



reasons set forth below, Licensees submit that the Petition, as amended and supplemented, should be denied. A separate response is being filed regarding the amended and supplemented petition filed by Allan L. Mitchell and Linda E. Mitchell ("Mitchell Petition" or "Mitchell Petitioners").

I. **INTRODUCTION**

In the Memorandum and Order, this Board ruled upon two timely petitions for leave to intervene and requests for hearing. One was filed by the Mitchell Petitioners and the other by Petitioner Scott and Petitioner Bush. The Board recognized that the latter petition was also submitted "in behalf of the Coalition for Responsible Energy Education (CREE), which, in turn, is a project of Arizonians for a Better Environment (ABE)."<sup>3/</sup> In the Memorandum and Order the Board determined that the Mitchell Petitioners had "established their standing by virtue of their residence within 5 miles of the station" and Mrs. Mitchell's employment as "an onsite worker at the station."<sup>4/</sup> However, it ruled "that the Scott/Bush Petitioners, either for themselves or for CREE and ABE, have so far failed to establish standing to intervene in this proceeding" and withheld any ruling as to their standing until they file their amended and supplemental petitions.<sup>5/</sup> The Scott/Bush/CREE Petition presents

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<sup>3/</sup> Memorandum and Order at 2.

<sup>4/</sup> Id. at 9.

<sup>5/</sup> Id. at 11.

standing issues that are not relevant to the Mitchell Petition, and thus, Licensees are responding to each Supplemental Petition individually.

The Scott/Bush/CREE initial petition did not assert any specific contentions. However, having rejected the arguments of both the Licensees and the NRC Staff that the Petition had failed to meet the "aspect" requirement contained in 10 CFR § 2.714(a)(2)<sup>6/</sup> and, in light of the provision contained in 10 CFR § 2.714(b)(1) authorizing the submittal of contentions for a limited period of time subsequent to the initial filing of petitions to intervene, the Board authorized Petitioners to file an amended and supplemental petition by March 11, 1991, "which include[s] a list of contentions which petitioner seeks to have litigated in a hearing."<sup>7/</sup> It specifically extended an opportunity to the Petitioners to amend their petition to establish standing.<sup>8/</sup> In that connection, it discussed the precedents related both to proximity-based personal standing of individuals, emphasizing the questions which both the Licensees and the NRC Staff had raised concerning whether Ms. Bush and Mr. Scott live within the appropriate "zone of interest" for this

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6/ Id. at 12-13.

7/ Id. at 16.

8/ Id. at 14.

proceeding, and the means by which an organization may establish representational standing.<sup>9/</sup>

The Board's Memorandum and Order directed that the supplemental Petition was to be served on "the Board and other parties" on March 11, 1991.<sup>10/</sup> Petitioners transmitted what appears to have been a draft of the Petition to the Board Chairman on the appointed day but Licensees did not receive the Petition.<sup>11/</sup> Upon request, Petitioner Scott transmitted a copy of the final document to Licensees on March 13, 1991.<sup>12/</sup> Licensees respond to the latter document herein, presuming that it is a complete and accurate copy of the supplemental Petition as filed and that it has been served on the Board and other parties.<sup>13/</sup>

Despite being given ample opportunity to clarify issues regarding their standing, Petitioners have failed to provide sufficient information to establish that they have standing to

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<sup>9/</sup> Id., at 4-6, 9-11.

<sup>10/</sup> Id. at 17.

<sup>11/</sup> At the request of Licensees, Chairman Smith transmitted a copy to them on March 12, 1991.

<sup>12/</sup> "Supplemental and Amended Petitions to Intervene of Myron L. Scott, Barbara S. Bush and the Coalition For Responsible Energy Education," dated March 11, 1991.

<sup>13/</sup> Licensees also received a copy of the Petition by first class mail on March 14, 1991. The Petitions received by Licensees on March 13 and 14 are identical, but these copies are not identical to the facsimile transmission received from Chairman Smith on March 12, 1991.

intervene in the requested hearing. Further, petitioners have not met the requirements of NRC regulations in framing their proffered Contentions. Consequently, they have neither established standing nor asserted an admissible Contention. The Petition should be denied.

