activities within areas which may be adversely affected by" either:

- "plutonium recovery operations";
- "the proposed mixed-oxide fuel fabrication facility";
- "the use of [MOX] fuel in two of Duke Power's nuclear reactors"; or

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[16] *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 121 (1992), *quoting Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (*quoting Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)).

[17] *See Energy Fuels Nuclear Inc.* (White Mesa Uranium Mill), LBP-97-10, 45 NRC 429, 431 (1997) (noting that "an organization typically would file an affidavit showing...that a particular person or group of people, whom it is authorized to represent, live in particular addresses, stating how far they live from the proposed [facility]"); *Northern States Power Co.* (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138, 141 (1996); *Babcock and Wilcox,* 39 NRC at 50; *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), LBP-91-4, 33 NRC 153, 158 (1991).

[18] Request at 2-4.

- "other related activities, such as transportation of radioactive materials and radioactive waste management."[19]

EI may not rely for standing upon issues that are outside the scope of this proceeding.[20] Instead, it must show that the alleged injuries may result, in a "concretely demonstrable way," from the approval of the MOX Facility CAR.[21] As discussed below, any alleged injuries that may result from: (1) "plutonium recovery operations"; (2) use of MOX fuel in the Duke reactors; or (3) the safety of transportation and waste management activities are clearly outside the scope of this proceeding and do not confer any basis for standing.

First, in mentioning plutonium recovery operations, EI is apparently referring to activities which would occur not at the MOX Facility, but at the separate Pit Disassembly and Conversion Facility ("PDCF") to be developed by DOE at SRS. Because the PDCF is solely under the jurisdiction and control of the DOE,[22] assertions regarding activities conducted at that facility are beyond the scope of the proceeding and are therefore inadequate to confer standing.

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[19] *Id.* Paragraph 4 on pages 3-4 of the Request (including all of its subparagraphs 1-11) does little more than restate the obvious point that persons who live, work, own property, or engage in recreation in a given area use such property, travel on the roads, breathe the air, drink the water, eat local produce and other foods, and derive income from the area. In addition, EI's assertion that "privacy rights" will be infringed is clearly outside the zone of interests protected by the AEA and NEPA. *See Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), 5 NRC 1418, 1420 (1977); *Gulf States Utilities Co.* (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31, 37 (1994) (explaining that the zone of interests encompassed by the AEA is radiological health and safety, while the zone of interests covered by NEPA is the identification and balancing of environmental harms). Thus, paragraph 4 adds nothing of any substance to EI's claim of representational standing.

[20] *See generally, Westinghouse Electric Corp.*, 12 NRC at 260 ("Intervention may not be based on claims pertaining to matters that are beyond the scope of this proceeding").

[21] *Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility) LBP-93-4, 37 NRC 72, 81 (1993); *see also Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 NRC 149, 155 (1998) ("the assertion of an injury without also establishing the causal link to the challenged [agency action] is insufficient to establish...standing").

[22] *See* Surplus Plutonium Disposition ("SPD") Final EIS, Sec. 2.4.4.1, p. 2-37.

Second, throughout the Request, EI cites "the use of [MOX] fuel in two of Duke Power's nuclear reactors"[23] as a basis for standing. In particular, EI bases its claim for standing on behalf of William Gregg Jocoy, Nancy Lynn Jocoy, Marian Minerd,[24] and Jess Riley upon these individuals' proximity to the reactor facilities.[25]

The agency action at issue is the NRC's review of the CAR for the MOX Facility. Since this proceeding does not encompass issues related to the use of MOX fuel in reactors, such claims are not acceptable bases for standing. Furthermore, EI fails to particularize any injury to the Jocoys, Ms. Minerd or Mr. Riley that could be attributed to the NRC's approval of the MOX Facility CAR. There is no plausible way in which these individuals could be adversely affected by the MOX Facility, since their respective properties are located over 100 miles away from SRS.[26]

Third, allegations regarding the safety of transportation of radioactive materials are also inappropriate as bases for standing. EI asserts that all of the named individuals (except Ms. Minerd) "travel over" MOX fuel transportation routes.[27] DCS will not be transporting feed material to, or MOX fuel from, the MOX Facility. Such transportation will be provided by DOE or another of its contractors.[28] Consequently, any assertion regarding the safety of transportation

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[23] Request at 2.

