

RAS 2249

RECORDED
INDEXED
September 25, 2000

00 OCT -3 09:28

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
Northeast Nuclear Energy Company)	Docket Nos. 50-336
)	50-423
(Millstone Nuclear Power Station,)	
Units 2 and 3))	

NORTHEAST NUCLEAR ENERGY COMPANY'S ANSWER
TO REQUEST FOR A HEARING AND PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Northeast Nuclear Energy Company ("NNECO"), the licensed operator for Millstone Units 2 and 3, hereby files its answer to the request for hearing and petition for leave to intervene ("Petition") filed on September 8, 2000, by the Connecticut Coalition Against Millstone ("CCAM") and the STAR Foundation ("STAR") (hereinafter, "Petitioners" refers to CCAM and STAR). The Petition responds to the *Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations* ("Notice") published in the *Federal Register* on August 9, 2000 (65 Fed. Reg. 48754), concerning NNECO's proposed amendment to the Millstone Units 2 and 3 Technical Specifications. As discussed below, the Petitioners have not satisfied the Commission's requirements for standing to intervene in this matter, nor have they set forth a valid contention. Therefore, pursuant to 10 C.F.R. § 2.714, the Petition should be denied.

Template = SECY-037

SECY-02

II. BACKGROUND

The license amendment request ("LAR") at issue, first submitted to the NRC on February 22, 2000, concerns no more than the relocating of selected Radiological Effluent Technical Specifications ("RETS") and the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual ("REMODCM"). As discussed herein, the proposed changes are consistent with the requirements of 10 C.F.R § 50.36c(2)(ii), which describes the limiting conditions for operation for which Technical Specifications must be established, with 10 C.F.R. § 50.36a(a), which requires a programmatic Technical Specification addressing radioactive effluents and mandating operating procedures, and with the Commission's "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,"¹ with Generic Letter ("GL") 89-01,² and with NUREG-1431 and NUREG-1432.³ The LAR does not involve any change to radiological monitoring instrumentation or radiological effluents from the nuclear units, nor does it impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated.

In particular, GL 89-01 provides licensees with guidance for a license amendment to: (1) relocate the existing details of the RETS to the Offsite Dose Calculation Manual

¹ 58 Fed. Reg. 39132, 39136 (1993), as amended, 60 Fed. Reg. 36953 (1995).

² "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program" (January 31, 1989).

³ NUREG-1431 and NUREG-1432 are the Improved Standard Technical Specifications for Westinghouse and Combustion Engineering plants, respectively. Millstone Units 2 and 3 employ Combustion Engineering and Westinghouse nuclear steam supply systems, respectively.

(“ODCM”);⁴ and (2) replace them in the Technical Specifications with programmatic controls for the radioactive effluent control and radiological monitoring programs, mandating that appropriate programs and operating procedures be in place and conform to the applicable regulatory requirements. As stated in GL 89-01, the Commission’s intent is to allow relocating the operating requirements and reporting details of the RETS to the ODCM without reducing the level of radiological monitoring and effluent control.⁵

Completely consistent with GL 89-01, the details currently covered in the Millstone RETS and which are to be relocated are the limiting conditions for operation (“LCOs”), action statements for the LCOs not being met, surveillance requirements (“SRs”), and the Bases sections related to:

- liquid and gaseous radioactive effluent monitoring instrumentation;
- liquid radioactive effluent concentration and dose;
- gaseous radioactive effluent doses and dose rates; and
- total radioactive dose.

These requirements will be simply relocated to the REMODCM and, substantively, will continue to be incorporated into plant procedures.

Also consistent with GL 89-01, the Technical Specifications, as proposed by NNECO, will provide ongoing programmatic controls for the relocated RETS requirements such that the programs must be implemented and any future changes will be consistent with applicable

⁴ ODCM is a generic industry term for the off-site dose calculation manual. The equivalent manual at Millstone is the REMODCM.

⁵ The NRC has previously issued several other amendments of this type. *See, e.g.*, 65 Fed. Reg. 54083, 54093 (September 6, 2000) (involving Salem Station); 65 Fed. Reg. 56946, 56964 (September 20, 2000) (involving Vermont Yankee).

regulatory requirements (e.g., 10 C.F.R. Part 20 and Part 50). Technical Specifications specifically will be added establishing requirements for the basic elements of a radiological effluent control program and radiological environmental monitoring program. Any future changes to the details of the REMODCM will be subject to the programmatic controls for changes described in the amended Administrative Controls section of the Technical Specifications and will be subject to the screening and evaluation requirements of 10 C.F.R. § 50.59. See LAR, Attachment 1, at 13. For example, Technical Specification 6.15, "Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM)," states that licensee changes to the REMODCM shall: (1) be documented and records of reviews shall be retained; (2) become effective after review and acceptance by SORC and the approval of the designated officer; and (3) be submitted to the Commission in the form of a complete, legible copy of the entire REMODCM as a part of or concurrent with the Radioactive Effluent Release Report.

