RAS1713

May 8, 2000

DOCKETED

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

'00 MAY 10 P3:51

In the Matter of:	)	
	)	
Northeast Nuclear Energy Company,	)	
	)	
and	)	Docket Nos. 50-245
	)	50-336
Consolidated Edison Company of New York, Inc.	)	50-423
	)	
(Millstone Nuclear Power Station, Units No. 1, 2, and 3)	)	

ANSWER OF NORTHEAST NUCLEAR ENERGY COMPANY AND CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. TO PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.1307(a), Northeast Nuclear Energy Company ("NNECO") and Consolidated Edison Company of New York, Inc. ("Con Edison") herein answer the Petition for Leave to Intervene and Request for Hearing ("Petition") filed on April 27, 2000, by the Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone ("CAM") (collectively, "Petitioners"). The Petitioners seek a hearing and leave to intervene regarding Nuclear Regulatory Commission ("NRC") approval, pursuant to 10 C.F.R. § 50.80, of an indirect transfer of the operating licenses for the three-unit Millstone Nuclear Power Station. The indirect transfers are associated with the proposed merger of Northeast Utilities ("NU") and Consolidated Edison, Inc. ("CEI") -- the parent companies of NNECO and Con Edison, respectively. NNECO and Con Edison oppose the Petition for lack of a demonstration of a sufficient "interest" that could be affected by the transfer and for lack of a litigable contention.

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SECY-02

II. BACKGROUND: THE NRC CONSENT REQUESTED

On January 13, 2000, NNECO and Con Edison jointly notified the NRC of the proposed merger of CEI and NU. CEI and NU are the parent companies of the NRC licensees for Indian Point Units 1 and 2, Millstone Units 1, 2, and 3, and Seabrook Station. In particular, CEI is the current parent of Con Edison. Con Edison is the Indian Point licensee. NU is the current parent of NNECO, The Connecticut Light and Power Company ("CL&P"), Western Massachusetts Electric Company ("WMECO"), Public Service Company of New Hampshire ("PSNH"), North Atlantic Energy Corporation ("NAEC"), and North Atlantic Energy Service Corporation ("NAESCO"). NNECO, CL&P, WMECO, and PSNH are Millstone licensees (the operator and owners). NAESCO, NAEC, and CL&P are Seabrook licensees (the operator and owners). In the January 13, 2000 application, the licensees requested, to the extent necessary, NRC consent in accordance with 10 C.F.R. § 50.80 to the indirect transfers of the Indian Point, Millstone, and Seabrook licenses. The transfers will result from the planned merger of CEI and NU.

The current, pre-merger corporate structure of CEI and NU is shown in Attachment A. The proposed post-merger structure is shown in Attachment B. In essence, a new holding company, New CEI, will be created from the merger of the two current holding companies. Upon completion of all of the related merger transactions, New CEI will own all of the assets of CEI (substantially all of which is the stock of its subsidiaries, including Con Edison). In addition, NU will be a wholly-owned subsidiary of New CEI. The NU subsidiaries, including the present NRC licensees for Millstone and Seabrook, will retain their current corporate identity; they will simply exist within the New CEI combined corporate structure.

As discussed in the application, the proposed merger will have no effect on the management, organizations, or technical qualifications of: Con Edison, the entity currently

responsible for operating and maintaining Indian Point, Units 1 and 2; NNECO, the entity currently responsible for operating, maintaining and decommissioning the three Millstone units; or NAESCO, the entity currently responsible for operating and maintaining Seabrook. The merger will not result in changes to these organizations and personnel, and may actually present opportunities for synergies and shared expertise and best practices. The merger will also have no impact on the plant equipment or procedures.

As also discussed in the application, the merger will not impact the financial qualifications of the licensed subsidiaries and affiliates of CEI and NU. These companies are all "electric utilities" within the definition of 10 C.F.R. § 50.2 and the merger will not change that status. The licensees will continue to recover their costs, directly or indirectly, through rates authorized by applicable state public utility commissions and the Federal Energy Regulatory Commission. As part of electric industry restructuring initiatives, some or all of the nuclear facilities may become increasingly dependent on operating revenues from wholesale electric sales; however, the timing and full extent of the transition is uncertain, largely dependent on future events, and unrelated to the proposed merger.

