

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHEAST NUCLEAR ENERGY COMPANY)	Docket No. 50-423-LA-3
)	
(Millstone Nuclear Power Station,)	
Unit No. 3))	

NRC STAFF RESPONSE TO "INTERVENORS' MOTION TO FILE
SUPPLEMENTARY DECLARATION AND CONFORM THEIR SUMMARY"
AND REQUEST FOR FURTHER RELIEF

INTRODUCTION

On July 6, 2000, intervenors, Long Island Coalition Against Millstone and Connecticut Coalition Against Millstone, filed a Motion to File Supplementary Declaration and to Conform their Summary. For the reasons discussed below, the NRC staff (Staff) opposes the motion, urges the Licensing Board to deny it and requests the Licensing Board expeditiously to convene a telephone conference call to resolve the matter forthwith.¹ This matter must be expeditiously resolved so that other parties may prepare for the oral argument scheduled for July 19, 2000.

For the reasons discussed below, the Staff submits that the version of intervenors' summary filed July 3, 2000, may not be supplemented, even if the intervenors' motion of June 30, 2000, requesting permission to file out of time is granted.

¹ As discussed below, intervenors have filed three different versions of their summary, the first on July 3, 2000, the second on July 4, 2000, and the third on July 6, 2000.

BACKGROUND

On June 30, 2000, the date on which written summaries pursuant to 10 C.F.R. §2.1113 were due to be filed, Intervenors faxed to the Staff at 10:25 p.m. a “Motion for Permission to File Summary Untimely.” In that motion, Intervenors represented that their summary was “substantially complete,” but that a “sudden and unexpected computer lock” made it “impossible” to meet that deadline. Intervenors also stated that “alternate means to file the summary will be available shortly and the filing possible.”

Three days later, on July 3, 2000, the Staff received an E-mail from Intervenors’ counsel, which included their Subpart K summary.² Subsequently, on July 4, 2000, a “corrected” version, which purports to reorder exhibits beginning at number 7, was E-mailed to the Staff. Two days later and six days after the summary was due to be filed, Intervenors filed the motion that this response addresses together with a revised summary. By the motion, Intervenors seek to file a “supplementary” declaration, that of David A. Lochbaum, and to conform their summary to reflect that supplementation.

ARGUMENT

The Staff opposes the motion. Even if the Board were to grant Intervenors’ motion of June 30, 2000, said to be necessitated by the impossibility of filing on the required date because of a “computer lock,” the relief granted would not run to what is now being proposed by the instant motion, that Intervenors be allowed to add another declarant. In other words, the computer problem might arguably have constituted good cause for the

² Although the summary was accompanied by a declaration of Dr. Gordon Thompson, several essential attachments were not included, to wit: Appendices A, B and C and all the cited exhibits. These documents were mailed on July 3, 2000, and received by the Staff on July 6, 2000.

filing of July 3, 2000. That same problem cannot constitute good cause for further relief three days later, namely, permission to supplement the July 3, 2000, filing, which was already out of time. Further, Intervenors' failure to name Mr. Lochbaum as a declarant should not be excused, as that failure does not relate to the proffered reason for the motion of June 30, 2000, namely, the computer problem. Also, there is no additional justification for Intervenors' failure to name Mr. Lochbaum in a timely manner.

The Commission's regulations in Subpart K, specifically, 10 C.F.R. §2.1113, require simultaneous filings. Intervenors' action in filing three successive versions of their summary has the effect of subverting the intention of the required simultaneous filings and is unfair to the other parties, who have complied with the regulations.

CONCLUSION

For the reasons discussed, the Licensing Board should deny Intervenors' motion and should expeditiously convene a telephone conference call to resolve this matter.

Respectfully submitted,

Ann P. Hodgdon **/RA/**
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of July, 2000

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO "INTERVENORS' MOTION TO FILE SUPPLEMENTARY DECLARATION AND CONFORM THEIR SUMMARY" AND REQUEST FOR FURTHER RELIEF" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system or; by deposit in the Nuclear Regulatory Commission's internal mail system with copies by electronic mail, as indicated by an asterisk; or by E-mail as indicated by a double asterisk, followed by a conforming copy via first-class mail this 6th day of July 2000.

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