

January 28, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONDOCKETED
USNRC

February 26, 2002 (11:58AM)

BEFORE THE COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

Tennessee Valley Authority

(Sequoyah Nuclear Plant, Units 1 and 2, and
Watts Bar Nuclear Plant, Unit 1)Docket Nos. 50-327-LA
50-328-LA
50-390-LATENNESSEE VALLEY AUTHORITY'S ANSWER TO REQUEST FOR A HEARING
AND PETITION TO INTERVENE OF JEANNINE HONICKERI. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Tennessee Valley Authority ("TVA"), applicant in the above-captioned matter, hereby files its answer to the "comment" and request for hearing and petition to intervene ("Petition") filed on January 14, 2002, by Ms. Jeannine Honicker ("Petitioner"). The Petition responds to the Notices of Opportunity for a Hearing published by the Nuclear Regulatory Commission ("NRC" or "Commission") in the *Federal Register* on December 17, 2001, concerning TVA's proposed amendments to its operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2 ("SQN"), and Watts Bar Nuclear Plant, Unit 1 ("WBN").¹ The proposed license amendments would allow TVA to provide incore irradiation services for the United States Department of Energy ("DOE") and produce tritium to

¹ See "Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," 66 Fed. Reg. 65,000 and 66 Fed. Reg. 65,005 (Dec. 17, 2001).

be maintained by DOE for purposes of national defense. While the focus of the filing made by Ms. Honicker appears to be a "comment" on the NRC's proposed findings of no significant hazards consideration associated with the proposed license amendments, the last paragraph of the pleading and a handwritten note on the first page also appear to request a hearing. Accordingly, TVA is treating the Petition as such a request. As discussed below, the Petitioner has not satisfied the Commission's requirements for an individual's standing to intervene in this proceeding and has not shown any basis for discretionary intervention. Therefore, pursuant to 10 C.F.R. § 2.714, the Petition (*i.e.*, the hearing request) must be denied.²

II. BACKGROUND

A. The Approval at Issue

The license amendment requests ("LARs") at issue, first submitted to the NRC on August 20 and September 21, 2001, for WBN and SQN, respectively, concern proposed changes to the plants' Technical Specifications that would allow incore irradiation services for DOE. These changes would allow TVA to insert tritium-producing burnable absorber rods ("TPBARs") into the WBN and SQN reactor cores to support DOE in maintaining its tritium inventory for national defense purposes.³ In the LARs, TVA proposes to insert up to approximately 2,300 TPBARs, per reactor at both SQN and WBN. The TPBARs neither contain fissile material nor replace normal reactor fuel, and because the TPBARs will not adversely affect reactor neutronic

² Of course, the NRC Staff can give any appropriate consideration to the Petition as a "comment" on the applications and on the proposed no significant hazards consideration findings.

³ The TPBARs absorb neutrons and are similar to (and would replace) normal burnable neutron absorber rods that serve to shape neutron flux in the core. They contain no fissile material and will be installed in fuel assemblies where burnable absorber rods are normally placed in selected fuel assemblies. 66 Fed. Reg. at 65,000-01, 65,006.

or thermal-hydraulic performance, their presence in the core would not have a significant effect upon the probability or consequences of previously analyzed accidents, including fuel handling accidents. The NRC in the *Federal Register* notices has made a proposed determination that the amendment requests involve no significant hazards considerations, pursuant to 10 C.F.R. § 50.92.

Under the interagency agreement between DOE and TVA with respect to the irradiation services to be provided, TVA's responsibilities are limited to irradiation of the TPBARs during reactor operation, consolidating the TPBARs into containers and shipping casks provided by DOE, and loading the casks on DOE-furnished transport for removal by DOE.⁴ The Technical Specification changes at issue in the LARs do not involve the transport and subsequent storage, processing, or use of the TPBARs by DOE.

B. The NRC's Standing Requirements

It is fundamental that any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that she has standing to do so. The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, among other things, "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 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene, the Atomic Safety and Licensing Board ("Licensing Board") is to consider:

⁴ Interagency Agreement No. DE-AI02-00DP00315 between the United States Department of Energy and the Tennessee Valley Authority for Irradiation Services (Jan. 1, 2000).

- (i) The nature of the petitioner's right 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 petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2).