On April 7, 2000, the NRC published its *Federal Register* notices of consideration of issuance of orders approving the indirect transfers under 10 C.F.R. § 50.80. The NRC published separate notices for the Millstone licenses (65 Fed. Reg. 18,381 (2000)), the Seabrook license (65 Fed. Reg. 18,380 (2000)), and the Indian Point licenses (65 Fed. Reg. 18,378 (2000)). The Petitioners timely filed their Petition on April 27, 2000. It appears that the Petitioners' sole interest relates to the Millstone licenses and the Petition is limited to that matter. Indeed, in Contention 5 (discussed below) the Petitioners specifically request that "these proceedings should preclude consideration" of Indian Point and Seabrook.

III. PETITIONERS' INTEREST OR STANDING

Under 10 C.F.R. § 2.1308, the Commission must consider in addressing a petition such as the one here at issue: a) the "nature of the Petitioner's alleged interest;" b) "[w]hether that interest will be affected by an approval or denial of the application for [license] transfer"; and c) the "possible effect of an order granting the request for license transfer on that interest," including whether granting the relief requested would redress the alleged injury. See North Atlantic Energy Service Corp., et al. (Seabrook Station, Unit 1) and Northeast Nuclear Energy Company (Millstone Station, Unit 3), CLI-99-27, 50 NRC 257, 262 (1999). The showing required of the Petitioners is therefore similar to the showing of "standing" traditionally required by the Commission in NRC licensing cases.[1]

CCAM and CAM are organizations with a common mission that is characterized in the Petition as "the permanent closure of Millstone Nuclear Power Generating Station." Petitioners purport to represent former Millstone "whistleblowers" (not present employees) and "families with young children who reside within the 10-mile emergency evacuation zone of the Millstone reactors." However, no such whistleblowers, families, or young children are identified. Petitioners rely instead on the fact that both CCAM and CAM were previously granted standing with respect to a license amendment application for Millstone Unit 3. That pending amendment relates to increasing the storage capacity of the Unit 3 spent fuel pool. See Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 3), LBP-00-02 (slip op., February 9, 2000).

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[1] However, as recently made apparent by the United States Court of Appeals for the D.C. Circuit, in determining whether a party has the requisite "interest" for intervention in one of its proceedings, the NRC is not bound by judicial standing concepts. Envirocare of Utah, Inc. v. NRC, 194 F.3d 72 (D.C. Cir. 1999).

In traditional terms, the Petitioners appear to be seeking standing in this Subpart M license transfer proceeding based on representation of members, not on any harm to their organizational interests. Accordingly, for representational standing, Petitioners would each need to identify at least one member (by name and address) and provide some "concrete indication" that the member has authorized the organization to represent him or her in the proceeding. See, e.g., Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 188 (1987). Further, even if CCAM or CAM had met this procedural requirement, the organizations would still need to show that the individual members to be represented would suffer a concrete and particularized injury fairly traceable to the challenged NRC action (the transfer in this case) and likely to be redressed by a favorable decision. Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

The NRC approval, or consent, requested in the present case relates to the corporate merger of the NU and CEI. As discussed above, NU, NNECO, and the other NU-owned Millstone licensees would become wholly-owned subsidiaries of New CEI, the new holding company. NNECO would continue to be the Millstone operator and the indirect transfer would have no effect on the organizations that operate the units, on the cost recovery and rate structure for the units, or on the plant hardware or procedures. In the Petition, neither CCAM nor CAM articulate how, given the nature of the transaction, their unidentified members would be harmed. The Petitioners' only identified interest, the "permanent closure" of Millstone, is not something that can be addressed in this proceeding.

Petitioners' reliance on their standing in the Unit 3 spent fuel storage matter is misplaced. For license amendments, the Commission has held that nearby residence does not automatically confer standing. The Commission has held that petitioners must allege a clear

potential for offsite consequences resulting from the amendment. Florida Power and Light Company (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989). In the Millstone Unit 3 spent fuel storage case the Licensing Board found, citing some Commission precedent related to *spent fuel storage amendments*, that proximity (within 10-17 miles) could confer standing -- presumptively because of the potential for offsite safety consequences related to increased spent fuel storage. Millstone, LBP-00-02, slip op. at 6-7. With respect to the present corporate structure application, these precedents have no relevance. There are no offsite injuries identified by the Petitioners that would be traceable to the creation of a new holding company. Nor can there be any such injuries because the approval will not involve any change to plant management or operations.

