

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TENNESSEE VALLEY AUTHORITY)	Docket Nos. 50-327 and 50-328
)	Docket No. 50-390
(Sequoyah Nuclear Plant, Units 1 and 2))	(Consolidated)
)	
(Watts Bar Nuclear Plant, Unit 1))	

NRC STAFF'S ANSWER TO REQUESTS FOR HEARING
AND LEAVE TO INTERVENE FILED BY
BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE
AND MS. JEANNINE HONICKER

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby submits its answer to the requests for hearing and/or petitions for leave to intervene filed by the Blue Ridge Environmental Defense League (BREDL) and Ms. Jeannine Honicker (Ms. Honicker).¹ For the reasons set forth below, the Staff concludes that BREDL and Ms. Honicker have not demonstrated standing in connection with the consolidated license amendment proceedings described herein.²

¹Letter from D. Moniak (Blue Ridge Environmental Defense League) to Secretary of the Commission (Jan. 16, 2002); letter from Jeannine Honicker to Chief, Rules & Directive Branch, U.S. Nuclear Regulatory Commission (Jan. 14, 2002).

²As is discussed later in this Answer, there are two separate license amendment requests pending involving two separate facilities. Pursuant to an order dated January 28, 2002, issued by the Chief Administrative Judge, the two proceedings have been
(continued...)

BACKGROUND

Tennessee Valley Authority (TVA) is the licensee for the Sequoyah Nuclear Plant, Units 1 and 2 (Sequoyah), and the Watts Bar Nuclear Plant, Unit 1 (WB). By applications dated August 20, 2001 (for WB), and September 21, 2001 (for Sequoyah), TVA requested license amendments that would allow TVA to insert up to a certain number of tritium producing burnable absorber rods (TPBARs), which contain no fissile material, into the reactor cores. The proposed amendments are related to an agreement between TVA and the U.S. Department of Energy (DOE) under which TVA will provide certain irradiation services to DOE. DOE plans to transport the irradiated TPBARs to its Savannah River site in Georgia for defense purposes, but the transportation activities by DOE are not the responsibility of TVA and are not the subject of the pending amendment requests. On December 17, 2001, the Staff published in the *Federal Register* two separate notices of the amendment requests and of an opportunity for a hearing. 66 Fed. Reg. 65,000 (2001) and 66 Fed. Reg. 65,005 (2001). Pursuant to the notices, BREDL and Ms. Honicker filed hearing requests and/or petitions for leave to intervene with respect to both facilities.

DISCUSSION

I. Legal Requirements for Intervention

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a.(1) of the Atomic Energy Act of 1954, as amended ("Act" or "AEA"), 42 U.S.C. § 2239(a), states:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing

²(...continued)
consolidated. The Staff has no objection to consolidation.

upon the request of *any person whose interests may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.”

(Emphasis added).

The Commission’s regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, *inter alia*, “shall set forth with particularity the interest of the petitioner in the proceeding, [and] 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 set forth in [§ 2.714(d)(1)].” Pursuant to section 2.714(d)(1), in ruling on a petition for leave to intervene or a request for hearing, the Presiding Officer or Atomic Safety and Licensing Board (Board) is to consider:

- (i) The nature of the petitioner’s right under the Act 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.

Finally, a petition for leave to intervene must set forth “the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.” 10 C.F.R. § 2.714(a)(2). In addition, a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding. 10 C.F.R. § 2.714(b).

To determine whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. See, e.g., *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (“Yankee Rowe”); *Gulf States Utils. Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit

1), CLI-93-21, 38 NRC 87, 92 (1993); *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Org. v. NRC*, 996 F.2d 1224 (9th Cir. 1993).

In order to establish standing, a petitioner must show that the proposed action will cause “injury in fact” to the petitioner’s interest and that the injury is arguably within the “zone of interests” protected by the statutes governing the proceeding. *See, e.g., Georgia Power Co.* (Vogtle Elec. Generating Plant, Units 1 & 2), CLI-93-16, 38 NRC 25, 32 (1993); *Public Serv. Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991), *citing Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act. *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

To establish injury in fact, the petitioner must establish (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Yankee Rowe*, CLI-98-21, 48 NRC at 195, *citing Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988). It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. A petitioner must have a “real stake” in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting & Power Co.* (South Tex. Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979). While the petitioner’s stake need not be a “substantial” one, it must be “actual,” direct” or “genuine.” *Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied Gen. Nuclear Servs.* (Barnwell Fuel Receiving & Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *International Uranium Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116 (1998); *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff’d in part on other grounds*, CLI-92-11, 36 NRC 47 (1992).

