

DOCKETED
August 18, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 AUG 19 P12:08

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-295/304-LA
)
(Zion Nuclear Power Station,)
Units 1 and 2))

NRC STAFF'S RESPONSE TO AMENDED PETITION
TO INTERVENE FILED BY EDWIN D. DIENETHAL

INTRODUCTION

On June 4, 1998, Mr. Edwin D. Dienethal filed his initial petition for leave to intervene in this proceeding ("Initial Petition"), concerning the application of Commonwealth Edison Company (the "Licensee") to amend its operating license for the Zion Nuclear Power Station, Units 1 and 2, dated March 30, 1998. Responses to the Initial Petition were filed by the Licensee and the NRC Staff ("Staff") on July 1 and July 8, 1998, respectively, in which each of those parties opposed the Initial Petition for failing to demonstrate Mr. Dienethal's standing to intervene in this proceeding.¹ By Order dated July 10, 1998, the Licensing Board (a) afforded Mr. Dienethal an opportunity to "amend his intervention petition to address any shortcomings, or other matters, in his initial petition by a pleading filed no later than July 22, 1998," (b) directed

¹ See "Commonwealth Edison Company's Answer to Petition to Intervene," dated July 1, 1998 ("Applicant's Response"); and "NRC Staff's Response to the Petition for Leave to Intervene Filed by Edwin D. Dienethal," dated July 8, 1998 ("Staff Response").

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Mr. Dienethal to file a supplement to his petition "containing all of his proffered contentions" by the same date, in accordance with the requirements of 10 C.F.R. § 2.714(b)(2), and (c) afforded the Licensee and Staff an opportunity to respond to the amended petition on the issues of the Petitioner's standing to intervene and the admissibility of his contentions.²

On July 31, 1998, Mr. Dienethal filed "Petitioner's Amended Petition to Intervene and Statement of Contentions" ("Amended Petition"). For the reasons set forth below, the Staff submits that Mr. Dienethal's Amended Petition fails to establish his standing to intervene in this proceeding, and otherwise fails to satisfy the Commission's requirements governing petitions for leave to intervene. Accordingly, the Staff opposes Mr. Dienethal's intervention in this proceeding and recommends that his Amended Petition be denied.

BACKGROUND

The procedural background of this proceeding is described in the Staff's response to Mr. Dienethal's Initial Petition (Staff Response, at 1-4), and is summarized herein. Briefly stated, the Licensee submitted a license amendment application on March 30, 1998, seeking to make the following changes to its operating license for Zion Station, Units 1 and 2, in order to facilitate plant activities following the permanent shutdown and defueling of the facility: (1) the facility's current technical specifications (the "Custom Technical Specifications" or "CTS"), would be

² The Licensing Board's Order of July 10, 1998, directed that responses to the amended petition on the issue of standing were to be filed by July 31, 1998, and responses to contentions were to be filed by August 5, 1998. By Order dated July 20, 1998, the Licensing Board granted the Petitioner's unopposed motion for enlargement of time, thereby extending the date for Mr. Dienethal's filing to July 31, 1998, and extending the dates for the Applicant's and Staff's responsive pleadings to August 18 and 24, 1998. By Order dated August 13, 1998, the Licensing Board granted the Applicant's motion to defer the filing of responses to Mr. Dienethal's statement of contentions until after a ruling has been issued on his standing to intervene.

retained in lieu of the recently approved (but never implemented) "Improved Technical Specifications" (the "ITS"); (2) five license conditions which had been deleted upon the approval of the ITS would be reinstated;³ and (3) changes would be made to Section 6 of the CTS, which would alter certain management titles and responsibilities to reflect the permanently shut down plant organization, allow the use of Certified Fuel Handlers in lieu of personnel licensed under 10 C.F.R. Part 55, reduce shift staffing numbers and the on-shift crew composition, and alter certain verbiage which could be interpreted to imply that the units are operational (*see* Staff Response at 2-3 and n.3).