In prior Subpart M cases, the NRC has never found standing to exist based on nearby residence. The NRC has found that certain petitioners have had standing to intervene in license transfer proceedings. See North Atlantic Energy Service Corporation, et al. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 215-17 (1999); North Atlantic Service Corporation, et al. (Seabrook Station, Millstone Unit 3), CLI-99-27, 50 NRC 257, 262-63 (1999). However, these cases involved petitions by *co-owners* alleging harm to their interests based on alleged financial implications of the proposed license transfers. That is a very different injury claim from one presumably based on offsite doses and physical harm. Moreover, these prior Subpart M cases involved *direct* transfers -- that is, the acquisition of an ownership share by a new entity. See also Gulf States Utilities Company, et al. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47-51 (1994) (upholding a licensing board's determination that a co-owner would have standing with respect to a transfer of another owner's interest in the plant to a third party). The present proposed transfer is indirect and does not introduce a new Millstone licensee.

In one other case that predates Subpart M, a licensing board granted standing in a license transfer case to a petitioner who lived near the plant and who alleged potential offsite harm due to the unfitness of the management of the proposed licensee. Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 NRC 96, 106-107 (1993), affd., CLI-93-16, 38 NRC 25, 32-39 (1993). However, there are important differences between that case and the present case. First, the Vogtle case involved a *direct* transfer whereby a new operating company (Southern Nuclear Operating Company, Inc.) would take over operation of the Vogtle plant from Georgia Power Company. In the present case, there is no change in the operating entity, the organization, or the personnel. Second, the petitioner in that case articulated a potential injury at least arguably within the scope of the application. The petitioner alleged that the management inadequacies of the new operator would lead to offsite harm. In the present case, no such chain of causation is stated. Even the specific proposed contentions raise matters that would not lead to any offsite harm (Contentions 1, 2, 3, and 5) or exceed the scope of the requested consent (Contentions 4 and 6).[2] In sum, there is no plausible injury identified in the Petition that would result from the present proposed transfer or that could be redressed in this proceeding.

IV. PETITIONERS' PROPOSED CONTENTIONS

The NRC's Subpart M regulations create a streamlined process for approval of license transfers. The process was adopted by the Commission in explicit recognition that "license transfers do not involve any technical changes to plant operation" (63 Fed. Reg. 66,721, at col. 3 (1998)) and that "license transfers do not, as a general rule, involve the type of technical

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[2] As is also discussed further below, generalized complaints regarding management are not sufficient to confer standing absent a "direct and obvious relationship between the character issues and the licensing action in dispute." See Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185 (1999).

issues with immediate impact on the actual operation of facilities that might benefit from review by a multi-member, multi-disciplined Atomic Safety and Licensing Board" (id. at 66,722, col. 1). The regulations set forth particularized requirements for all hearing requests and intervention petitions related to license transfers. A petitioner must, under 10 C.F.R. § 2.1306(b):

> (2) Set forth the issues sought to be raised and
>
> (i) Demonstrate that such issues are within the scope of the proceeding on the license transfer application,
>
> (ii) Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer,
>
> (iii) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and
>
> (iv) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact;

Sections 2.1308(a)(3) and (4) further provide that in determining whether to grant a petition to intervene or hearing request, the Commission will consider

> . . .whether the relief requested is within the Commission's authority, and . . .
>
> [w]hether the issues sought to be litigated are-
>
> (i) Within the scope of the proceeding:
>
> (ii) Relevant to the findings the Commission must make to act on the application for license transfer;
>
> (iii) Appropriate for litigation in the proceeding; and
>
> (iv) Adequately supported by the statements, allegations, and documentation required by § 2.1306(b)(2)(iii) and (iv).

In many respects, these requirements track the standards for admission of contentions adopted in the NRC's more general Subpart G hearing procedures. The Commission

has previously emphasized that those standards in Subpart G were adopted to raise the threshold for admitting contentions[3] and that the standards are to be strictly applied.[4] Similar expectations were re-stated in the Commission's 1998 Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998).

NNECO and Con Edison maintain that, upon a review of the Petition, the Commission must conclude: a) that Petitioners have failed to set forth issues and support (such as alleged facts or expert opinions) that would satisfy the Commission's pleading requirements; and b) that, in any event, the Petitioners have failed to demonstrate that a genuine dispute exists on a material issue of law or fact within the scope of the proposed license transfer. In sum, the issues identified are not "appropriate for litigation" in this proceeding.