[24] Ms. Minerd also claims standing based upon "her employees [sic] health and the health of those who shop at her store." However, there is no indication that EI has been authorized to represent the interests of Ms. Minerd's unnamed employees and customers - who may or may not be EI members.

[25] Request at 4, 5.

[26] Distances from Rock Hill and Fort Mill to Aiken (103 miles and 109 miles, respectively) determined using Landview, a mapping program developed by the U.S. Bureau of the Census. *See* www.census.gov/geo/www/tiger/landview.html

[27] *See* Request at 4, 5.

[28] *See* SPD Final EIS, Section 2.4.4.1, p. 2-37.

of feed materials or MOX fuel is beyond the scope of the proceeding and is not appropriate for consideration as a basis for standing.[29]

In any event, the NRC has consistently denied standing based upon a petitioner's proximity to a transportation route. For example, in *Northern States Power Co.*, a petitioner claimed that truck shipments of radioactive waste from decommissioning would be routed within a mile of his home, and that a transportation accident would expose him to unacceptable levels of radioactivity.[30] The Licensing Board held that:

> Nuclear waste safely and regularly moves via truck and rail throughout the nation under regulations of the NRC and Department of Transportation. The mere fact that additional radioactive waste will be transported if decommissioning is authorized does not ipso facto establish that there is a reasonable opportunity for an accident to occur...or for the radioactive materials to escape because of accident or the nature of the substance being transported.[31]

Similarly, in *Exxon Nuclear Co.*, a petitioner was denied standing based upon an allegation that spent fuel rods would be shipped over train tracks "very near to her home."[32] The NRC held that petitioner's "allegations of possible physical and/or economic injury are entirely speculative in nature, being predicated on the tenuous assumptions that the spent fuel will be shipped by the named carrier and that an accident might occur in the area proximate either to her residence or to her rental property."[33]

EI's allegations of injury from the transportation of radioactive materials fall short of even the petitioners' claims in *Northern States Power Co.* and *Exxon Nuclear Co.* EI has not

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[29] *See Westinghouse Electric Corp.*, 12 NRC at 260 (1980) ("Intervention may not be based on claims pertaining to matters that are beyond the scope of this proceeding").

[30] *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 42 (1990).

[31] *Id.* at 43.

[32] *Exxon Nuclear Co., Inc.* (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519 (1977).

[33] *Id.* at 520.

provided any information regarding the actual distances from the transportation routes to its members' residences or businesses. Indeed, EI does not even claim that its members live near such routes; rather, it relies on the broad statement that they "travel over" the "roads that would be used to transport" MOX fuel. EI fails to mention the frequency of such travel. Such general, unsupported assertions are clearly inadequate to confer standing.

Finally, EI's allegations of harm resulting from "waste management activities" or the "collection of high level radioactive waste,"[34] are inappropriate in this proceeding. These claims provide insufficient information regarding the type of waste – and the type of "activities" – that EI is concerned about. Furthermore, allegations regarding high-level radioactive waste are irrelevant since no such waste will be produced at the MOX Facility.[35]

EI also generally alleges that it has members who live, work, own property or engage in recreational activities within areas that might be affected by the MOX Facility itself. In particular, it alleges that J.S. McMillan[36] and Edward Giusto own property and reside approximately 20 miles from the SRS. The mere fact that these individuals reside at a location in the general vicinity of the MOX Facility is not sufficient to confer standing. Although the NRC has presumed standing in reactor operating license proceedings where persons have resided within "the zone of possible harm from the nuclear reactor or source of radioactivity" (generally

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[34] Request at 3.

[35] NRC regulations define high-level radioactive waste as "(1) irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and (3) solids into which such liquid wastes have been converted." 10 C.F.R. § 60.2. There is no such material associated with the MOX Facility. *See* SPD Final EIS Section 4.4.2.2., page 4-56; MOX Facility Environmental Report, Section 3.3.3, page 3-17.