A person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *Umetco Minerals Corp.*, LBP-94-18, 39 NRC 369, 370 (1994); *see, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization; *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of constituents).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. See *Georgia Inst. Of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Thus, an organization may meet the injury in fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it “derivative” or “representational” standing. *Houston Lighting & Power Co.* (South Tex. Project Units 1 & 2), ALAB-549, 9 NRC 644, 646-47 (1979), *aff’g* LBP-79-10, 9 NRC 439, 447-48 (1979). An organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or the National Environmental Policy Act. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 528-30 (1991). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31 (1998); *Georgia Inst. of Tech.*, CLI-95-12, 42 NRC at 115; *Turkey Point*, ALAB-952, 33 NRC 521 at 530; *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979).³

³The alleged injury in fact to the member must fall within the purposes of the organization. *Private Fuel Storage*, CLI-98-13, 48 NRC 26 at 33-34; see *Curators of the Univ. of Mo.* (TRUMP-S Project), LBP-90-18, 31 NRC 559, 565 (1990).

II. BREDL

A. The BREDL Petition

According to the letter dated January 16, 2002, submitted “on behalf of” BREDL and under the signature of Mr. Donald Moniak (described therein as “Community Organizer and SRS Project Coordinator”) (BREDL petition), BREDL attempts to gain representational standing through the alleged impacts that the proposed license amendments will have on Mr. Moniak’s interests. See BREDL petition at 2. BREDL argues that as a result of Mr. Moniak’s proximity to the DOE’s Savannah River site (SRS) (he lives within 25 miles of SRS according to the petition), he will be harmed in several ways. Specifically, BREDL’s petition states that “Donald J. Moniak will be affected by:

- a. the risks of accidents during the transporting of tritium rods from TVA to SRS that result[] in large quantities of tritium being dispersed into the atmosphere, and
- b. by the risks of accidents during the processing of these tritium rods that result in large quantities of tritium being dispersed to our environment.

BREDL petition at 2. BREDL goes on to argue that it will be impacted because (1) tritium production is an unnecessary expenditure of federal taxpayer funds; (2) the proposed amendment increases the risk of an accident and BREDL’s members, through the Price-Anderson Act, would have to cover the costs of a severe accident; and (3) tritium production is a nuclear proliferation activity that would pose a threat to the common defense and security of the United States. BREDL petition at 3.

B. Analysis

The above-referenced *Federal Register* notices of the amendment requests provide the scope of the license amendment proceedings. *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980). In those Notices, the

Commission stated that the proposed amendments involve changes to each reactor's technical specifications so that TPBARs may be irradiated in the reactor cores and stored (pending shipment by DOE). 66 Fed. Reg. 65,000; 66 Fed. Reg. 65,005. Mr. Moniak, however, presumably in his capacity as a member of BREDL, does not allege any harm related to the proposed license amendments.⁴ Rather, Mr. Moniak alleges that his harm will result out of the transportation of the TPBARs and the operation of a tritium extraction facility at the SRS. Neither of these arguments satisfy the standing requirements to participate in these proceedings.

First, the argument that BREDL should have standing because of any injury that Mr. Moniak may suffer as a result of the operation of a tritium extraction facility at SRS is without merit. One of the fundamental requirements to obtain standing in a proceeding is that the harm alleged can be redressed by a favorable ruling. See *Yankee Rowe*, CLI-98-21, 48 NRC at 195. While a ruling in favor of BREDL perhaps could serve to cause DOE to modify its current plans to obtain tritium through use of the TVA reactors, such a ruling would not ensure anything with respect to how or when DOE operates the tritium extraction facility at the SRS.

Second, BREDL argues that Mr. Moniak will be harmed by the transportation of the TPBARs to the SRS. Again, Mr. Moniak's alleged harm is beyond the scope of this proceeding. As mentioned above, the notices issued in the *Federal Register* cover only amendments to the technical specifications of Sequoyah and WB; neither of the notices mentions transportation of the TPBARs to the SRS. Further, in the license amendment

⁴The BREDL petition does not argue presumptive standing based on any notion of a fifty mile proximity, and that concept would not apply in any event in light of the Staff's estimate that Mr. Moniak lives over 200 miles from either Sequoyah or WB.

requests filed by TVA, the licensee does not request any NRC action in relation to the transportation of the TPBARs. Therefore, Mr. Moniak has not alleged an injury that is “fairly traceable” to the subject matter of this proceeding.