Contention 1: The Commission Lacks Legal Authority to Grant an Indirect Transfer of the Millstone Operating Licenses

In this proposed contention Petitioners raise an argument of law: that the NRC does not have authority under 10 C.F.R. § 50.80 to approve an indirect transfer such as the one that NNECO and Con Edison are requesting. This argument is baseless and frivolous, and certainly requires no further proceedings.

Section 184 of the Atomic Energy Act, 42 U.S.C. § 2234, provides:

> No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance

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3 Final Rule, Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (1989).

4 Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) ("if any one of these requirements is not met, a contention must be rejected").

> with the provisions of this Act, and shall give its consent in writing.

It is plain from this statutory provision that: a) a license cannot be transferred without NRC consent; b) it matters not whether a transfer is voluntary or involuntary, direct or indirect; and c) the NRC has authority to give its consent in writing upon a review of relevant information. Similar prohibitions and authorities are reflected in 10 C.F.R. § 50.80.[5]

By longstanding course of practice, the NRC has invoked 10 C.F.R. § 50.80 to require its review and consent prior to corporate restructurings involving holding companies.[6] This longstanding practice is reflected in the Commission's 1997 "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry":

> The NRC has considered, and will continue to consider mergers and the outright sales of facilities, or portions of facilities, to require NRC notification and prior approval in accordance with 10 CFR 50.80 in order to ensure that the transferee or licensee is appropriately qualified. . . . The NRC has also advised licensees that the formation of holding companies requires notification and approval pursuant to 10 CFR 50.80.

62 Fed. Reg. 44,071, 44,076, at col. 1 (1997). In light of the clear authority, practice, and policy in this area, proposed Contention 1 requires no further consideration.

Contention 2: Application Does Not Provide Information Required by 10 C.F.R. § 50.33

This proposed contention asserts that NNECO and Con Edison have not satisfied 10 C.F.R. § 50.80(b) and 10 C.F.R. § 50.33 because the license transfer application fails to provide "basic information" on New CEI. However, the only information identified by

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5 See also 42 U.S.C. § 2131, which requires a license in order to "possess," "use," or "transfer" a nuclear power plant.

6 See, e.g., Northeast Nuclear Energy Company, 64 Fed. Reg. 72,367 (1999), Consolidated Edison Company of New York, Inc., 62 Fed. Reg. 65,449 (1997), Pacific Gas and Electric Company, 61 Fed. Reg. 55,174 (1996).

Petitioners as missing is New CEI's address. The Petitioners also question whether New CEI "presently even has a legal existence." This proposed Contention does not establish a genuine dispute worthy of consideration in a public hearing process.

The transfer application of January 13, 2000, provides substantial information on the proposed merger of CEI and NU, on the corporate restructuring, and on its impacts on NRC-licensed activities. Information germane to the indirect transfer and as required under 10 C.F.R. § 50.33 is provided throughout the application. NNECO and Con Edison believe that the application fully satisfies the requirements of 10 C.F.R. §§ 50.80 and 50.33, as well as the needs of the NRC Staff reviewers. Neither Section 50.80 nor Section 50.33 require all the information that would be required for an initial operating license application, because the indirect transfer involves no changes to the plant, the operating organization, the financial qualifications of the licensees, or the operating procedures.

To the extent the NRC Staff needs additional information, NNECO and Con Edison will provide that information in response to specific Staff requests. For example, by a submittal dated May 2, 2000, the parties provided the NRC with further information on the progress of the merger, submitted a copy of the approved Joint Proxy Statement for the merger and a supplement to the Joint Proxy Statement, and provided information to clarify the post-merger structure of the merged companies.

Specifically with respect to New CEI, information on the new holding company, its Board of Directors, and the lack of foreign ownership or control was provided in the joint application (at page 7-8). While the address of New CEI is not specifically stated, the parties here confirm that the address will be the same as the address listed in the application (at p. 6) for the Indian Point licensee, Con Edison. The approved Joint Proxy Statement also provides substantial information on New CEI. The current legal status of New CEI is irrelevant; what is

relevant is that it will exist as a legal entity at the time of the closing on the merger. In total, proposed Contention 2 fails to raise an appropriate, litigable issue.

Contention 3: The Application is Premature

This proposed contention alleges that the application is "premature" because a legal merger of Consolidated Edison of New York, Inc. and Northeast Utilities "has not yet occurred" and because, the Petitioners believe, there is reason to doubt that the merger will be approved by the Connecticut Department of Public Utility Control ("DPUC").[7] Again, this is a frivolous issue that should be summarily rejected.