On May 6, 1998, the Staff published a "Notice of Consideration of Issuance," "Proposed No Significant Hazards Consideration Determination," and "Notice of Opportunity for Hearing" in the *Federal Register*.⁴ The Notice advised that, by June 5, 1998, "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene" in accordance with the requirements of 10 C.F.R. § 2.714 (63 Fed. Reg. at 25102). The Notice further advised that "[i]nterested persons should consult a current copy of 10 CFR 2.714," and included specific instructions that a petition for leave to intervene must "set forth with particularity the interest of

³ As set forth in the Staff's Response (at 2 n.2), these license conditions pertain to: (a) requirements for reactor operation in Modes 1 or 2; (b) the weight of loads carried over fuel stored in the spent fuel pool; (c) the secondary water chemistry monitoring program used to inhibit steam generator degradation; (d) the program for maintenance, inspection and testing to reduce leakage of highly radioactive fluids outside containment during a serious transient or accident; and (e) airborne iodine concentration monitoring under accident conditions.

⁴ *See* "Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations," 63 Fed. Reg. 25101, 25105 (May 6, 1998).

the petitioner in the proceeding and how that interest may be affected by the results of the proceeding." *Id.* The Notice also stated that "[t]he petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene." *Id.* See 10 C.F.R. § 2.714(d)(1).⁵

On June 4, 1998, Mr. Dienethal filed his Initial Petition, in which he stated that he resides in Kenosha, Wisconsin, within 50 miles of the Zion facility (Initial Petition at 1). In addition, Mr. Dienethal stated that "[t]he operations at Zion Nuclear Station directly impact the health and safety of myself and my family, as well as the health and safety of my community"; and he asserted that he has "financial interests" in the proceeding that result from his "ownership of both real and personal property in close proximity to" the facility. *Id.* However, Mr. Dienethal failed to indicate the precise distance between his home or other activities and the Zion site, and he failed to demonstrate that he would suffer injury in fact by issuance of the requested license amendment for this facility, given his failure to identify (a) the geographic distance from his property and activities to the facility, (b) the nature of his property or other interest that could be harmed by the proposed licensing action, or (c) any explanation of how his interests could be

⁵ On July 24, 1998, the Staff issued the requested license amendment, having first made a final no significant hazards consideration finding, and having notified the Commission of its intent to issue the amendment. See Board Notification 98-01, dated August 4, 1998, and attachments thereto.

affected by the proposed licensing action. For these reasons, the Staff opposed the Initial Petition as having failed to establish Mr. Dienethal's standing to intervene in this proceeding (Staff Response at 4, and 8-11; *see also*, Licensee Response at 3, and 4-8).

On July 31, 1998, Mr. Dienethal filed an Amended Petition and Affidavit (together with other documents supporting his contentions), in which he (a) elaborated upon the location of his residence and other activities within the vicinity of the Zion facility, (b) generally asserted that the license amendment at issue in this proceeding could adversely affect his interests, including the health and safety of his family, and (c) set forth 19 contentions pertaining to the proposed license amendment and other aspects of the facility's operation.

For the reasons set forth below, the Staff submits that Mr. Dienethal's Amended Petition fails to demonstrate his standing to intervene in this proceeding, in that he has not set forth with particularity any credible means whereby his interests could be adversely affected by the proposed amendment at issue in this proceeding or by any order which might be entered in the proceeding. Accordingly, the Amended Petition should be denied.

DISCUSSION

A. Legal Standards Governing Petitions to Intervene.⁶

It is fundamental that any person who wishes to request a hearing or to intervene in a Commission proceeding must demonstrate that he has standing to do so. Section 189a(1) of the Atomic Energy Act, 42 U.S.C. § 2239(a), provides that:

⁶ A discussion of these legal principles is also set forth in the Staff's response to the Initial Petition (*see* Staff Response at 4-7).

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

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 in [10 C.F.R. § 2.714(d)(1)]." *Id.*, emphasis added.⁷ Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene or a request for a hearing, the presiding officer or Licensing 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.

