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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:
NORTHEAST NUCLEAR ENERGY COMPANY
NORTH ATLANTIC ENERGY SERVICE
CORPORATION
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
(Millstone Nuclear Power Station,
Units Nos. 1, 2 and 3; Facility Operating
Licenses Nos. DPR-21, DPR-65, NPF-49)

Docket No. 50-245
Docket No. 50-336
Docket No. 50-423

April 27, 2000

**PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING IN
THE PROPOSED INDIRECT TRANSFER OF THE MILLSTONE NUCLEAR
GENERATING STATION UNITS 1, 2 AND 3 FACILITY OPERATING
LICENSES NOS. DPR-21, DPR-65 and NPF-49**

The Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone ("CAM")(collectively, "Petitioners") hereby petition for leave to intervene and request for hearing by an Atomic Safety and Licensing Board in the above-captioned matter (Federal Register, April 7, 2000, Volume 65, Number 68, Pages 18381-18382) in accordance with the provisions of 10 CFR 2.1306.

I. Introduction

On January 13, 2000, Northeast Nuclear Energy Company and North Atlantic Energy Service Corporation (collectively "NU") and Consolidated Edison Company of New York, Inc. ("Con Ed") applied to the United States Nuclear Regulatory Commission under 10 CFR 50.80 for approval of the proposed indirect transfer of Facility Operating Licenses Nos. DPR-21, DPR-65 and NPF-49 for the Millstone Nuclear Power Station, Units 1, 2 and 3, respectively. The indirect transfer would be to a "new" Consolidated Edison, Inc("CEI"), incorporated in Delaware. ("Application")

10 CFR 50.80 provides as follows:

Transfer of licenses.

- (a) No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.
- (b) An application for transfer of a license shall include as much of the information described in SS50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be

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required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by S50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to S.50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

- (c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines:
 - (1) That the proposed transferee is qualified to be the holder of the license; and
 - (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

II. The Petitioners

The Petitioner, Connecticut Coalition Against Millstone, is an organization of statewide safe-energy and environmental groups and individuals devoted to the permanent closure of the Millstone Nuclear Power Generating Station. Its membership includes Millstone whistleblowers who were fired by NU in retaliation for raising safety issues of consequence to the public health and safety. Its membership includes families with young children who reside within five miles of the Millstone nuclear reactors. CCAM is based at 13 Water Street, Mystic, Connecticut, within the 10-mile emergency evacuation zone of the Millstone reactors.

The Petitioner, Long Island Coalition Against Millstone, is an organization of Long Island, New York, safe-energy and environmental groups and individuals devoted to the permanent closure of the Millstone Nuclear Power Generating Station. Its membership includes families with young children who reside within the 10-mile emergency evacuation zone of the Millstone reactors.

Altogether, the membership of the Petitioners is in the thousands of individuals.

The Petitioners have standing to intervene in these proceedings. Both Petitioners have been granted intervention status in the pending proceedings before the Atomic Safety and Licensing Board, "In the Matter of Northeast Nuclear Energy Company," Docket No. 50-423-LA-3/ASLBP 00-771-01-LA.

In the present proceedings, Petitioners declare that the application, if granted, would subject them to greater risk of peril from the operations of the Millstone reactors. The application does not address health and safety issues; NU and Con Ed have both demonstrated a reckless disregard for public health and safety in their nuclear operations.

Affidavits supporting the standing of the Petitioners to intervene in these proceedings will be submitted under separate cover.

III. Contentions

Contention No-1: The Commission Lacks Legal Authority to Grant “Indirect” Transfer of the Millstone Facility Operating Licenses.

The applicant seeks approval for “indirect” transfer of the Millstone Facility Operating Licenses pursuant to 10 CFR 50.80, above cited.

While 10 CFR 50.80 does provide authority for the transfer of such facility operating licenses, subsection (c) only authorizes the “transfer” of a license. While subsection (a) prohibits the “indirect transfer” of a license, 10 CFR 50.80 simply does not provide authority to the Commission to approve an “indirect” license transfer.

Accordingly, while the Commission would be authorized to approve a direct transfer of the Millstone Facility Operating Licenses, it has no authority to approve an “indirect” transfer.

Contention No. 2: The Application Does Not Provide the Information Required by 10 CFR 50.33.