In determining whether a petitioner has established the requisite interest, the Commission traditionally has applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utils. Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). The Commission has further determined that to satisfy the standing requirements of 10 C.F.R. § 2.714, a petitioner must demonstrate that:

- 1. it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;
- 2. the injury can fairly be traced to the challenged action; and
- 3. the injury is likely to be redressed by a favorable decision.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *see also Lujan v. Defenders of Wildlife*,

504 U.S. 555, 560-61 (1992). In particular, with respect to the alleged “injury-in-fact,” the Commission has held that it is incumbent upon the petitioner to allege some “plausible chain of causation” from the licensing action at issue to the alleged injury that would or could be redressed in the proceeding. *Zion*, CLI-99-4, 49 NRC at 192 (1999). Such injury may be actual or threatened. *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995), *cert. denied*, 515 U.S. 1159 (1995). The injury, however, must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560 (citations omitted).⁵

Thus, a petitioner must have a “real stake” in the outcome of the proceeding to establish an injury-in-fact for standing. While this stake need not be a “substantial” one, it must be “actual,” “direct,” or “genuine.” *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979). A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the petitioner must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982) (*citing Allied-Gen. Nuclear Serv.* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976)); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982). Herein, Petitioner has failed to demonstrate any more than an academic interest and therefore has failed to show standing. The Petition should be dismissed.

⁵ Additionally, the claimed injury suffered by a petitioner must fall within the “zone of interests” sought to be protected by the Atomic Energy Act (“AEA”) or the National Environmental Policy Act (“NEPA”). *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-04, __ NRC __, slip op. at 7 (Jan. 24, 2002); *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

III. DISCUSSION

As explained below, Petitioner makes a number of general, wide-ranging comments — and raises several open-ended questions — with regard to the proposed license amendments. Ms. Honicker “take[s] issue” with the TVA and NRC Staff no significant hazards consideration analyses for not considering “the probability or consequences of a fully fuelled jetliner being used as a missile and purposely being crashed into a nuclear power plant.” Petition at 1. She poses a sweeping, yet vaguely defined, question about the “maximum exposure” and the “size population that would be affected,” both by “routine emissions” from the plants and under “maximum accident conditions.” *Id.* at 2-3. Interwoven into her inquiry about the potential radiological exposure of the local populace, Ms. Honicker asks additional questions about radiological monitors, as well as monitoring and evacuation plans. *Id.* at 2. Finally, she asks that the Commission — out of “concern for mankind” — “[c]onsider the consequences of increasing the threat of nuclear war that this action poses.” *Id.* at 3.

Missing from Petitioner’s comments and questions, however, is the requisite statement of her particular interest in this proceeding, much less the necessary explanation of how that interest may be affected by the proposed amendments and the results of this proceeding.⁶ Ms. Honicker has not demonstrated that issuance of the proposed amendments will cause her to suffer any distinct and palpable harm constituting injury-in-fact. Her lack of any geographic proximity to either SQN or WBN logically precludes such a finding. Nor has Ms. Honicker made any further showing, fairly tracing an injury to the challenged license

⁶ Having been engaged with respect to earlier NRC adjudicatory proceedings, Petitioner cannot reasonably claim unfamiliarity with Commission regulations or adjudicatory requirements. *See, e.g., Tennessee Valley Auth.* (Watts Bar Nuclear Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292 (1977), *aff’d*, ALAB-413, 5 NRC 1418 (1977).

amendments. The generalized interests inherent in Ms. Honicker's open-ended comments and questions simply cannot be redressed by a favorable decision in this proceeding.

Indeed, Ms. Honicker herself acknowledges that she has not met the Commission's standing requirements, asking instead that the Commission "widen" the "definition of interest." *Id.* at 3. "Using these *new standards of interest*, I believe that you will agree that I qualify to become an intervenor...." *Id.* (emphasis added). However, Ms. Honicker has not demonstrated any basis for discretionary intervention. In sum, her Petition must be denied.

A. Petitioner Has Not Demonstrated Injury-in-Fact Traceable to the Amendments at Issue

1. Petitioner Is Not Entitled to Standing Based on Geographic Proximity

As a threshold matter, it is clear that Petitioner does not and cannot base standing on nearby residence or geographical proximity. Geographical proximity has been found sufficient for petitioners who reside within a specific distance — normally up to 50 miles — from a nuclear plant, at least with respect to construction permits, operating licenses, or significant amendments that raise a potential for offsite consequences. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). In this case, however, Petitioner resides in LaGrange Georgia, (Petition at 3), over 150 miles from both the SQN and WBN plants.⁷ Thus, she is not geographically proximate to either of the facilities for which TVA has requested license amendments. Moreover, the Petitioner has not shown that the amendments at issue involve any obvious potential for offsite consequences. *See, e.g., Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), *aff'd*

⁷ WBN is located near Spring City, Tennessee, and SQN is located near Soddy-Daisy, Tennessee, both of which are located more than 150 miles from LaGrange, Georgia.

on other grounds, ALAB-816, 22 NRC 461 (1985). Accordingly, Petitioner's total lack of proximity to either the SQN or WBN plant, combined with the vague, unparticularized claims of theoretical injury to herself and others resulting from actions beyond the scope of the requested license amendments, fail utterly to establish standing.