The merger of CEI and NU is contingent upon a number of regulatory approvals, including the approvals from the NRC and the DPUC. As is the customary practice before the NRC and other agencies, the parties in this case are pursuing the necessary regulatory approvals in parallel, in advance of the target date for consummation of the merger. The merger will not and cannot proceed until all necessary regulatory approvals are obtained. (Indeed, Section 184 of the Atomic Energy Act and 10 C.F.R. § 50.80 are clear that the NRC's consent to a transfer must be a prior consent.) The parties will keep the NRC informed of progress at the DPUC and elsewhere.[8] The contention that the application is premature is little more than nonsense.

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[7] The Petitioners also allege that it is "questionable that the merger could occur because "Northeast Utilities" is not a legal entity. The basis and logic for this statement is not apparent. NU is a business trust organized and existing under the laws of Massachusetts.

[8] See, for example, the companies' supplemental filing dated May 2, 2000, where it is noted that the states of Maine and Vermont have approved the merger and that other approvals are currently pending.

Contention 4: Application Requires an Environmental Evaluation

In this proposed contention, Petitioners raises several environmental allegations -- all beyond the scope of the NRC consent requested in the Section 50.80 application at issue. The Petitioners challenge the validity of the Millstone National Pollution Discharge Elimination Systems ("NPDES") permit; assert that operations at Millstone involve "illegal discharges" under federal and state law, and that NU is "the subject of a continuing federal investigation into potential environmental crimes" (no details or basis provided); and argue that the "Millstone reactors have significantly depleted the indigenous stocks of Niantic winter flounder." These allegations are all matters that CCAM and CAM are currently addressing in other lawsuits in Connecticut state court. These matters are not in any way created or changed by the proposed Section 50.80 license transfer approval currently before the NRC.

The environmental consequences of the transfer are addressed in the joint application (at pages 15-16). Specifically, the Commission regulations, at 10 C.F.R. § 51.22(c)(21), provide that direct and indirect transfers of licenses are entitled to a categorical exclusion from environmental review. And, in any event, the merger does not involve any changes to the equipment or operations at the Millstone units, or to the previously evaluated environmental impacts. Accordingly, the application does not require any further environmental review.

It is an NRC axiom that the scope of a licensing hearing is limited to the scope of the approval at issue. See Statement of Policy on Conduct of Adequacy Proceedings, CLI-98-12, 48 NRC at 22 ("the 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"); see also 10 C.F.R. § 2.1308(a)(4)(i) and (ii). Allegedly ongoing environmental impacts of Millstone operation (including impacts on winter flounder), the status of the NPDES

permit, and unidentified investigations are not relevant to the findings that the NRC will make with respect to the proposed license transfer. This contention should not be accepted for any further review.

Contention 5: The Commission Should Not Consider the Indian Point or Seabrook License Transfers in this Proceeding

In this proposed contention the Petitioners point out that the Millstone *Federal Register* notice, advising of the proposed approval and providing an opportunity for hearing, did not address Seabrook and Indian Point. Therefore, Petitioners request that "these proceedings preclude such issues."

As discussed above, the NRC issued three notices of the proposed indirect license transfers: once each for Millstone, Seabrook, and Indian Point. Petitioners perhaps did not read the Seabrook and Indian Point notices. Nonetheless, NNECO and Con Edison interpret this contention as doing no more than limiting the Petition to the transfer approval for Millstone. (Indeed, the Petitioners' entire standing argument applies only to Millstone.) We have treated the Petition in that light in this Answer. Contention 5 does not raise a litigable issue.

Contention 6: NU and Con Edison Have Demonstrated Willful Disregard for the Public Health and Safety

In this proposed contention Petitioners baldly allege that "[t]hrough their respective patterns of mismanagement and disregard for public health and safety in their nuclear operations over three decades, NU and Con Edison should not enjoy the economic windfalls which will ensue should the present applications be granted." Petitioners further assert that 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." However, no details or evidence of the alleged mismanagement by either NU or Con Edison, or the alleged significant health and safety issues, are provided.