10 CFR 50.80(b), above cited, requires compliance with the requirements of 10 CFR 50.33. Requisite information regarding the proposed transferee, Consolidated Edison, Inc. (“CEI”), is completely omitted. CEI is the applicant for transfer; yet, the application does not list such basic information, required by 10 CFR 50.80(b), as CEI’s address. Indeed, it is not clear from the application whether CEI presently even has a legal existence. (See “Agreement and Plan of Merger,” Section 1.02 “Closing.”) Similarly, the application fails to provide the information required by 10 CFR 50.80 (c) through (k). Without such basic information, the Commission cannot properly evaluate the application.

Contention No. 3: The Application Is Premature.

The application presumes a legal merger of Consolidated Edison of New York, Inc. and “Northeast Utilities.” However, such a merger has not yet occurred. Moreover, since “Northeast Utilities” is not a legal entity, it is questionable that such a merger could occur. Although application to governmental agencies for approval of such a merger are pending, they may be rejected. Indeed, during pending hearings before the Connecticut Department of Public Utility Control (“DPUC”), a member of the DPUC was not optimistic that the DPUC could approve the merger proposal as submitted. The Attorney

General of the State of Connecticut has also publicly denounced the proposed merger. Under these circumstances, the application prematurely seeks a determination by the NRC premised on a proposal which may well not come to pass. The application asks the NRC to devote its limited resources to deciding speculative issues.

Contention No. 4: The Application Requires an Environmental Evaluation.

Presently, the three Millstone reactors lack a requisite Clean Water Act National Pollution Discharge Elimination System ("NPDES") permit, pursuant to Connecticut General Statutes S.22a-430 et seq. The previous NPDES permit expired on December 14, 1997. The operations at Millstone Units 1, 2 and 3 also involve illegal discharges under the Clean Water Act and the Connecticut Environmental Protection Act. 10 CFR 50.80(c)(2) precludes approval of a license transfer which is inconsistent with applicable provisions of law. Moreover, NU is the subject of a continuing federal investigation into potential environmental crimes committed at the Millstone Station in violation of the Clean Water Act. It has previously been fined record penalties for criminal violations of the Clean Water Act. The operations of the Millstone reactors have significantly depleted the indigenous stocks of Niantic winter flounder, a staple of the local commercial fisheries. Although NU projected losses to fisheries over the life of the license, such projections have proved to have substantially underestimated the scope of negative impact.

Contention No. 5: The Commission Should Not Consider Indian Point or Seabrook License Transfers in This Proceeding.

The Federal Register notice does not provide information about proposed Indian Point or Seabrook transfers. Therefore, these proceedings should preclude consideration of such issue.

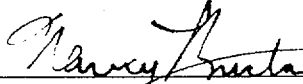
Contention No. 6: NU and Con Ed Have Demonstrated Wilful Disregard for the Public Health and Safety.

Through their respective patterns of mismanagement and disregard for public health and safety in their nuclear operations over three decades, NU and Con Ed should not enjoy the economic windfalls which will ensue should the present application be granted. The application does not address the significant health and safety issues which have direct bearing on the lives of all the members of the Petitioners.

Respectfully submitted,

Connecticut Coalition Against Millstone
Long Island Coalition Against Millstone

By:



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upon Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place—1830, New York, NY 10003 (telephone number (212) 460-4333 and e-mail address brandenb@coned.com), attorney for Consolidated Edison, Inc., William J. Quinlan, Esq., Northeast Utilities, 107 Selden Street, Berlin, CT 06037 (telephone number (860) 665-3761 and e-mail address quinlwj@nu.com), attorney for Northeast Utilities; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 8, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated January 13, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and Accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.NRC.gov>).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 3rd day of April 2000.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00-8627 Filed 4-6-00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-245, 50-336, and 50-423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Units 1, 2, and 3; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR-21, DPR-65 and NPF-49 for the Millstone Nuclear Power Station, Units 1, 2, and 3, (Unit 1, Unit 2, and Unit 3), respectively, to the extent held by Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Northeast Nuclear Energy Company (NNECO), and Public Service Company of New Hampshire (PSNH). The indirect transfer would be to a new Consolidated Edison, Inc., incorporated in Delaware (New CEI), resulting from the planned merger of Consolidated Edison, Inc. (CEI), the current parent of Consolidated Edison Company of New York, Inc. (Con Ed), and Northeast Utilities (NU), the parent company of WMECO, CL&P, PSNH and NNECO.