II. THE PETITIONERS HAVE NOT DEMONSTRATED STANDING

Under 10 CFR § 2.714, a person who desires to intervene in an NRC proceeding is required to identify an interest that would be affected by the proceeding. Specifically, 10 CFR § 2.714 (a) (2) states:

The petition shall set forth with particularity the interest of the petitioners in the proceeding, 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 facts in paragraph (d) (1) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

Similarly, 10 CFR § 2.714 (d) (1) states that the NRC will consider the following factors in ruling on a petition for leave to intervene or a request for hearing:

- (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 which may be entered in the proceeding on the petitioner's interest.

The Commission has held that, in determining whether a person has an interest which may be affected by a proceeding, "contemporaneous judicial concepts of standing should be used." Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). To have standing, a person must allege that he will be injured in fact as a result of the proceedings and that his interests fall within the zone of interests protected by applicable statutes. Pebble Springs, CLI-76-27, 4 NRC at 613-14; Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

In order to establish "injury-in-fact" for standing, a petitioner must have a real stake in the outcome of the proceeding. 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). As the Board has correctly pointed out, proximity to a nuclear plant may satisfy the requirement for potential injury or a "real stake" in the outcome of the proceeding, however, 50 miles from a nuclear facility is the greatest distance that has been held to support standing to intervene on the basis of proximity alone. Memorandum and Order at 6. Even so, the support for finding standing at that distance is rather weak. See Tennessee Valley Authority (Watts Bar, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977). Thus, the Board has indicated that "[t]he 50-mile ruling [is] already very



liberal" and has stated that it would not be inclined to extend this outer boundary. Merorandum and Order at 9.

For the reasons set out below, Petitioners have failed to satisfy the requirements for establishing standing.

Therefore, the Petition should be denied.

**A. Petitioners Scott and Bush Have Failed To Establish Individual Standing**

Since the arguments of Petitioners Scott<sup>14/</sup> and Bush<sup>15/</sup> concerning their individual standing are for all practical purposes identical, Licensees will address the standing of these two Petitioners together. In "Licensees Answer In Opposition To Petitions To Intervene and Requests For Hearing" ("Answer"), Licensees pointed out that the Tempe, Arizona, mailing address listed for Petitioner Bush and/or ADE/CREE is located approximately 52 miles from the Palo Verde Nuclear Generating Station ("PVNGS"). At that time Licensees noted that "[i]f this address is the residence of Petitioners Bush and Scott

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<sup>14/</sup> Petitioner Scott has signed the Petition and presumably attested to its veracity pursuant to 10 CFR § 2.708(c). It is unclear under what authority and in what capacity Petitioner Scott has signed the Petition. Petitioner Scott has previously indicated that he is a "trained lawyer" (January 22 Petition at 2, ¶ 11.), however, he has not entered a Notice of Appearance as an attorney-at-law or as representative of CREE pursuant to 10 CFR § 2.713(b). Licensees do not know where Petitioner Scott is admitted to practice law.

<sup>15/</sup> The Petition avers that Ms. Bush's affidavit attesting to facts contained in the Petition "will be served within 48 hours" of the Petition's service. Petition at 3. Licensees have not received any such affidavit to date.

and/or ABE's [and presumably CREE's] headquarters, it is, nevertheless, beyond the distance ordinarily considered within close proximity for purposes of establishing standing." Answer at 6. Petitioners do not deny that their residence is 52 miles from PVNGS, but rather "stipulate" that their "permanent residence is approximately 50 miles from [PVNGS]." Petition at 1. Given the emphasis expressed by the Board, Licensees, and Staff concerning the precise location of the Scott/Bush residence, it must be presumed that Petitioners reside more than 50 miles from PVNGS. Thus, Petitioners have not met the minimum requirements for proximity based standing.

Although the Board specifically cautioned Petitioners "that any additional arguments in support of their claim of standing to intervene must be specific and sufficient to carry [their] burden,"<sup>16/</sup> the supplemental Petition adds only the following argument:

In support of his personal standing and in support of CREE's standing, Mr. Scott states that he is an active hiker, camper, birdwatcher and photographer, and has and continues to engage in these activities within close proximity to PVNGS at locations including the Harquahala Valley, the Eagle Tail Mountains, Painted Rocks State Park, the Estrella Mountains (as recently as November, 1990), and White Tank Mountains (as recently as January, 1991).

Petition at 2. The Petition relies upon this same statement, in substantive part, as the basis for the standing of Petitioner

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<sup>16/</sup> Memorandum and Order at 11-12.