[36] EI has failed to provide Mr. McMillan's address. *See generally Energy Fuels Nuclear Inc.*, 45 NRC at 431 (noting that "an organization typically would file an affidavit showing...that a particular person or group of people, whom it is authorized to represent, live in particular addresses, stating how far they live from the proposed [facility]"). In addition, there is no indication that EI has been authorized to represent the interests of Mr. McMillan's unnamed customers - who may or may not be EI members.

considered to be within a 40-50 mile radius),[37] such a presumption is unavailable in this non-reactor case.[38] Indeed, DCS is not aware of any case in which a petitioner has been afforded standing based upon residence within 20 miles of a materials or fuel cycle facility.[39]

The proximity presumption is only applicable in proceedings where "the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences."[40] The proposed MOX Facility is to be located almost six miles inside the SRS boundary at its closest point.[41] The analysis in the CAR shows that any radiological consequences at the SRS boundary as a result of an accident would be low - approximately 10 mrem for the most bounding accident.[42] Obviously, the dose to Mr. McMillan and Mr. Guisto, who reside approximately 20 miles away, would be substantially less than that. Therefore, it should not be presumed that they would be affected by an accident at the MOX Facility based merely upon the location of their residence.

Furthermore, EI's allegations of injury are far too vague to demonstrate the existence of a particularized injury in fact. For example, EI alleges that:

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37 *Florida Power and Light Co.* (Turkey Point, Units 3 and 4), LBP-01-06, 2001 WL 261863, at *3 (2001).

38 *See, e.g., Florida Power and Light Co. (St. Lucie, Units 1 and 2)*, CLI-89-21, 30 NRC 325, 329-30 (1989) (holding that in cases not involving the construction, operation, or major alteration of a nuclear reactor or facility involving an obvious potential for significant offsite consequences, 50-mile proximity is insufficient to establish standing).

39 DCS has identified one proceeding involving renewal of both a reactor operating license and its related special nuclear material license, in which a Licensing Board granted standing to an individual who lived approximately 30 miles away from the facility. However, the facility at issue was a reactor, and neither the Applicant nor the NRC Staff raised the proximity issue. *General Electric Company* (GETR Vallecitos), LBP-83-19, 17 NRC 573, 576-77 (1983).

40 *Florida Power and Light Company* (Turkey Point, Units 3 and 4), 2001 WL 261863, at *3, *citing Georgia Inst. of Tech.*, 42 NRC at 116 (emphasis supplied). Standing is presumed for persons whose location is proximate to a power reactor because such facilities operate at high pressures, and therefore have a large source of energy for dispersing radioactive material over a wide area in the event of an accident. Comparable sources of energy do not exist at the MOX Facility.

41 *See* MOX Facility CAR, Section 1.3.1.1

42 *See id.* at Section 5.5.3 and Table 5.5-26.

- there is a "possibility that people's lives and their natural environment will be damaged";
- there are "inadequacies [in] the Applicant's Environmental Report";
- there will be a "possible detrimental impact on the economic well-being of farmers, those owning business, [and others due to] radioactive fallout"; and
- there is a "threat from terrorist activities."[43]

EI also generally alleges that there will be releases of radioactivity and the potential for contamination into the "atmosphere, water or other environs," including the "Savannah River and other waterways," "parks and other public areas," "air and drinking water," and local foods and "agricultural produce."[44]

Similar vague claims were rejected in *Northern States Power Co.*, where petitioners alleged that environmental and radiological impacts of a proposed decommissioning would "degrade the soil, water, and air." The Licensing Board denied standing, holding that the allegation was "too general to be legally sufficient,"[45] and explaining:

> Information should be furnished to establish the locale of the soil, water and air that is the subject of the concern, and the relationship of the organization to it and a statement as to the nature of the environmental and radiological impacts that are expected to cause the alleged degradation.[46]

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[43] Request at 2-4.

[44] *Id.* at 3, 4.

[45] *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 315 (1989).

[46] *Id.*

EI has failed to meet this basic standard of specificity in its allegations.[47]

Likewise, a vague concern that the approval of the CAR might in some way affect locally produced food or other agricultural products is clearly insufficient to confer standing. The Licensing Board denied standing under similar circumstances in *Philadelphia Electric Co.*, where the petitioner alleged that a nuclear facility "will cause radiologically contaminated food, which [petitioner] may consume."[48] The Board held that such "allegations are too remote and too generalized to provide a basis for standing to intervene," and that even if the allegations were assumed to be true, the Licensing Board "will not take it upon itself to manufacture through sheer speculation a mechanism by which the petitioner might conceivably receive the injury he fears."[49]