2. Petitioner Has Not Demonstrated That She Suffers From A Distinct and Palpable Harm

Apart from a lack of any geographical connection to either SQN or WBN, Petitioner's interest in the instant proceeding is insufficient to confer standing upon her because she has not demonstrated an injury which is "concrete and particularized." *Lujan*, 504 U.S. at 560. Rather, she has cobbled together a string of conjecture, hypothetical inquiries, and academic questions that do not involve any injuries to herself that are either "actual" or "imminent." *Id.* This deficiency is illustrated by Ms. Honicker's conjecture about a "fully fuelled jetliner being used as a missile and purposely being crashed into a nuclear power plant" or its "cooling pools." Petition at 1-2. There is no connection drawn between this scenario and either the amendments at issue or the Petitioner who resides over 150 miles away. Petitioner similarly speculates about an undefined "accident" coinciding with a "University of Tennessee home football game" or when "Pidgeon [sic] Forge, Gatlinburg, and the Boy Scout Camp are filled to capacity." *Id.* at 2. Pointing to the "number of dairies in the possibly affected area" — an area left undefined — Petitioner inquires about an "increase [in] radiation dose to people, in routine and maximum accident conditions." *Id.* Ms. Honicker fails to specify the particular group of "people" on whose behalf she is posing the question. Nor does she affirmatively state that she herself is even one of the affected "people." Perhaps most illustrative of Petitioner's

failure to allege a particular injury to herself, she alludes to “the consequences of increasing the threat of nuclear war that this action poses.” *Id.* at 3.

All of these abstract, hypothetical questions raised by the Petitioner are insufficient to establish her standing to intervene. *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 (1998). Her “generalized grievance(s),” shared in substantially equal measure by all or a large class of citizens, do not result in a distinct and palpable harm sufficient to support standing. *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 333 (1983) (citing *Transnuclear, Inc.* (Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977)). At bottom, Petitioner has not demonstrated how she would be personally affected, in a concrete and specific way, by any of the generalized harms asserted in her Petition.

3. Petitioner’s Alleged Injuries Cannot be Traced to the Challenged Action or Redressed by a Favorable Ruling in this Proceeding

It is equally clear that the hypothetical events and academic questions raised by Petitioner cannot be fairly traced to the proposed license amendments. Any related injuries cannot be redressed in this proceeding.

First, Petitioner’s entire argument is characterized as a “comment” on the NRC’s proposed no significant hazards consideration finding. Petitioner specifically challenges the conclusion in the proposed finding, under 10 C.F.R. § 50.92(c)(2), that the amendment will not create the possibility of a new or different kind of accident. To the extent the Petitioner is seeking a hearing challenging this conclusion, however, she is raising a matter that cannot be addressed in this forum. *See* 10 C.F.R. § 50.58(b)(6).

Moreover, Petitioner's conjecture about a purposeful jetliner crash does not in any way demonstrate how that scenario is a new or different kind of accident created by the proposed amendments. Likewise, the Petitioner does not show how either the probability or consequences of such an event are increased by the amendments. Nor does Petitioner identify any relief that could be given in this proceeding to mitigate the potential injury.

Moreover, this particular conjecture constitutes, at best, a challenge to the design basis threat ("DBT") of the SQN and WBN facilities. Such a challenge is impermissible in an individual licensing proceeding, such as this, as it takes issue not with the proposed license amendments, but rather with the substantive content of Commission regulations — specifically 10 C.F.R. § 50.13 and 10 C.F.R. Part 73.⁸ Such issues are not properly raised here. *See* 10 C.F.R. § 2.758(a); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 151 (2001); *Duke Energy Corp.* (Oconee Nuclear Station, Units