Bush. Id. Petitioners fail to state either the extent or frequency of their activity and fail to indicate the specific locations where this activity is conducted.

Quick reference to a map reveals that the valley, park, and mountain ranges mentioned by Petitioners cover wide areas of Arizona ranging in distance anywhere from 10 to 60 miles from PVNGS. In fact, the vast majority of the possible land area cited by Petitioners is at least 30-40 miles from PVNGS.

Based upon the sketchy information provided by Petitioners, the best argument for standing that can be drawn is that Petitioners, who reside more than 50 miles from PVNGS, have conducted intermittent activity -- the extent or duration of which they fail to specify -- at unspecified distances from the plant twice in the last five months. This level of activity is not sufficient to confer standing upon Petitioners, especially given Petitioners' failure to comply with the Licensing Board's explicit instruction to provide specific information. See also South Texas Project, LBP-79-10, 9 NRC at 459 ("A petitioner is responsible for providing a Board with sufficient information for determining whether that petitioner has standing of right.").

Particularization of interest has been emphasized by boards evaluating recreational interests in the past. For instance, one Appeal Board has opined:

We have serious reservations, however, about the claim that the interest of petitioner and his family in using the river "for a variety of recreational and aesthetic purposes" --

presumably near their residence in New Orleans -- will be affected by the proposed reactor. That claim brings into sharp focus the need for particularization of claims of interest . . . .

Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973).

It is true and has been noted that "[r]ecreation close to [a] site has been a factor contributing to standing in some cases, but in those instances the individuals have also resided less than fifty miles from the plant." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1448 n.22 (1982).<sup>17/</sup> Where an individual lived more than fifty miles from the site and identified six specific visits to within a fifty mile radius of the plant, the licensing board in Limerick concluded that "[i]ntermittent visits to the area do not show an interest sufficient to require granting intervenor status." Id. at 1448 (citing Public Service Co. of Oklahoma (Black Fox Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977)).

The amount of time a potential intervenor spends conducting an activity and the distance of the activity from the facility are relevant in determining whether or not the contact is de minimis. See South Texas Project, LBP-79-10, 9 NRC at 457. Although it was a "close question," the South Texas Project Board

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<sup>17/</sup> See, e.g., Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173, 173 & n.1 (1973); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 (1979).

concluded that a petitioner's fishing activity once a month within 40 or 50 miles of a plant was insufficient to confer standing as a matter of right. Id.

Petitioners have wholly failed to establish their interest in this license amendment proceeding. Rather than admit that they reside more than fifty miles from PVNGS, Petitioners "stipulate" that the distance is "approximately fifty miles." Since the fifty mile limit is itself very generous, Petitioners have a substantial burden to show the frequency, location, and extent of specific activities in proximity to PVNGS that demonstrate their interest or "real stake" in this proceeding. Despite explicit instruction from the Board, they have demonstrated only a generalized interest that is shared with many citizens of Arizona and the United States. Such an interest is inadequate to establish standing as a matter of right.

**B. CREE Has Failed To Supply Sufficient Information and Has Failed To Establish Either Organizational or Representational Standing.**

The legal status of CREE is very unclear. Originally, Petitioners noted that CREE was a "project" of ABE. January 22 Petition at 1. The supplemental Petition, however, includes no reference to ABE other than the information that Petitioners Scott and Bush are "members, directors and present or past officers of CREE (and ABE)." Petition at 3. Thus, the Petition wholly fails to address the legal status of CREE or the role of ABE in this proceeding. Although there is precedent for the

admission of intervenors that are unincorporated associations,<sup>18/</sup> a licensing board has denied standing -- at least initially -- to an organization, where the legal status of the organization was unclear. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-76-12, 3 NRC 277, 288-289 (1976).

The legal status of CREE is especially significant in determining CREE's standing here, because CREE is seeking to represent the interests of its members. The fact that CREE is a "project" indicates that it may not actually have members. Rather, such status indicates that the members claimed for CREE are actually members only of ABE, an organization which is not seeking to intervene in this proceeding.