In order to determine whether a petitioner has met these standards, the Commission applies contemporaneous judicial concepts of standing. *See, e.g., Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Organization v. NRC*, 996 F.2d 1224 (9th Cir.

⁷ Pursuant to § 2.714(a)(2), a petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 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).

1993); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).

To establish standing, a petitioner must show that the proposed action will cause "injury in fact" to his interest, and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. *E.g.*, *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991) (*citing* Three Mile Island, *supra*, 18 NRC at 332). Further, in order to establish standing, 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. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox* (Apollo, PA, Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993).

A petitioner must have a "real stake" in the outcome of the proceeding to establish injury-in-fact for standing. *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). 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 and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Id.*,

LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *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).⁸

Finally -- and most significantly here -- in operating license amendment proceedings such as this, there is no presumption of standing based upon geographic proximity of a petitioner's residence to a nuclear power reactor. Rather, standing to intervene will depend upon the nexus shown between the petitioner's interests and the proposed licensing action. Thus, standing may be denied in reactor license amendment proceedings where the requested license amendment had not been shown to have a potentially adverse effect on the petitioner's interest. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *Boston Edison Co.* (Pilgrim Nuclear Power Station, LBP-85-24, 22 NRC 97, 98-99, *aff'd on other grounds*, ALAB-816, 22 NRC 461(1985); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-98-12, 48 NRC __ (June 12, 1998), slip op. at 17-18. *See generally, Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115-16 (1995).

⁸ It is also well established that 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. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother could not represent son attending university unless he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents).

B. The Amended Petition Fails to Meet the Standards for Intervention.

In the Staff's response to Mr. Dienethal's Initial Petition, the Staff indicated that while Mr. Dienethal alleged that he resides in Kenosha, Wisconsin, within 50 miles of the Zion facility, he had failed "to specify the precise (or approximate) distance between his home and the facility" (Staff Response at 8). In addition, while Mr. Dienethal stated that he had "financial interests" which could be affected by the proceeding, due to his "ownership of both real and personal property in close proximity to" the facility, he had not identified those property interests or the location of the subject property (*Id.*). Similarly, the Staff noted that while Mr. Dienethal alleged that "[t]he operations at Zion Nuclear Station directly impact the health and safety of myself and my family, as well as the health and safety of my community," he had altogether failed to show how the license amendment at issue in this proceeding could have any possible effect upon his health and safety, his property interests, or the health and safety or other interest of any person whom he may be authorized to represent in this proceeding; further, he had not identified any family member or other persons whom he seeks to represent in this proceeding, and he had not indicated how those persons could be affected by the instant licensing action (*Id.*). The Staff concluded: "In sum, Mr. Dienethal has not shown that the proposed action will cause him a distinct injury that can fairly be traced to the requested amendment of the facility license," and that "[t]hese omissions are significant, and require that the Petition be denied (*Id.*).

In his Amended Petition, Mr. Dienethal attempted to correct certain of these deficiencies, particularly with respect to the location of his residence (or property) and activities within the vicinity of the Zion site, and the identity of his family members for whom he is concerned. In this regard, the Amended Petition states that Mr. Dienethal and his family reside within 10.4 miles

of Plant Zion (Amended Petition at 6);⁹ that he and his family "reside, recreate, work, and perform virtually all of their everyday activities well within Plant Zion's 'zone of harm'" (*Id.* at 6-7); that he and his family "boat, fish, swim, and play water sports in Lake Michigan, where Plant Zion discharges effluents and waste (*Id.* at 7); that his family "frequents a bike trail that . . . passes directly in front of Plant Zion" (*Id.*); that he "golfs, and frequents a state public park in the town of Zion" (*Id.*); that his two minor children (ages 6 and 9) play soccer nine miles from the plant once a week for six months each year, and that he and his wife attend every game (*Id.*); that his children's school is located 12 miles from the plant (*Id.*); that he and his wife must travel "within one mile of Plant Zion to visit the post office, shop, attend movies, or purchase gasoline" at least three to four times a week (*Id.*); that he and his family consume food "purchased from local farms within 10 miles of Plant Zion, and water supplied by Lake Michigan where Plant Zion dumps waste (*Id.*); that his "daily business activities and work commute brings him directly past or very near Plant Zion three to four times a week" (*Id.* at 8); that an essential business supplier, whom he must visit "on a regular basis," is located one mile from the plant (*Id.* at 8-9); and that many of the roads he must travel are also used by the Applicant to transport radioactive waste from the plant (*Id.* at 9).