⁸ The design basis security threat to reactors is addressed in 10 C.F.R. § 73.1(a)(1). Commission regulation 10 C.F.R. § 50.13 also explicitly provides that NRC reactor licensees are not required to provide for design features or other measures to protect against the effects of attacks and destructive acts, including sabotage, by an enemy of the United States (including, but not limited to, foreign governments), at least to the extent those threats exceed the DBT. The NRC and Federal decisions have consistently held that the responsibility for defense against such acts of war lies with the United States government. *See Siegel v. Atomic Energy Commission*, 400 F.2d 778, 783-84 (D.C. Cir. 1968) (in licensing commercial reactors, the NRC is not required to consider issues related to — or require a showing of effective protection against — the possibilities of attack or sabotage by foreign enemies); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2098 (1982) (where the Licensing Board declined to admit a proposed contention addressing an external attack by terrorists commandeering a very large airplane). Petitioner's conjecture that the TVA facilities will become "military targets" is insufficient to overcome the regulatory application of 10 C.F.R. § 50.13.

1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 65 (1978).⁹

Petitioner's security-related concerns also involve generic issues currently under Commission review. The Commission's ongoing generic review of security concerns is the appropriate vehicle for considering Petitioner's security-related concerns. Well-established Commission precedent holds that proposed contentions concerning generic issues that are (or about to become) the subject of rulemaking by the NRC should not be adjudicated in individual licensing proceedings. *See, e.g., Oconee*, CLI-99-11, 49 NRC at 345; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998); *Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993).

Petitioner also implies that existing generic and TVA-specific requirements regarding plant radiation monitors and evacuation plans are somehow deficient and could therefore cause injury (to someone). Petition at 2. Petitioner specifically questions the content of current "monitoring plans" and "evacuation plans," and asks if the NRC has developed "new stricter guidelines for monitoring" and "new and enhanced evacuation rules." *Id.* With respect to these issues, however, no link is ever made to the proposed amendments. No plausible chain

⁹ Petitioner alludes to the possibility that a crash could impact not only the reactors, but also the "cooling pools" at the SQN and WBN facilities. Petition at 2. The reasons stated herein as to why the postulated aircraft crash is outside the scope of this proceeding apply with equal force to the premise of a crash into the plants' onsite spent fuel pools ("SFPs"). The threat of such aircraft crashes into SFPs has been held inadmissible in several NRC adjudications, with regard to both AEA- and NEPA-based challenges. *See, e.g., Turkey Point*, LBP-01-6, 53 NRC at 166 (2001); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit No. 3); LBP-02-05, __ NRC __, slip op. at 18 (Jan. 24, 2002); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 296 (1998).

of causation is provided from the insertion of the TPBARs to accidents, to radiation monitors or to evacuation plans, and to the Petitioner residing 150 miles away. Moreover, insofar as Petitioner is asking the NRC to impose new radiation monitoring and emergency planning requirements on the TVA facilities alone, or implying that TVA does not comply with such requirements, her request is more properly treated as one for agency action pursuant to 10 C.F.R. §§ 2.802 or 2.206.

A similar conclusion applies to Petitioner's assertion that granting the requested license amendments "increas[es] the threat of nuclear war." Petition at 3. The Commission has rejected similar claims in the past, noting that a petitioner would have to demonstrate that the activity in question risked a result "inimical to the common defense and security" that "would arise as a *direct* result" of the license amendments in question (emphasis in original). *Curators of the Univ. of Missouri*, CLI-95-1, 41 NRC 71, 163-66 (1995) (citing *United States Dep't of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412 (1982), *rev'd and remanded per curiam on other grounds sub nom. Natural Resources Def. Council v. NRC*, 695 F.2d 623 (D.C. Cir. 1982) (where Commission rejected the proposition that plutonium-producing breeder reactor would increase threat of nuclear war and nuclear proliferation)). Petitioner's claim in this regard is extremely general and lacks the requisite direct nexus to the LARs.¹⁰

Petitioner's exposition of her terrorism-based concern states that the licensee analysis "should include the worst case scenario," and refers to possible population exposures in

¹⁰ As set forth in the DOE/TVA environmental impact statement ("EIS"), the proposed action is also sanctioned by United States law and treaty obligations, including those concerned with nuclear nonproliferation. See *Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor* (DOE/EIS-0288) (March 1999), at pp. S-14 - S-15. This simply is not the proper forum in which to challenge DOE's legal obligations and TVA's resulting tritium-related activities.

the nearby cities of Chattanooga and Knoxville, Tennessee, as well as to the tourist attractions of “Pidgeon [sic] Forge, Gatlinburg,” and a Boy Scout camp on Watts Bar Lake. Petition at 2. Petitioner further refers to the threat of increased radiation doses, both resulting from normal operations and from a terrorist attack, on the local food chain and persons living nearby. *Id.* at 2-3. Petitioner appears to be arguing, albeit indirectly, that the revised analysis she seeks from TVA is required pursuant to NEPA. However, as with the AEA, the Commission has held that an assertion of standing pursuant to the interests under NEPA fails when there is no direct effect on the petitioner bringing the claim. *See Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 8-10 (1998).¹¹

In sum, apart from the vague and generalized nature of the claims of potential injuries, Petitioner has failed to show how those injuries are traceable to the LARs or how they could be redressed in this proceeding. The Petition, therefore, should be denied.