Assuming arguendo that CREE is an entity capable of intervening in this proceeding upon a proper showing, CREE has nevertheless failed to establish standing to intervene. In order to meet the requirements for standing, an "organization must show injury either to its organizational interests or to the interests of members who have been authorized to act for them." Limerick Generating Station, LBP-82-43A, 15 NRC at 1437, (citing Warth v. Seldin, 422 U.S. 490, 511 (1975); Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972)). CREE is apparently claiming both

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<sup>18/</sup> See, e.g., Pacific Gas and Electric Co. (Humboldt Bay Power Plant, Unit No. 3), LBP-88-4, 27 NRC 236, 237 (1988); Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 395 (1984).

organizational and representational standing. It asserts as an argument for standing that it is a "public interest group" and also claims standing as a representative of the public at large and its members, five of whom are identified. Petition at 4.

To the extent that CREE is attempting to intervene on its own behalf based upon the claim that it is a "public interest group," intervention should be denied.<sup>19/</sup> The Supreme Court has rejected such grounds for standing, stating 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" within the meaning of the APA. The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if 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. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual

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<sup>19/</sup> Apparently CREE also seeks to represent the public at large. However, CREE may not attempt to intervene in order to represent the interests of unnamed individuals who have not authorized CREE to intervene on their behalf. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474 n.1 (1978); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-77-11, 5 NRC 481, 483-84 (1977); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-75-60, 2 NRC 687, 690 (1975).



citizen with the same bona fide special interest would not also be entitled to do so.

Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972). This holding is applied in NRC proceedings. See, e.g., Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 742 (1978); Pebble Springs, CLI-76-27, 4 NRC at 613; Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 421-23 (1976).

CREE also argues that "intervention by CREE is consistent with past NRC practice of recognizing intervenor status on behalf of the general (local) interest," and claims that CREE has been given a role in proceedings before other federal and state agencies. Petition at 4. As far as licensees can ascertain, CREE has never been admitted as an intervenor in an NRC adjudicatory proceeding, but rather has made several requests pursuant to 10 CFR § 2.206. Under the terms of 10 CFR § 2.206, however, "[a]ny person may file a request" for enforcement action, and no legal interest or standing requirement is imposed. Consequently, past NRC practice regarding CREE's Section 2.206 requests does not provide any support for granting CREE intervenor status. Similarly, CREE's status as an intervenor before other regulatory bodies is not relevant to its legal standing in this proceeding.

CREE has also failed to establish standing as a representative of its members. When an organization undertakes



to intervene on that basis, it must demonstrate that a member has authorized the organization to represent him or her in the proceeding. Limerick Generating Station, LBP-82-43A, 15 NRC at 1437; South Texas Project, LBP-79-10, 9 NRC at 444, aff'd ALAB-549, 9 NRC 644; Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978). As pointed out in footnote 18 supra, CREE may not assert standing to represent the interests of unnamed members. Moreover, to the extent CREE's standing is based upon that of Petitioners Scott and Bush, it must be denied for the reasons set out in section A supra. Thus, CREE's attempt to establish standing is based solely upon its capacity to represent the three other individuals identified in the Petition, Claire Estes, Lorain E. Kadish, and John T. Stigner.

The mere identification of Claire Estes as a member of CREE who may authorize CREE to represent her interests is not sufficient to satisfy the authorization requirement.<sup>20/</sup> Likewise, the statements offered by John T. Stigner and Lorain E. Kadish are insufficient to satisfy the requirement that individuals possess "indicia of membership," particularly in

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<sup>20/</sup> Petitioners state that Claire Estes lives "within approximately 30 miles or less of PVNGS." Petition at 3. Licensees estimate that the Estes address is located at least 40 miles from PVNGS. This distance is calculated by measuring the straight line distance from the center of the PVNGS site to the Estes address using a U.S. Geological Survey Map with a scale of 1" = 5 miles. Other distances estimated by Licensees in this Response were calculated using the same method.

light of the fact that Petitioners have failed to define CREE's legal status and ability to have a membership at all.<sup>21/</sup>

Under governing judicial concepts of standing, the mere designation of a person as a "member" of an organization does not necessarily entitle the organization to represent the person's interest. In order for such representation to be sanctioned, the person must -- in fact -- possess the "indicia of membership" in the organization. For example, in Health Research Group, v. Kennedy, 82 F.R.D. 21, 27 (D.D.C. 1979), a court held that persons who contributed financial support to and communicated with an organization but who did not elect the board of directors of the organization or otherwise exercise any control over the organization could not be construed as "members" for the purpose of standing. Similarly, the U.S. Supreme Court found that an organization possessed the "indicia of membership" for purposes of standing when its "members" elected the controlling body of the organization, could serve on the body, and financed its activities. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 344-45 (1977).