This contention must fail for several reasons. First, in referring to "economic windfalls" and alleged past misconduct, the Petitioners appear to be seeking some form of punitive action. Obviously, a request for enforcement is not an appropriate issue for a licensing proceeding and should be handled as a petition under 10 C.F.R. § 2.206.[9]

Second, if the Petitioners allege past mismanagement as a basis for denial of the proposed transfer, they raise an issue outside the scope of this proceeding. As discussed above, the proposed merger and indirect transfer will occur at the holding company level of the corporate structure. The merger does not involve any change to the corporate licensees or to the operating organizations and personnel at Millstone Station. Given that there is no change to technical qualifications, these management issues are not relevant to the findings the Commission will make and are not within the scope of the hearing opportunity. 10 C.F.R. § 2.1308(a)(4).

In the Vogtle license transfer case discussed earlier, a licensing board did admit a "management character and competence" issue in a Subpart G license transfer proceeding. Vogtle, LBP-93-5, 37 NRC at 104-105, aff'd., CLI-93-16, 38 NRC 25. However, as discussed above, that case involved the direct transfer of the license from Georgia Power Company to a new entity, Southern Nuclear Operating Company. The present indirect transfer is very different, involving no change to the Millstone operating licensee (NNECO). In affirming the licensing board in the Vogtle case, the Commission specifically observed:

> We do not mean to suggest that every licensing action throws open an opportunity to engage in a free-ranging inquiry into the "character" of the licensee. There must be some direct and obvious relationship between the character issues and the licensing action in dispute. Where, as here, the proposed action concerns the

[9] To the extent that the Petitioners' concern regarding "economic windfalls" is addressed to economic regulatory issues associated with the merger, those matters are beyond the scope of NRC jurisdiction and might be better addressed in another forum.

> transfer of the license to a new organization and management that will be responsible for the safe operation of the plant, character issues may be directly relevant.

CLI-93-16, 38 NRC at 32. In the present Millstone case, the relationship between the contention and the transfer at issue is neither direct nor obvious. The management team at Millstone and the operating organizations that have successfully recovered two units for safe and beneficial operation will remain following the indirect transfer.

Finally, even if Petitioners' management issues could be considered to be material to the proposed transfer, Petitioners have failed to provide the specificity and basis that the Commission would expect for an admissible contention. See 10 C.F.R. § 2.1306(b)(2)(iii); see also Palo Verde, CLI-91-12, 34 NRC at 155-56 ("[t]hese requirements are designed to raise the Commission's threshold for admissible contentions and to require a clear statement as to the basis for the contentions and the submission of more supporting information and references to specific documents and sources to establish the validity of the contention"). Millstone was the subject of an extended regulatory shutdown, beginning in 1996. The NRC, based on a formal vote of the Commission, authorized restart of Unit 3 in 1998 and restart of Unit 2 in 1999. The NRC has continued substantial oversight of the operation of the units, and obviously has permitted continued operation. In this context, Petitioners' unsupported allegations that the units pose risk to its (unidentified) members due to mismanagement are unsupported and baseless.[10] The desired "permanent closure" of Millstone is not relief that could be granted in this proceeding and, in any event, could not be granted based upon the bald allegations offered. This proposed contention should be rejected.

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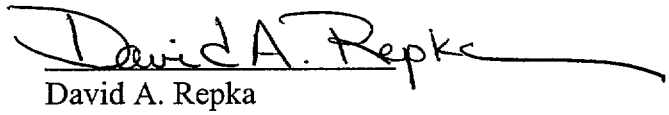
[10] Compare GPU Nuclear, Inc., et. al. (Oyster Creek Nuclear Generating Station), CLI-00-06, slip.op at 12-14 (May 3, 2000).

V. CONCLUSION

For the reasons set forth above, the request for hearing and petition for leave to intervene filed on behalf of CCAM and CAM should be denied.