The Staff believes that these statements in the Amended Petition sufficiently provide the required details concerning the location of Mr. Dienethal's residence and his (and his family's) activities within the vicinity of the plant, which were lacking in the Initial Petition. Nonetheless,

⁹ Mr. Dienethal's affidavit indicates that he owns his home, provides his address, and states that the distance from his home to the plant gate "is 10.2 miles driving and 8 ½ to 9 miles as the crow flies." Affidavit of Edwin D. Dienethal dated July 30, 1998 (Dienethal Aff.), at 1 ¶¶ 1-2, and 2 ¶ 4).

the Amended Petition does little to cure another fundamental problem presented by his Initial Petition -- *i.e.*, it altogether fails to show any credible means whereby his interests could be adversely affected by the particular license amendment that is at issue in this proceeding, contrary to the requirements of 10 C.F.R. § 2.714.

With respect to the possible effect of this proceeding upon Mr. Dienethal's interests, nothing in the Initial or Amended Petitions demonstrates "with particularity" the possible effect on the Petitioner's interests that may be caused by any order in this proceeding. Rather, the Amended Petition indicates that Mr. Dienethal is concerned about decommissioning activities at the plant, or problems with the existing management of the facility -- neither of which are the subject of the instant license amendment. In this regard, the Amended Petition erroneously states: "This proceeding concerns the failure of Applicant to properly manage Plant Zion" (Amended Petition at 3, emphasis added). Further, it states that "[t]he hazards to the public health and safety posed by the continued presence of radioactive material at the Zion site, and the work which must be performed to decommission the plant, are as severe, and in many cases more severe, than those that existed during the operational phase of the plant" (*Id.* at 4, emphasis added); the Applicant has little economic incentive to manage the plant safely during the decommissioning process (*Id.*). In even more general terms, the Amended Petition states that the Petitioner's (and his family's) activities near the plant place them "in distinct and palpable risk of serious injury in fact, directly traceable to Plant Zion" (*Id.* at 7, emphasis added); "Plant Zion poses a concrete and serious risk of future negative health effects on Petitioner Dienethal, his wife and children, his family, and his community by threatening [their] food, water, and air quality" (*Id.* at 8); and "if the request for amendment is approved[,], the facility poses a serious negative impact on Dienethal's property

value, as well as the property value of his surrounding community overall" (*Id.*, citing Dienethal Aff. ¶ 4).¹⁰

Notwithstanding this statement of concerns, it is clear that concerns over decommissioning activities, the existence of the Zion plant, or continued activities at the plant, are not relevant to the license amendment at issue here. The instant license amendment does not authorize decommissioning, and does not authorize continued activities at the plant or a resumption of power operations; rather, it only authorizes the retention of a previously approved set of technical specifications), reinstatement of five previously approved license conditions, changes in plant personnel requirements, and other changes to the administrative controls section of the technical specifications. Inasmuch as the Amended Petition fails to establish that these changes could have any possible impact upon Mr. Dienethal's interests, it fails to establish his standing to intervene in this proceeding.