Nevertheless, even assuming that Mr. Moniak’s alleged harm was somehow traceable to the proposed amendments, he still has failed to allege any concrete harm. The BREDL petition states that Mr. Moniak will be affected by the transportation of the TPBARs. See BREDL petition at 3. The petition, however, fails to allege how Mr. Moniak will be affected by the transport of the TPBARs, what the nature of his harm would be, or even his proximity to the transport. In a decommissioning case, the Commission ruled on a similarly vague claim of standing based on proximity to a transportation route. See *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). In that case, the Commission observed that “the petition [does not] allege[] any concrete or particularized injury that would occur as a result of the transportation. Furthermore, while the supplement [to the petition] alleges that Petitioner’s members live “close” to transportation routes that will be used for . . . shipments, the supplement does not identify those routes or explain how ‘close’ to those routes the Petitioner’s members actually live. In sum, the Petitioner has failed to identify any organizational interest within the zone of interests protected” *Id.* As in the aforementioned case, Mr. Moniak has failed to plead any actual harm arising from the transportation of the TPBARs.

The rest of BREDL’s asserted interests focus on general concerns relating to expenditure of taxpayer funds, nuclear non-proliferation and the common defense and security of the United States, and the Federal indemnification provisions of the Price-Anderson Act in the case of a severe accident. None of the arguments advanced by

BREDL plead a particularized harm to it or any of its members. Instead, the petition asserts claims that are generalized grievances against the tritium program. The Commission, however, has long held that “generalized grievances” do not support standing. See *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983). As a result, BREDL has failed to allege an injury that would entitle it to standing in this proceeding.

III. Ms. Honicker

A. Ms. Honicker’s Petition

Ms. Honicker’s petition largely consists of comments on the proposed no significant hazards consideration determinations, and questions she raises. For example, she notes that TVA’s analysis was made before the events of September 11, 2001, and thus did not consider jetliner attacks on the facilities, or the notion that the facilities would purportedly become military targets. She asks questions concerning monitoring plans, evacuation plans, and radiation doses, among other things. At the very end of her petition, she states that “[t]his action increases the area of possible harm far beyond the 10 mile ‘area of interest’ of your regulations, even beyond the 50 miles that you have historically limited your boundary of possible harm.” Honicker petition at 3.

B. Analysis

In light of the intervention requirements and standing concepts set forth above, it is evident that Ms. Honicker has not established standing to intervene in these proceedings. Specifically, she has failed to establish injury in fact, *i.e.*, to assert a concrete and particularized injury that is fairly traceable to the proposed license amendments and likely to be redressed by a favorable decision in these proceedings. None of the comments,

concerns, or questions voiced by Ms. Honicker in her petition establish the requisite injury in fact to her interests.

Ms. Honicker gives her address as LaGrange, Georgia. As a resident of LaGrange, Georgia, Ms. Honicker is not entitled to a presumption of standing based on geographical proximity to either plant at issue, as both plants are located significantly farther than 50 miles from LaGrange.⁵ Moreover, Ms. Honicker has not provided any indication that she “frequents the area” within a 50-mile radius of either facility.

Absent establishing presumptive standing, Ms. Honicker is required to show injury in fact, but has failed to establish that she has personally suffered or will suffer a “concrete and particularized” injury associated with the proposed amendments. The various concerns, comments, and questions proffered by Ms. Honicker are purely conjectural or hypothetical in nature, and fail to establish any “actual” or imminent” harm to her. Indeed, one of her speculative concerns about the allegedly increased prospect of a jetliner being deliberately crashed into the facilities at issue forms the crux of her petition. It is within the context of such an “accident” that Ms. Honicker conjectures about harm to some rather broad if not entirely nondescript groups of people (of which Ms. Honicker fails to explicitly identify herself as a member), instead of demonstrating any “distinct and palpable” harm to herself. For example, Ms. Honicker’s petition encompasses the populations of Chattanooga and Knoxville, Tennessee (including the “approximately 100,000” attendees at a “University of Tennessee home football game”), tourists at the “Pidgeon Forge and

⁵See *generally Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989). Sequoyah is located near Soddy-Daisy, Tennessee, which is roughly 190-200 miles from LaGrange, Georgia. WB is located near Spring City, Tennessee, which is approximately 240 miles from LaGrange.