Respectfully submitted,



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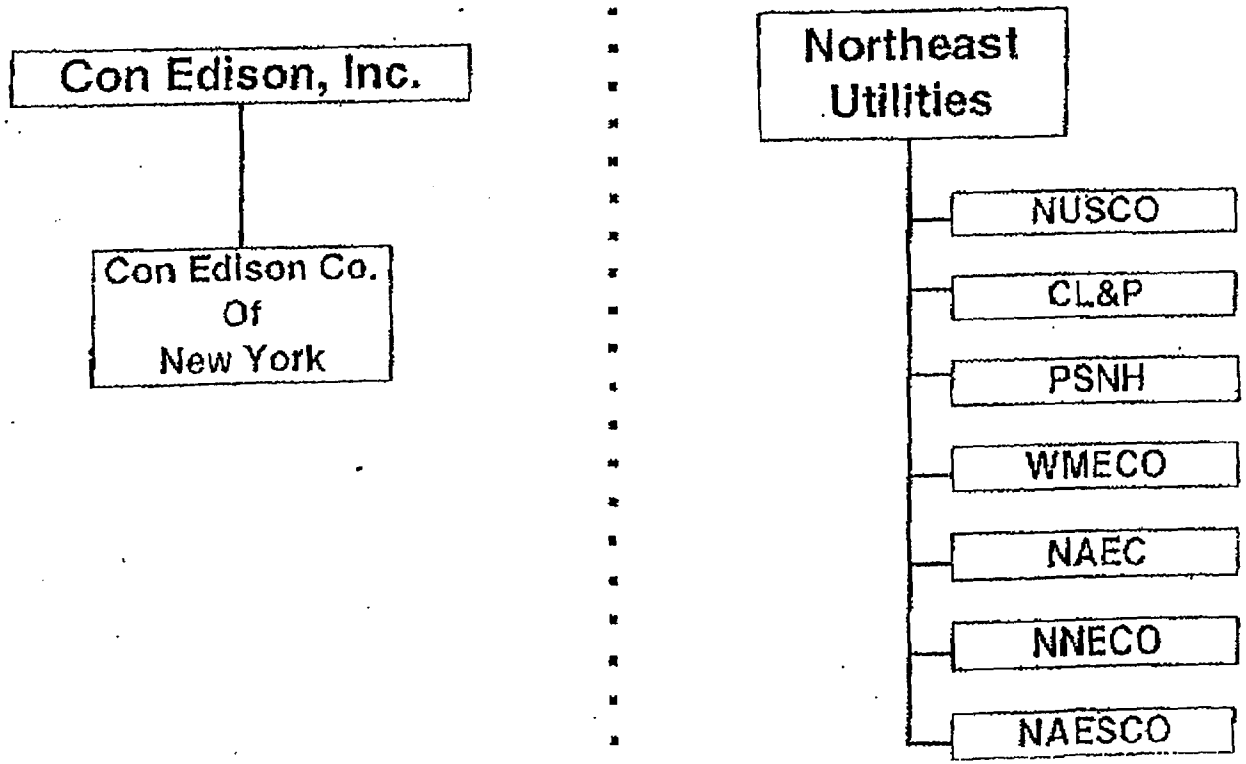
ATTORNEYS FOR NORTHEAST NUCLEAR ENERGY COMPANY and
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Dated in Washington, District of Columbia
this 8th day of May 2000