EI also asserts alleged "economic" injuries. But again, its allegations are remote and speculative, and it fails to particularize any injury to EI's members that may be linked to the NRC's approval of the MOX Facility CAR. Furthermore, EI may not assert harm to non-members as a basis for standing.[50] To the extent that EI has "framed [its] concerns in terms of

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47 *See Atlas Corp.* (Moab, Utah Facility), LBP-97-10, 45 NRC 414, 425-26 (1997) (rejecting standing based on allegation that petitioner may suffer radiological harm as a result of "drinking, bathing, and cooking" with water from a river flowing next to the challenged facility, because he had "not provided any information that indicates whether these water-related activities are being conducted upstream or downstream from the facility, a fact critical to establishing whether these activities will establish the requisite injury in fact").

48 *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-43A, 15 NRC 1423, 1449 (1982)

49 *Id. See also Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979) (refusing to allow intervention on the basis of the possibility of petitioners consuming produce, meat products, or fish originating within 50 miles of the site).

50 EI relies upon allegations of harm to non-members as its bases for standing numerous times in the Request. *See, e.g.,* Request at 3 (claiming "future generations are also stakeholders who need to be represented by Petitioner"); Request at 2 (referencing non members who "could be harmed in terms of...endangerment of their health and safety").

undefined economic injury to the local community as a whole," such injuries are not cognizable.[51]

Based upon the above, EI has failed to demonstrate it has standing to represent its members.

B. ENVIRONMENTALISTS, INC. HAS FAILED TO DEMONSTRATE ORGANIZATIONAL STANDING

As an organization, EI provides two bases for standing:

(1) It is "a responsible public-interest organization concerned with the construction and operation of nuclear facilities in such a way as to eliminate uncalled for risks to the health, welfare and safety of the public and to the environment as a whole..."[52]

(2) It desires "to ensure that the provisions of NEPA, the AEA, and other federal and state legislation for the preservation of environmental qualities and the protection of people from the damaging effects of radiation are enforced."[53]

These alleged injuries constitute the type of "generalized grievance...shared by the general public" that have been consistently rejected by the NRC as bases for standing.[54] The Licensing

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[51] *Babcock and Wilcox*, 37 NRC at 94, n. 64.

[52] Request at 6.

[53] *Id.* EI also references the NEPA requirement that the NRC prepare an EIS for major agency actions such as its approval of the MOX Facility CAR, and notes that "skip[ing] this step" would constitute a violation of NEPA. *See* Request at 6. This general statement does not actually assert a basis for standing, and is, in any event, a moot point in light of the NRC's published decision to prepare an EIS for the MOX Facility. *See* 66 *Fed. Reg.* 13,794 (2001).

[54] *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 529 (1991) (affirming denial of standing to organization claiming a generalized grievance – alleged danger from a nuclear power plant – that is shared by the general public) *see also Babcock and Wilcox*, 39 NRC at 50 (rejecting standing for an organization requesting a hearing "on behalf of the citizens of Kiski Valley" and "seek[ing] to protect 'property values and the health and safety of the remaining general population'" because an organization "may not undertake to represent the general public as if [it] were [a] private attorney[] general").

Board has recently reiterated that standing cannot be based upon a general interest in ensuring the NRC's compliance with the dictates of federal and state laws and regulations.[55] "The Commission has made it abundantly clear that the assertion of...a general interest – again, one that is not unique to the organization asserting it but rather is broadly held – cannot serve to confer standing."[56]

A mere "interest in the problem" – no matter how longstanding – is insufficient to give an organization standing.[57] In *Sierra Club v. Morton*, the U.S. Supreme Court stated that an organization could not predicate its standing to enjoin agency approval of a commercial development in a national game refuge upon an asserted "special interest in the conservation and the sound maintenance of the national parks, game refuges and forests of the country."[58] The basis for the holding was that:

> [A] mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved'...[I]f a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived....[59]

Similarly, in *Dellums v. United States Nuclear Regulatory Commission*, the court found that "the interests of [an] organization in 'opposing nuclear proliferation and ensuring proper safeguards for nuclear energy'" constitute a generalized goal insufficient to confer standing.[60]

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55 *See International Uranium (USA) Corp.* (White Mesa Uranium Mill), 2001 WL 472989, *4 (2001).