Gatlinburg tourist attractions,” the “Boy Scout Camp” on Watts Bar Lake, “people” who consume milk produced at “dairies in the possibly affected area,” and the whole of “mankind” (to the extent that the proposed amendments purportedly “increas[e] the threat of nuclear war”). Honicker petition 2-3. Clearly, such concerns are “unparticularized” and could be shared in substantially equal measure by all or a large class of citizens, as Ms. Honicker herself suggests through her references to “people” and “mankind.” In essence, Ms. Honicker fails to make any specific assertion that the proposed amendments will be detrimental to her personally.

Ms. Honicker has similarly failed to satisfy the second element of the injury in fact requirement, in that the speculative harms and hypothetical scenarios raised by her cannot be fairly traced to the amendments proposed by the licensee. Ms. Honicker purports to establish a causal connection between the proposed amendments and the deliberate crashing of a jetliner into the subject plants by suggesting that the “cogeneration of tritium” will increase the likelihood of such an attack on the plants. Honicker petition at 1. Indeed, Ms. Honicker goes so far as to state that “the probability of such an attack increases from 1 in 103 nuclear plants to number 1 of 103.” *Id.* However, she provides no factual basis for her statement. Aside from the fact that physical security-related events are not within the stated scope of this proceeding, the chain of causation suggested by Ms. Honicker is extremely tenuous at best.

With respect to the third element of the injury in fact requirement, redressability, Ms. Honicker has again failed to make the requisite showing. She fails to identify any particular form of relief that could be granted to mitigate the prospective harms alleged by her, or establish that a “favorable decision” within these license amendment proceedings

will “likely” redress these alleged harms. For example, she makes no showing that denial of the proposed amendments would redress the hypothetical threat of a deliberate jetliner crash or diminish the threat of nuclear war, which, more importantly, are issues that could not be considered in these proceedings.

Pursuant to 10 C.F.R. 2.714(a)(2), a petitioner is required to state the “specific aspect or aspects of the subject matter of the proceeding” as to which she wishes to intervene. In this regard, Ms. Honicker must identify, at a minimum, “general potential effects of the licensing action or areas of concern” that are within the scope of these license amendment proceedings. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990). While Ms. Honicker has raised issues that are outside the scope of these proceedings, such as acts of terrorism directed at nuclear power plants or the threat of nuclear war,⁶ she appears to have stated at least one or more aspects within the scope of the proceedings, e.g., appropriate exposure pathway and dose calculation assumptions. The statement of a specific aspect under 10 C.F.R. 2.714(a)(2), however, does not cure the deficiencies discussed above regarding an adequate showing of injury in fact.

⁶Furthermore, some of these issues fall outside the scope of Commission consideration at all in these proceedings under 10 C.F.R. § 50.13. In addition, to the extent Ms. Honicker is attempting to put at issue Commission regulations, she is barred from doing so, having failed to meet the requirements of 10 C.F.R. 2.758.

CONCLUSION

In consideration of the foregoing, BREDL and Ms. Honicker have not established standing and thus should be denied intervention.

Respectfully submitted,

/RA/

Antonio Fernández
Counsel for NRC Staff

Dated at Rockville, Maryland
this 31st day of January 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO REQUESTS FOR HEARING AND LEAVE TO INTERVENE FILED BY BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE AND MS. JEANNINE HONICKER" and "NOTICE OF APPEARANCE" for Antonio Fernández and Steven R. Hom in the above-captioned consolidated proceedings have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 31st day of January, 2002.

Atomic Safety and Licensing Board Panel*
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas S. Moore, Chairman*
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Office of the Secretary*
Attn: Rulemakings and Adjudications Staff
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(Watts Bar Nuclear Plant, Unit 1))	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter in accordance with 10 C.F.R. § 2.713.

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Admissions:	State of Maryland
Name of Party:	NRC Staff

Respectfully submitted,

/RA/

Antonio Fernández
Counsel for NRC Staff

Dated at Rockville, Maryland
this 31st day of January, 2002

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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 10 C.F.R. § 2.713.

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Admissions:	United States Court of Appeals for the Ninth Circuit State of New York State of California
Name of Party:	NRC Staff

Respectfully submitted,

/RA/

Steven R. Hom
Counsel for NRC Staff

Dated at Rockville, Maryland
this 31st day of January 2002