B. Petitioner Has Failed to Identify an Aspect Within the Scope of the Proceeding

10 C.F.R. § 2.714(a)(2) also requires a petitioner to identify the “specific aspect or aspects of the subject matter of the proceeding” as to which it wishes to intervene. The purpose of this requirement is not to judge the admissibility of the issues, but to determine whether the petitioner specifies “proper aspects” for the proceeding. *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). The requirement is satisfied by identifying “general potential effects of the licensing action or areas of concern” within the scope of the

¹¹ Insofar as these concerns are related to normal plant operation or accidents not caused by a terrorist attack, they are still insufficient to support standing due to a lack of connection to the LARs and Petitioner’s admitted lack of proximity to the SQN and WBN plants.

proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990).

The Petition at issue is devoid of any such information. Petitioner has not identified a specific aspect, within the scope of this proceeding, as to which she wishes to intervene. As the Commission has held, “[t]he burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner.” *Zion*, CLI-99-4, 49 NRC at 194. Thus, neither the Licensing Board, TVA, nor the NRC Staff is required to look to Petitioner’s assertions to try to divine an aspect not advanced by Petitioner herself. *Id.*

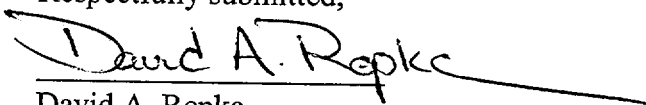
C. Petitioner Has Not Demonstrated Any Basis for Discretionary Intervention

As noted above, the Petition by its terms seems to acknowledge that under normal judicial and NRC standing concepts, the Petition would fail. Without using the words, the Petitioner seems to seek an exercise of discretionary intervention (a widening of the “interest” definition). However, for such discretionary intervention to be appropriate, there would need to be some demonstration as to: (1) how the Petitioner’s participation might reasonably be expected to assist in developing a record; (2) the extent of the Petitioner’s interests in the proceeding; and (3) the possible effect of an order in the proceeding on that interest. *See Portland Gen. Elec. Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Here, there has been no such showing. In particular, the Petitioner has not demonstrated any ability to assist in developing a record on relevant issues. *See Tennessee Valley Auth.* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422-23 (1977) (in which the Appeal Board denied Ms. Honicker discretionary intervention under the *Pebble Springs* approach). Likewise, for all the reasons discussed above, the Petitioner has not shown any interest that could reasonably be affected by the LARs or remedied by an order in this proceeding.

IV. CONCLUSION

For the foregoing reasons, Petitioner's request for hearing and petition for leave to intervene in this proceeding should be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a long horizontal line extending to the right.

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Counsel for Tennessee Valley Authority

Dated in Washington, D.C.
this 28th day of January, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)	
)	
Tennessee Valley Authority)	Docket Nos. 50-327-LA
)	50-328-LA
(Sequoyah Nuclear Plant, Units 1 and 2, and)	50-390-LA
Watts Bar Nuclear Plant, Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "TENNESSEE VALLEY AUTHORITY'S ANSWER TO REQUEST FOR A HEARING AND PETITION TO INTERVENE OF JEANNINE HONICKER," "TENNESSEE VALLEY AUTHORITY'S ANSWER TO REQUEST FOR A HEARING AND PETITION TO INTERVENE OF BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE," and a "NOTICE OF APPEARANCE" for Edward J. Viglucci, Harriet A. Cooper, David A. Repka, and Kathryn M. Sutton in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 28th day of January 2002. Additional e-mail service has been made this same day as shown below.

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jeffrey S. Merrifield, Commissioner
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Office of the Secretary
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Attn: Rulemakings and Adjudications Staff
(original + two copies)
(e-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate
Adjudication
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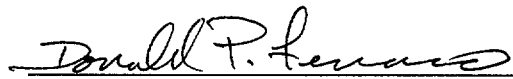
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