56 *Id.*

57 *Sierra Club v. Morton*, 405 U.S. at 739; *Dellums v. NRC*, 863 F.2d 968, 972 (D.C. Cir. 1988).

58 *Sierra Club*, 405 U.S. at 730.

59 *Id.* at 739.

60 *Dellums*, 863 F.2d at 972.

The court held that "even assuming the NRC's orders would adversely affect the [organization's] general interest, this court has consistently held that harm to an interest in 'seeing the law obeyed or a social goal furthered' does not constitute injury in fact."[61]

Under these well-established precedents, EI must allege facts showing that it will be adversely affected by the NRC's approval of the MOX Facility CAR.[62] To allow EI to participate in a hearing without such a showing would be to allow any individual or organization to "vindicate [its] own value preferences through the judicial process."[63] The required showing is nowhere to be found. The Request leaves the NRC to speculate as to which of EI's interests might be injured.

As a result, EI has failed to demonstrate that it has standing as an organization.

III. ENVIRONMENTALISTS, INC. HAS NOT SUBMITTED AN ADMISSIBLE CONTENTION

In order to intervene in an NRC licensing proceeding, an individual or group must demonstrate both that it has standing, and "proffer with specificity at least one admissible contention."[64] Under the NRC's Notice,[65] the admissibility of contentions is governed by 10 CFR § 2.714(b)(2), which requires that "[e]ach contention must consist of a specific statement

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61 *Id.*

62 *See Private Fuel Storage* (Independent Spent Fuel Storage Installation), 2000 WL 1099908, *3 (2000); *American Legal Fund v. FCC*, 808 F.2d 84, 92 (D.C. Cir., 1987).

63 *Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976), *citing Sierra Club*, 405 U.S. at 740.

64 *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996); *Gulf States Utility Company* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994).

65 66 *Fed. Reg.* at 19,996.

of the issue of law or fact to be raised or controverted." Under Section 2.714(b)(2), "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..., together with references to those specific sources and documents... on which the petitioner intends to rely to establish those facts or expert opinion;
> (iii) Sufficient information 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.

"A contention that fails to meet any one of these standards must be dismissed, as must a contention that, even if proven, would be of no consequence because it would not entitle a petitioner to any relief."[66] When a mandatory hearing is not required, licensing boards should "take the utmost care" to assure that at least one good contention is advanced because, absent successful intervention, no hearing need be held.[67]

In addition, "[a] petitioner's proffered contentions must be confined to the subjects delineated by the hearing notice and contentions concerning matters outside that defined scope cannot be admitted."[68] In this case, the NRC's Notice limits the scope of any hearing to contentions on DCS' CAR, Environmental Report, and/or Quality Assurance Plan.[69] As is

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[66] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-13, 47 NRC 360, 365 (1998).

[67] *Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Power Station) ALAB-305, 3 NRC 8, 12 (1976).

[68] *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit No. 3), LBP-98-28, 48 NRC 279; 1998 WL 817407, at *3 (1998) (*citing Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1996)).

[69] 66 *Fed. Reg.* at 19,996.

clearly reflected in the NRC's Notice, issues related to potential future operation of the MOX Facility will be addressed during a later phase of the hearing.[70]

As demonstrated below, none of EI's contentions meets the NRC requirements for admission.

A. Information Regarding "Similar Operations"

EI first contends that "there is a lack of information [in the CAR] regarding operations similar to those planned by the Applicants."[71] Specifically, it notes that the Nuclear Fuel Services plant in West Valley, New York is not discussed.

There are no NRC regulations that require an applicant to discuss or reference every document that might be relevant to the matters discussed in the application. EI does not specify what information or experience from the Nuclear Fuel Services plant (which reprocessed spent nuclear fuel) – or any other facility – might be relevant to the MOX Facility. Nor does it identify: (1) the specific information that EI deems to be missing from the CAR; (2) the supporting reasons – or "bases" – for that belief; (3) any alleged facts or expert opinion in support of its contention; or (4) sufficient information to demonstrate that there exists a genuine issue of material fact or law, as required by 10 CFR § 2.714. Further, even if EI could prove its contention, it would not be entitled to any relief. Therefore, this contention is entirely insufficient and should be rejected.

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[70] *Id.* at 19,995.

[71] Request at 7.