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<sup>21/</sup> Licensees estimate that the Stigner residence is located at least 44 miles, and the Kadish residence at least 50 miles, from PVNGS. Thus, even if these individuals possess the requisite indicia of membership, it is not clear that their interest is sufficient to confer standing without a further showing of activity in the vicinity of the plant. Cf. North Anna, ALAB-522, 9 NRC at 57 (organization's claim of interest was demonstrated where member resided 45 miles from the plant and engaged in canoeing on North Anna River in the vicinity of the plant).

In short, to have "indicia of membership" in an organization, the members must be able to exercise at least some control over the organization.<sup>22/</sup> An organization may therefore be denied standing asserted on behalf of a member who explicitly authorizes such representation, where the "member" lacks the essential elements of control. See Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 514 n.5 (1990).

Petitioners have failed to properly identify CREE's organizational status and thus call into question the membership status of Mr. Stigner and Ms. Kadish. The statements provided assert that these individuals are members of CREE, but do not shed any light on whether or not they exercise any control over - or indicia of membership in -- CREE which is, in turn, a project of ABE.

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<sup>22/</sup> One licensing board ruled that Health Research Group should not be applied in NRC proceedings. Consolidated Edison Co. (Indian Point, Unit No. 2), LBP-82-25, 15 NRC 715, 733-736 (1982). However, on appeal, the Commission expressly declined to reach a conclusion on the correctness of this ruling. CLI-82-15, 16 NRC 27, 31 (1982). Similarly, the North Anna Appeal Board explicitly declined "to explore the question whether representational standing can be based on the personal interests of a mere financial contributor to the organization." ALAB-536, 9 NRC at 404 n.2. Licensees respectfully submit that the licensing board's ruling in Indian Point is entitled to no precedential value in light of the Commission's decision. In any event, the licensing board's ruling in Indian Point is incorrect and inconsistent with the Commission's direction in Pebble Springs, CLI-76-27, 4 NRC at 614, that contemporaneous judicial concepts of standing should be applied in NRC proceedings.

Petitioners have been given ample opportunity to establish CREE's interest in this proceeding, and have been given explicit instruction to specify the requisite elements of that interest. The information supplied by Petitioners is insufficient to grant CREE standing to intervene in this proceeding.

III. PETITIONERS HAVE NOT SUBMITTED AT LEAST ONE ADMISSIBLE CONTENTION

The Petition also should be denied for failure to submit at least one admissible contention. As pointed out in the Board's February 19 Memorandum and Order, a petitioner is required to submit a list of contentions prior to the prehearing conference on the petition to intervene. Memorandum and Order at 13-14; 10 CFR § 2.714(b)(1). That section further provides that "[a] petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one Contention will not be permitted to participate as a party." In summary, a contention must consist of:

1. A specific statement of the issue of law or fact to be raised or controverted . . . . § 2.714(b)(2).
2. A brief explanation of the bases of the contention . . . . § 2.714(b)(2)(i).
3. A concise statement of the alleged facts or expert opinion which support the contention . . . . § 2.714(b)(2)(ii).
4. Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact . . . . § 2.714(b)(2)(iii).



The Petitioners present three contentions, none of which meets these four requirements. Petitioners' first contention states merely that "the technical specifications are outside safety range." Petition at 5. A general allegation that the amendment would be unsafe, such as contended here, has never been sufficient to meet the Commission's contention requirement. Additionally, Petitioners fail to meet the procedural requirements to state the basis for the contention, factual support for the contention, and sufficient information to show a genuine dispute with licensees' application. See 10 CFR § 2.714(b)(2).

In their second and third contentions, Petitioners raise generalized concerns about quality assurance and employee involvement. These contentions not only offer no basis, support, or dispute with the application, but also are not within the scope of this amendment proceeding.<sup>23/</sup> Should Petitioners wish to raise these concerns, they may raise them in the

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<sup>23/</sup> As explained in the Notice of Opportunity for Hearing, "Contentions shall be limited to matters within the scope of the amendment under consideration." 55 Fed. Reg. 53220, at 53221 (Dec. 27, 1990). "[T]he controlling principle [is] that an amendment proceeding is limited to a consideration of those issues 'directly arising from the proposed change.'" Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-14, 13 NRC 677, 697 (1981), aff'd ALAB-660, 14 NRC 987 (1981) (quoting Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974)). See Licensees' Response to Supplemental Petition of Mitchell Petitioners, at 2-2.

appropriate fora -- in a 10 CFR § 2.206 request to NRC or in an action before the Department of Labor.