According to a January 13, 2000, application by ConEd, NNECO, and North Atlantic Energy Service Corporation (NAESCO) for approval of certain indirect license transfers, on October 13, 1999, NU entered into an Agreement and Plan of Merger with CEI. Upon consummation of the merger, NU will become a wholly owned subsidiary of New CEI. CL&P, WMECO, NNECO, and PSNH are all subsidiaries of NU, and will remain as such following the merger, but will have a new indirect parent, New CEI. Accordingly, consummation of the merger will effect an indirect transfer of the Millstone Units 1, 2, and 3 licenses to the extent held by the above NU subsidiaries, to New CEI. CL&P and WMECO hold ownership interests in Units 1 and 2, and NNECO is exclusively authorized to operate both Units as well as Unit 3. CL&P, WMECO, and PSNH hold ownership interests in Unit 3 along with 11 other co-owners not affiliated with NU. NNECO would remain as the managing agent for the joint owners of the facilities and would continue to have exclusive responsibility for the management, operation, and maintenance of Units 1, 2, and 3. The application does not propose a change in the rights, obligations, or interests of the other 11 joint owners of Unit 3

which are not affiliates of NU. In addition, no physical changes to Units 1, 2, and 3 or operational changes are being proposed. No direct transfer of the licenses will result from the proposed merger.

The application also seeks approval of certain proposed indirect license transfers in connection with Seabrook Station and Indian Point, Units 1 and 2 facilities, which will be the subject of separate published notices.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By April 27, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2: In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place—1830, New York,

NY 10003 (telephone number (212) 460-4333 and e-mail address brandenburg@coned.com), attorney for Consolidated Edison, Inc., William J. Quinlan, Esq., Northeast Utilities, 107 Selden Street, Berlin, CT 06037 (telephone number (860) 665-3761 and e-mail address quinlwj@nu.com), attorney for Northeast Utilities; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 8, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated January 13, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.NRC.gov>).

Dated at Rockville, Maryland this 3rd day of April 2000.

For The Nuclear Regulatory Commission,
Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00-8628 Filed 4-6-00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 040-08838]

Notice of Consideration of Amendment Request for U.S. Army Jefferson Proving Ground Site in Madison, IN and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License No. SUB-1435 issued to the U.S. Army (licensee) at the Jefferson Proving Ground (JPG) site in Madison, Indiana. The licensee requested, in a letter dated February 15, 2000, to: (1) Authorize transfer of licensing responsibilities for the Jefferson Proving Ground (JPG) site from the U.S. Army Test and Evaluation Command (TECOM) to the U.S. Army Soldier and Biological Chemical Command (SBCCOM), (2) designate Ms. Joyce E. Kuykendall as the Radiation Safety Officer (RSO) for the site, and (3) include the revised JPG Security Plan in the license.

From 1941 to 1994, the licensee conducted ordnance testing on the JPG site, and fired more than 24 million rounds of conventional explosive. From 1984 to 1994, the licensee conducted accuracy testing of depleted uranium (DU) tank penetrator rounds at the site. An NRC license was issued to authorize the U.S. Army to use, store, and perform testing of DU munitions at JPG. The DU penetrator rounds vary in size but can be generally described as rods comprised of a DU titanium alloy with a diameter of approximately 2.5 centimeters (cm) (1 inch) and a length as much as 61 cm (2 feet). The DU munitions testing contaminated approximately 5.1×10^6 square meters (m^2) (1260 acres) of the site with an estimated 7×10^4 kilograms (1.5×10^5 pounds) of DU. In accordance with the Defense Authorization Amendments and Base Realignment and Closure Act of 1988 (Public Law 100-526), the licensee was required to close the JPG base on September 30, 1995. Currently, the licensed material is kept onsite in the restricted area known as the "Depleted Uranium Impact Area." This area is located north of the firing line, and consists of approximately 12×10^6 m^2 (3,000 acres).

An NRC administrative review, documented in a letter to the licensee dated March 15, 2000, found the license amendment application acceptable to begin a technical review. The application requested to: (1) Authorize transfer of licensing responsibilities for the JPG site from TECOM to SBCCOM, (2) designate Ms. Joyce E. Kuykendall as

the RSO for the site, and (3) include the revised JPG Security Plan in the license. The NRC Decommissioning Branch is currently changing its policy regarding listing the RSO by name in the license. Instead, the license will include the qualifications that an RSO must meet for the respective site. NRC staff plans to revise the JPG license condition on the RSO accordingly.

If the NRC approves the February 15, 2000, request, the approval will be documented in an amendment to NRC License No. SUB-1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment or a Categorical Exclusion.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Soldier and Biological Chemical Command, 5183 Black Hawk Road, Aberdeen Proving Ground, MD 21010-5424. Attention: Mr. John M. Ferriter, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S.