B. Transcripts from AGNS Licensing Proceeding

EI next contends that DCS "failed to make use of the evidence contained in the transcripts of the Barnwell Nuclear Fuel Plant...planned by Allied General Nuclear Services (AGNS)."[72] It is unclear from the Request what "evidence" EI is referring to, or why such information would be pertinent to the MOX Facility. This contention suffers from the same inadequacies as the first contention, and should be rejected.

C. Transcripts from Nuclear Reactor Licensing Proceedings

EI claims that DCS has not "use[d] evidence from the transcripts of licensing proceedings related to the two Duke nuclear plants."[73] In light of the substantial differences between a fuel fabrication facility and a nuclear reactor, it is difficult to understand how these licensing proceedings would be pertinent to the MOX Facility. Again, EI's failure to specify what information it deems to be missing from the CAR, and the supporting reasons for that belief, as well as its complete failure to meet the pleading standards set forth in 10 CFR § 2.714(2)(b), renders this contention inadmissible.

D. Findings from National Academy of Sciences Committee on Geological Aspects of Radioactive Waste Disposal and U.S. Geological Survey

EI next references the "omission [in the CAR] of the scientific findings of the National Academy of Sciences Committee on Geological Aspects of Radioactive Waste Disposal of 1966, as well as reviews of the 1970's [sic] by geologists with the U.S. Geological Survey," noting that

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[72] *Id.*

[73] *Id.*

"both groups...warned of problems at the location of the Savannah River Site."[74] This contention again falls far short of the pleading standards set forth in 10 CFR § 2.714(2)(b). EI does not explain what, if any, specific siting concerns regarding the MOX Facility it may have. Nor does it allege any specific deficiency in the design of the MOX Facility. In fact, on its face, this contention does not even mention the MOX Facility. Accordingly, the contention should be denied for lack of relevance to this proceeding.

E. "[P]ossible Outcomes" of the MOX Facility "From the Viewpoint of Business Owners"

EI's next contention states that DCS has not considered the possible impacts of the MOX Facility on "business owners in the State," and "other financial issues and questions."[75] However, EI does not explain what such impacts may be, or the nature of the alleged "financial issues and questions." As such, this contention is improperly vague, fails to meet the pleading standards set forth in 10 CFR § 2.714(2)(b), and is therefore inadmissible.

F. Tiering of SPD EIS in the MOX Facility Environmental Report

Finally, EI contends that the Transportation section of the DCS Environmental Report is "defective" because it "depend[s] heavily" on previous EISs prepared by DOE.[76] This contention is improper as a matter of law. There is no prohibition on referencing previously conducted environmental reviews in the Environmental Report. Indeed, judicial and NRC precedent and NEPA regulations expressly allow the adoption and tiering of previous, relevant

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[74] *Id.* at 8.

[75] *Id.*

[76] *Id.*

EISs.[77] Furthermore, this contention lacks the requisite specificity, and fails to identify any omission of pertinent information or inclusion of incorrect information within the Environmental Report's evaluation of transportation impacts. Accordingly, this contention is inadmissible as well.

Therefore, EI has failed to proffer any admissible contentions.

IV. CONCLUSION

For the reasons discussed above, EI does not have either representational or organizational standing to request a hearing on the MOX Facility CAR. Even if it did have standing, it has offered no admissible contentions. Therefore, DCS requests that EI's Request for Hearing be denied.

Respectfully submitted,

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[77] *See, e.g., Kelly v. Selin*, 42 F.3d 1501, 1519 (6th Cir. 1995); *United States Energy Research and Development Administration Project Management Corp. Tennessee Valley Authority* (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 84 (1976); 40 CFR §§ 1502.20, 1506.3; 10 CFR Part 51, Appendix A to Subpart A, 1(b) and n.2.

CERTIFICATE OF SERVICE

I hereby certify that copies of "Duke Cogema Stone & Webster's Answer to Environmentalists, Inc.'s Request for Hearing and Petition to Intervene" were served upon the persons listed below by U.S. mail, first class, postage prepaid, this 4th day of June, 2001.

Secretary of the Commission*
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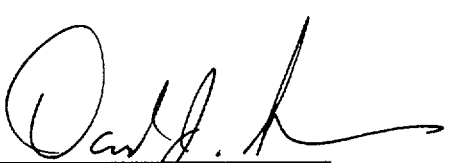

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