Consolidated Edison - Northeast Utilities Merger

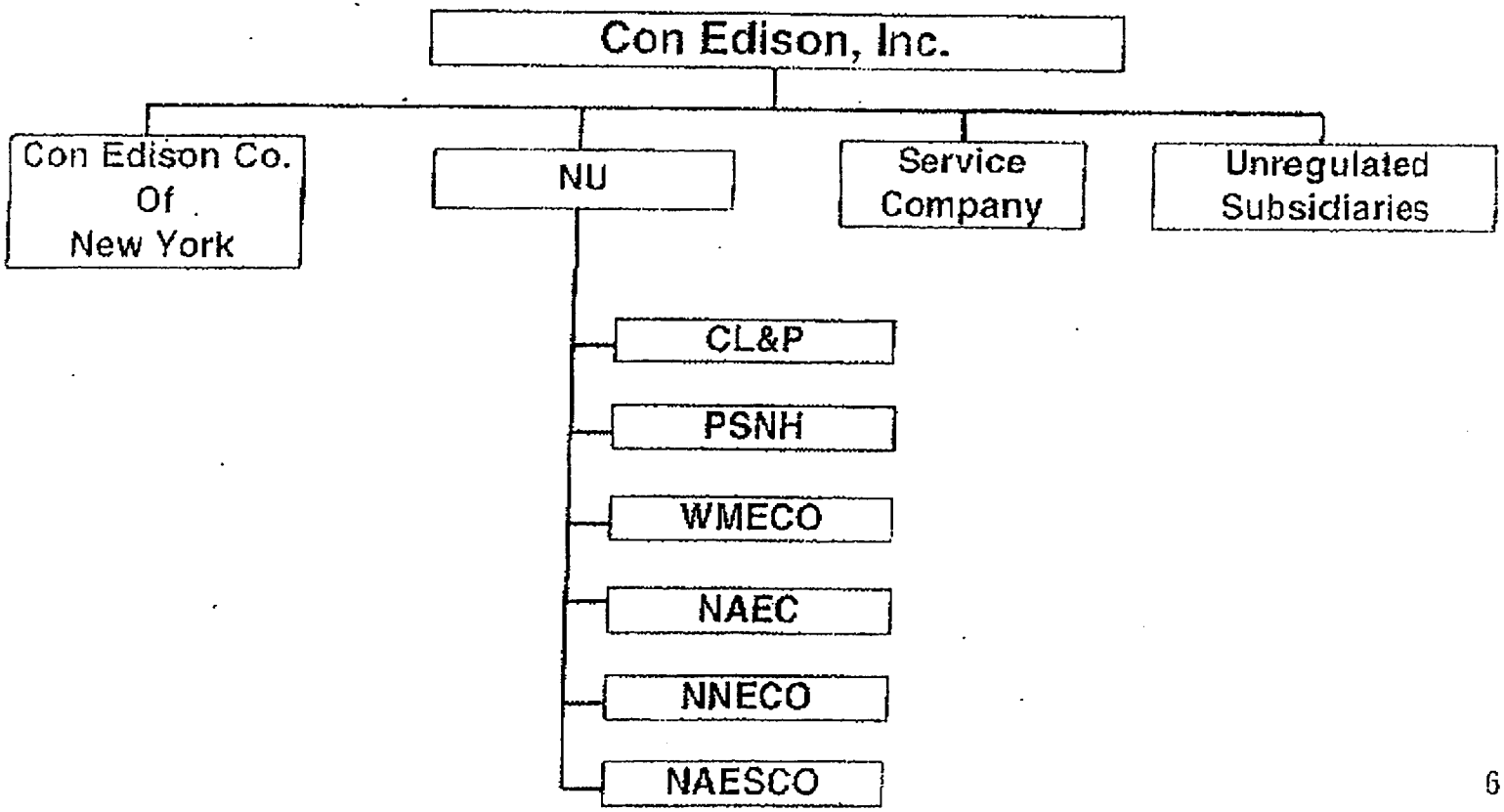
CORPORATE STRUCTURE -- Pre-Merger



ATTACHMENT A

Consolidated Edison - Northeast Utilities Merger

CORPORATE STRUCTURE -- Post Merger



ATTACHMENT B

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USNRC

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Consolidated Edison Company of New York, Inc.	)	
	)	
(Millstone Nuclear Power Station, Units No. 1, 2, and 3)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Name of Party:	Northeast Nuclear Energy Company 107 Selden Street Berlin, Connecticut 06037

David A. Repka

David A. Repka

Dated in Washington, District of Columbia
this 8th day of May 2000

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of:	)	
	)	
Northeast Nuclear Energy Company	)	Docket Nos. 50-245
	)	50-336
and	)	50-423
	)	
Consolidated Edison Company of New York, Inc.	)	
	)	
(Millstone Nuclear Power Station, Units No. 1, 2, and 3)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name:	William J. Quinlan
Address:	Northeast Utilities 107 Selden Street Berlin, Connecticut 06037
E-Mail:	quinlwj@nu.com
Telephone Number: Facsimile Number:	(860) 665-3761 (860) 665-5504
Admissions:	Superior Court of Connecticut United States District Court - District of Connecticut
Name of Party:	Northeast Nuclear Energy Company 107 Selden Street Berlin, Connecticut 06037

William J. Quinlan

Dated at Berlin, Connecticut
this 4th day of May, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Northeast Nuclear Energy Company,	)	Docket Nos. 50-245
	)	50-336
and	)	50-423
	)	
Consolidated Edison Company of New York, Inc.	)	
	)	
(Millstone Nuclear Power Station, Units No. 1, 2, and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER OF NORTHEAST NUCLEAR ENERGY COMPANY AND CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. TO PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING" and a "NOTICE OF APPEARANCE" for David A. Repka and William J. Quinlan, in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 8th day of May 2000. Additional e-mail service has been made this same day as shown below.

Nancy Burton, Esq.
147 Cross Highway
Redding Ridge, CT 06876
(e-mail to: nancyburtonesq@hotmail.com)

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemakings and Adjudications Staff
(original and two copies)
(e-mail to: HEARINGDOCKET@nrc.gov)

Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

The Honorable Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

The Honorable Edward McGaffigan, Jr.
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

The Honorable Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

The Honorable Greta J. Dicus
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

The Honorable Nils J. Diaz
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David A. Repka

David A. Repka