Moreover, the Amended Petition's assertion that Mr. Dienethal is placed "in distinct and palpable risk of serious injury in fact, directly traceable to Plant Zion," and that "Plant Zion poses a concrete and serious risk of future negative health effects on Petitioner," misconstrues the requirement -- expressly acknowledged by the Amended Petition -- that a petitioner must show an injury that is fairly traceable to the particular licensing action at issue in the proceeding. *See, e.g.*, Amended Petition at 5 ("[t]o comply with basic standing requirements, the petitioner needs to prove . . . that the injury is or can be fairly traceable to the challenged action").

¹⁰ In contrast to the Amended Petition's description of the cause of any such impact on property values, the affidavit states: "If it is revealed that the decommissioning of Plant Zion is not conforming to present rules, I believe this would affect my ability to sell my property at the current market value" (Dienethal Aff. at 2 ¶ 4, emphasis added).

To be sure, the Amended Petition does make certain conclusory statements which allege, in general terms, that the instant license amendment could affect Mr. Dienethal's interests. *See* Amended Petition at 8. These assertions are based upon certain allegations in Mr. Dienethal's affidavit, in which he states as follows:

19. I have specific concerns about the injuries that could result to my family and the local communities that derive from the proposed amendment by Commonwealth Edison. . . . I believe that the proposed amendment presents many threats to the public health and safety, harm to the environment, and harm to the health of employees at Plant Zion. These injuries would result from the structural and functional changes in Plant Zion proposed by the amendment or if any mishap should occur while Plant Zion is functioning under the proposed changes of the amendment.

20. As my contentions will demonstrate, if Plant Zion functions under the proposed amendments, the potential injuries to me and my family, Plant Zion workers, the community, and the local environment include, but are not limited to: 1. LOCA (Loss of Coolant Accident), 2. radiological concerns, 3. unsafe levels of radiation for the employees of the plant and the general public, 4. undetectable radiation contamination by employees, 5. contamination of the local community and the environment, 6. increase [sic] risk of accident at Plant Zion, and 7. contamination of Lake Michigan. After reading the affidavit of Randy Robarge, other injuries appear eminent [sic] which include the increased potential of failing to detect radiation in adequate time and the increase [sic] risk of the plant functioning unsafely and outside NRC regulations.

Dienethal Aff. at 7.¹¹ Similarly, in his statement of contentions Mr. Dienethal generally alleges that the instant license amendment could have some potential impact either on reactor safety or

¹¹ The fact that these conclusory allegations of potential impact appear in Mr. Dienethal's affidavit, rather than in the Amended Petition alone, does not afford them any greater weight or significance. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

the public health and safety. *See, e.g.*, Amended Petition at 11, 12, 19, 21, 28, 36, 40.¹² However, these general allegations fail to establish "with particularity" any credible reason to believe that the instant action could have any adverse impact upon Mr. Dienethal's interests.¹³

First, as set forth above, the Amended Petition reflects a fundamental misunderstanding of the nature of the instant license amendment: Contrary to the Petitioner's apparent belief, the instant amendment does not seek authority to conduct decommissioning activities at the site. Rather, the amendment seeks (in two out of three respects) to retain the existing technical specifications (the "CTS"), and to reimpose certain license conditions which were eliminated when the Applicant anticipated implementation of a new set of technical specifications (the "ITS") which had recently been approved. In essence, these changes seek to preserve the *status quo* which existed until the Staff approved the Zion Station ITS, and which still exists in large part today (apart from the absence of the deleted license conditions), since the CTS are still in use at the plant. The Amended Petition altogether fails to indicate how these license changes could result in any harm to Mr. Dienethal's interests.

¹² Like his statement on standing, many of the Petitioner's contentions seek to challenge decommissioning activities at the facility (which are not authorized by the instant amendment), or relate to concerns which, if proven, are not fairly traceable to the instant licensing action. These types of concerns are beyond the proper scope of this proceeding and would not be admissible herein. *See generally*, Policy Statement, "Policy on Conduct of Adjudicatory Proceedings," 63 Fed. Reg. 41872, 41874 (Aug. 5, 1998) (indicating that "[t]he scope of a proceeding, and, as a consequence, the scope of contentions that may be admitted, is limited by the nature of the application and pertinent Commission regulations").