The foregoing three contentions were expressly asserted on behalf of Petitioners Scott, Bush and CREE together. In the immediately preceding sentence, however, it is Petitioner CREE alone that "moves the Board to accept the contentions raised by the Mitchell Petitioners as joint contentions." Petition at 5. For this reason, if the Board determines that Petitioners Scott and Bush have standing to intervene in this proceeding, it should nevertheless dismiss the Petition as it relates to those two parties for failure to submit an admissible contention, and it should do so without regard to the disposition of the Mitchell contentions. In any event, Petitioner CREE's intent here is unclear. For example, the motion is prefaced by the comment "In general," which may indicate that Petitioner CREE does not agree fully with the contentions.

Although Petitioner CREE has failed to formally adopt or incorporate the contentions raised by the Mitchell Petitioners, its reference to the contentions as "joint" may indicate an intent to do so. Should the Board so interpret the CREE motion, Licensees adopt and incorporate herein their response and arguments in opposition to the Mitchell contentions. There, Licensees demonstrate that none of the Mitchell contentions meets the requirements of Section 2.714 because they are not specific, do not identify a sufficient basis or

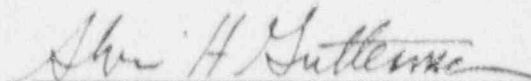


supporting facts, or are not material to the proposed amendment.<sup>24/</sup>

IV. **CONCLUSION**

The Petition does not demonstrate Petitioners' standing to intervene as a matter of right, and the Petition does not present one admissible contention. Accordingly, the Petition does not satisfy the requirements of 10 CFR § 2.714, and therefore should be denied.

Respectfully submitted,



March 21, 1991

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<sup>24/</sup> "Licensees' Response To Supplemental Petition of Mitchell Petitioners," at 12-28.

11573

March 20, 1991

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'91 MAR 22 P3:58

In the Matter of )

ARIZONA PUBLIC SERVICE  
COMPANY, et al. )(Palo Verde Nuclear Generating  
Station, Units 1, 2 and 3) )Nos. 50-528-OLA-2,  
50-529-OLA-2 and  
50-530-OLA-2(Allowable Setpoint  
Tolerance)

ASLBP No. 91-633-05-OLA-2

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that Alvin H. Gutterman enters  
an appearance as counsel for Arizona Public Service Company, et  
al. in the above-captioned proceeding.

Name: Alvin H. Gutterman

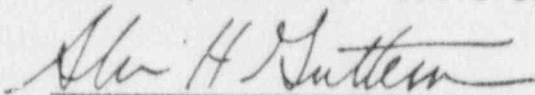
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Admissions: District of Columbia Court of  
Appeals  
Supreme Court of Tennessee

Name of Party: Arizona Public Service  
Company, et al.  
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Date: March 20, 1991

RECEIVED  
March 21, 1991

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'91 MAR 22 P3:58

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

ARIZONA PUBLIC SERVICE )  
COMPANY, et al. )

(Palo Verde Nuclear Generating )  
Station, Units 1, 2 and 3) )

Nos. 50-528-OLA-2, 50-529-OLA-2  
and 50-530-OLA-2

(Allowable Setpoint Tolerance)

ASLBP No. 91-633-05-OLA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensees' Response To Supplemental Petition of Mitchell Petitioners" and "Licensees' Response To Scott/Bush/CREE Supplemental and Amended Petition" in the above captioned proceeding, together with a cover letter to the Secretary of the Commission and a "Notice of Appearance of Counsel," were served on the following by deposit in the United States mail, first class, properly stamped and addressed or by express mail, overnight delivery, on the date shown below.

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Adjudicatory File  
Washington, D.C. 20555  
(two copies)

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Chief, Docketing and Service Section  
(Original plus two copies)

Administrative Judge\*  
Ivan W. Smith, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge\*  
Jerry R. Kline  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge\*\*\*  
Walter H. Jordan  
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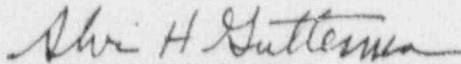
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