

February 12, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY

In the Matter of

Docket No. 52-009

System Energy Resources, Inc. (SERI)

(Early Site Permit for Grand Gulf ESP Site)

**HEARING REQUEST AND PETITION TO INTERVENE BY THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
CLAIBORNE COUNTY, MISSISSIPPI BRANCH,
NUCLEAR INFORMATION AND RESOURCE SERVICE, PUBLIC CITIZEN,
AND MISSISSIPPI CHAPTER OF THE SIERRA CLUB**

Pursuant to 10 C.F.R. § 2.714 and a notice published by the Nuclear Regulatory Commission (“NRC” or “Commission”) at 68 Fed. Reg. 67,489 (December 2, 2003), Petitioners National Association for the Advancement of Colored People Claiborne County, Mississippi Branch (“NAACP”); Nuclear Information and Resource Service (“NIRS”); Public Citizen; and Mississippi Chapter of the Sierra Club (Sierra Club) hereby request a hearing and petitions to intervene in the above-captioned proceeding. As demonstrated below, Petitioners have representational standing, through their members, to make this hearing request.¹

Description of Proceeding

This proceeding concerns an application by System Energy Resources, Inc. (“SERI”) for an Early Site Permit for construction of one or more new nuclear reactors on the site of the Grand Gulf nuclear power plant. SERI filed its application with the

¹ Petitioners have agreed that if they are admitted to the proceeding as interveners, NIRS will serve as the lead intervener.

NRC on October 16, 2003. The NRC published a notice of opportunity to request a hearing at 69 Fed. Reg. 2,636 (January 16, 2004). If granted, the Early Site Permit would permit SERI to bank or reserve the Grand Gulf site as a potential location for one or more new nuclear reactors with a total capacity of no more than 8,600 Megawatts thermal additional for the site.

Description of Petitioners

The National Association for the Advancement of Colored People Claiborne County Mississippi Branch is the local affiliate of the NAACP, a nonprofit voluntary membership organization incorporated under the laws of the State of New York. Founded in 1909, the NAACP is the nation's oldest and largest civil rights organization with a mission to secure and protect equal protection under law, including equal environmental protection. The NAACP has a half-million adult and youth members throughout the United States including members of the Claiborne County Branch who live in Claiborne County, Mississippi.

NIRS is a national non-profit organization with over 6,000 members, many of whom live in the southern part of the United States. NIRS has a mission to promote a non-nuclear energy policy, and a concern for the health and safety of the people and ecosphere that includes Mississippi and the surrounding region.

Public Citizen is a national, nonprofit consumer advocacy organization with 126,537 members nationwide. Public Citizen's mission is to protect openness and democratic accountability in government and the health, safety, and financial interests of consumers. Public Citizen advocates for policies that will lead to safe, affordable and environmentally sustainable energy.

The Mississippi Chapter of the Sierra Club is an affiliate of Sierra Club, a nonprofit voluntary membership organization incorporated under the laws of the State of California. Founded in 1892, Sierra Club's mission is to explore, enjoy and protect the wild places of the Earth; to practice and protect the responsible use of the Earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. The Sierra Club has more than 500,000 members throughout the United States with 1,359 members of the Mississippi Chapter including members who live in Claiborne, Warren and Adams County near the Grand Gulf nuclear power station.

Standing

As required by the NRC's Federal Register notice and 10 C.F.R. § 2.714, a hearing request must:

set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene with particular reference to the factors set forth in 10 CFR 2.714(d)(1), and the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.

In addition, the hearing request must address 1) the nature of the petitioner's right under the Atomic Energy 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 that may be entered in the proceeding on the petitioner's interest. *Id.*

Other standing requirements are found in NRC case law. As summarized by the Atomic Safety and Licensing Board ("ASLB") in a recent decision, these standing requirements are as follows:

In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plants), LBP-99-25, 50 NRC 25, 29 (1999). An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998). To intervene in a representational capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests. *See Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 168, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998).

Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002) (hereinafter "*Diablo Canyon*").

Petitioners' standing to participate in this proceeding is demonstrated by the declarations of the following members of Petitioner organizations, who have authorized Petitioners to represent their interests in this proceeding.

As demonstrated by the attached declarations, Petitioners' members live near the proposed site, i.e., within 50 miles. Thus, they have presumptive standing by virtue of their proximity to the one or more new nuclear plants that may be constructed on the site. *Diablo Canyon, supra*, 56 NRC at 426-427, citing *Florida Power & Light Co.* (Turkey

Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd*, CLI-01-17, 54 NRC 3 (2001) (hereinafter “*Florida Power & Light*”).²

Petitioners’ members seek to protect their lives and health by opposing the issuance of an Early Site Permit to SERI. The issuance of an Early Site Permit to SERI could have an adverse effect on these individuals’ interests in protecting their health and safety by paving the way for an unsafe nuclear operation with disproportion environmental impact on the nearby communities. Petitioners seek to ensure that no Early Site Permit is issued by the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) unless SERI demonstrates full compliance with the Atomic Energy Act and the National Environmental Policy Act (“NEPA”).

Specific Aspects of the Subject Matter As To Which Petitioners Seek to Intervene

As required by the Federal Register notice, Petitioners set forth below the specific aspects of the subject matter of this proceeding as to which they wish to intervene:

1. Whether enough information is available regarding reactor designs for the proposed site to permit sound judgments about environmental impacts of the proposed construction and operation of new reactors on the site. *See* Final Rule: Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors, 54 Fed. Reg. 15,372, Section II.2 (April 18, 1989).

² In *Diablo Canyon*, the Licensing Board noted that petitioners who live within 50 miles of a proposed nuclear power plant are presumed to have standing in reactor construction permit and operating license cases, because there is an “obvious potential for offsite consequences” within that distance. *Id.* Here, the granting of an Early Site Permit to SERI would facilitate the granting of a construction permit and operating license for one or more new reactors on the Grand Gulf site. Thus, the same standing concepts apply.

2. Whether there is a reasonable basis for information provided by the applicant regarding projected emissions, site impacts, safety factors, and exact operational parameters. *Id.*
3. Whether the applicant's Environmental Report contains a sufficient discussion of the purpose and need for the proposed action; the proposed action's environmental impacts; and the relative costs and benefits of a reasonable range of alternatives for avoiding or mitigating those impacts, including obviously superior alternatives sites.
4. Whether the applicant's Environmental Report contains a sufficient discussion of cumulative impacts, including the combined impacts of the operation of the one or more new proposed reactors and the existing Grand Gulf nuclear reactor.
5. Whether the applicant's Environmental Report contains an adequate site redress plan.
6. Whether, considering the final balance of conflicting factors regarding the environmental impacts of the proposed action, as well as reasonable alternatives, the appropriate action would be to deny the Early Site Permit.
7. Whether issuance of an Early Site Permit would be inimical to the common defense and security or the health and safety of the public.
8. Whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without posing undue risk to the health and safety of the public.

9. Whether issuance of an Early Site Permit would have disproportionate adverse environmental impacts on the predominately African American community of Claiborne County, where a significantly large proportion of residents live below the poverty level.

Petitioners' concerns under paragraphs 7, 8 and 9 include, but are not limited to, the adequacy of descriptive information supplied by SERI pursuant to 10 C.F.R. § 52.17, the adequacy of security for the site, the adequacy of emergency planning measures, and whether the application correctly addresses the NRC's siting criteria in 10 C.F.R. Part 100.

Conclusion

For the foregoing reasons, Petitioners have demonstrated their standing to request a hearing on the propose issuance of an Early Site Permit to SERI. Pending submission of at least one admissible contention, Petitioners should be admitted as interveners.

Respectfully submitted,

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