¹³ In addition, while Mr. Dienethal has expressed concern over the impact of the instant license amendment on the interests of plant workers, the general public, his wife and other (unidentified) members of his family (*see* discussion *supra*, at 13), in the absence of any indication that he is authorized to represent any person in this proceeding other than himself and his minor children, he cannot properly represent such persons herein. *See* n. 8, *supra*.

Second, while a portion of the instant license amendment seeks to change certain administrative controls in Section 6 of the CTS (*i.e.*, to alter certain management titles and responsibilities to reflect the permanently shut down plant organization, allow the use of Certified Fuel Handlers in lieu of licensed reactor operators, reduce shift staffing numbers and the on-shift crew composition, and alter certain verbiage which may imply that the units are operational), these changes do not provide authorization for decommissioning to commence. Moreover, even if these changes could be argued to have some potential offsite impact on public health and safety, the environment, or property values -- which is far from "obvious" -- the Amended Petition simply fails to establish that these changes could adversely affect Mr. Dienethal's interests.

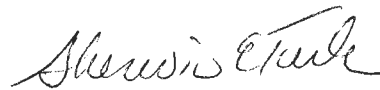
In this regard, the Commission has previously made it clear that where a petition for leave to intervene is based upon the petitioner's residence or activities in close proximity to a nuclear reactor, and the amendment at issue does not have an "obvious potential for offsite consequences," the petition must allege some specific "injury in fact" that will result from the action taken. *St. Lucie, supra*, 30 NRC at 329-30; *accord, Yankee Nuclear Power Station, LBP-98-12, supra*, slip op. at 17-18. Despite the Amended Petition's conclusory assertions that offsite impacts could result from the instant license amendment, it fails to provide any credible reason to believe that such impacts could occur as a consequence of this amendment. Indeed, the contrary conclusion is more plausible -- inasmuch as the license amendment does not authorize any different manner of operation for the facility, and does not reduce or eliminate any applicable standard which the plant must satisfy, it is not apparent or "obvious" that the instant licensing action could have any

offsite consequence whatsoever.¹⁴ Accordingly, having failed to establish, "with particularity," any credible reason to believe that offsite consequences could result from the instant licensing action and thus adversely affect the Petitioner's interests, the Amended Petition fails to establish Mr. Dienethal's standing to intervene and should be denied. *See Georgia Tech, supra*, 42 NRC at 116-17; *Sequoyah Fuels Corp.* (Gore, OK Site), CLI-94-12, 40 NRC 64, 72, 74 (1994) (requiring a showing of injury-in-fact that is "concrete and particularized" rather than "conjectural" or "hypothetical," or a "realistic threat" of direct injury resulting from the licensing action).

CONCLUSION

For the reasons set forth above, the Staff submits that Mr. Dienethal's Amended Petition fails to establish his standing to intervene in this proceeding. Accordingly, the Staff opposes his petition for leave to intervene, as amended, and recommends that it be denied.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of August 1998

¹⁴ Indeed, the Staff has found that the instant license amendment "is consistent with current licensing practice" and "ensure[s] that Zion is maintained in a safe, stable condition"; further, the Staff has concluded that "(1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the proposed amendments will not be inimical to the common defense and security or to the health and safety of the public." *See* Safety Evaluation dated July 24, 1998, at 4, attached to Board Notification 98-01, dated August 4, 1998.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '98 AUG 19 P12:08

In the Matter of)

COMMONWEALTH EDISON COMPANY)

(Zion Nuclear Power Station,
Units 1 and 2))

Docket Nos. 50-295/304-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO AMENDED PETITION TO INTERVENE FILED BY EDWIN D. DIENETHAL" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, this 18th day of August 1998:

Thomas S. Moore, Chairman
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Office of the Secretary (2)
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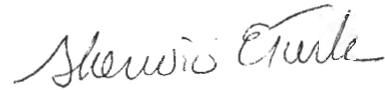
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