III. STANDING

A. The NRC's Standing Requirements

To meet the NRC's well-established standing requirements of 10 C.F.R. § 2.714(a)(2) (emphasis added), the Petition 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 petitioner should be permitted to intervene, with particular reference to the factors 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.

The Commission has determined that to satisfy the standing requirements of 10 C.F.R. § 2.714, a petitioner must demonstrate that:

1. it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;
2. the injury can be fairly traced to the challenged action; and

3. the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). See generally *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992); *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant), CLI-93-21, 38 NRC 87, 92 (1993). Injury may be actual or threatened. *Kelly v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995); *Wilderness Soc'y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987).

With regard to the standing of organizations that petition to intervene, such as CCAM and STAR, the Commission has further held that the organization must demonstrate that the action will cause an injury-in-fact to either: (1) the organization's interests; or (2) the interests of its members. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). Where standing is based on an injury to the organization itself, the petitioner must demonstrate that its interests have been adversely affected, applying the same injury-in-fact standard as for an individual. *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 NRC 120, 126 (1992). If standing is based on injury to an organization's members (so-called "representational standing"), the petitioner must "identify at least one of its members by name and address and demonstrate how that member may be affected ... and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of that member." *Northern States Power Co.* (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138, 141 (1996). To derive standing from a member, the organization must further demonstrate that the individual member has standing to participate and has authorized the organization to represent his or her interests. *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1979).

As will be discussed below, Petitioners have failed to meet the pleading requirements for an organizational petitioner.

B. Standing of the Organizations is Not Established

The Petition is defective with respect to the standing of the two organizations. As recited in *Yankee Atomic*, there are two routes by which an organization can attempt to demonstrate standing in an NRC hearing. First, it can assert injury to organizational interests and demonstrate that these interests are protected by the Atomic Energy Act. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991). Or, second, an organization can base standing on the interests of individuals that it represents. To derive standing from an individual, an organization must 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 Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987). Here, Petitioners have not satisfied either approach.

The Petition indicates that in this case CCAM, based in Mystic, Connecticut, and STAR, based in East Hampton, New York, are relying on the proximity of their members’ residences to Millstone Station as a basis for representational standing in this proceeding.⁶ Petitioners, however, have not identified any member (by name and address) or provided a “concrete indication,” by affidavit or any other means, that a member has authorized the organization to represent him or her in the proceeding. CCAM claims that its membership “includes families with young children who own property and reside within the five-mile priority emergency evacuation zone of the Millstone Nuclear Power Generating Station in Waterford,

⁶ The distance from Millstone Station to Mystic, Connecticut, and East Hampton, New York, is approximately 11 miles and 25 miles, respectively.

Connecticut.” Similarly, STAR claims that its “membership includes families with young children who own property and reside within the 10-mile emergency evacuation zone of the Millstone reactors.” However, Petitioners have not identified any member of either organization or established that either organization is authorized to represent the interests of any such member.⁷ Therefore, Petitioners have failed to demonstrate representational standing in this proceeding for their respective organizations.

The Petitioners do claim that if the LAR is granted, the membership of CCAM and STAR Foundation will suffer an increased risk of hazard from radiological releases from Millstone Units 2 and 3 and consequent adverse health effects. The Petitioners’ mere claim of injury from an increased risk of radiological releases, however, is unfounded and speculative, given the administrative nature of the LAR, and does not satisfy the Commission’s injury-in-fact test. As described in the Notice, the LAR does not change any aspects of plant equipment, operation, radiological releases or monitoring, and does not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way in which the plants are

⁷ Counsel for the present Petitioners is clearly aware of this requirement. In at least two previous cases involving Millstone Station, wherein CCAM was represented by Ms. Burton, affidavits were submitted to the licensing boards identifying individual members of the organization and asserting that the organization was authorized to represent those members. See letter from Nancy Burton, Esq., to Office of the Secretary, U.S. Nuclear Regulatory Commission, forwarding affidavit of Joseph H. Besade (July 23, 1998), *Northeast Nuclear Energy Company* (Millstone Nuclear Power Station, Unit 3), ASLBP No. 98-743-03-LA (1998); and letter from Nancy Burton, Esq., to Office of the Secretary, U.S. Nuclear Regulatory Commission, forwarding affidavits of Susan Perry Luxton, Clarence O. Reynolds, and Joseph H. Besade (July 6, 1998), *Northeast Nuclear Energy Company* (Millstone Nuclear Power Station, Unit 3), ASLBP No. 98-740-02-LA (1998).

In a subsequent case involving Millstone and wherein CCAM was again represented by Ms. Burton, the affidavits were not submitted as part of the original petition to intervene, and were only submitted after being requested to do so by the Atomic Safety and Licensing Board. *Northeast Nuclear Energy Company* (Millstone Nuclear Power Station, Unit 3), ASLBP No. 00-771-01-LA (1999).

operated. Consequently, the Petitioners have not shown, and cannot show, any potential for offsite consequences resulting from the proposed changes.

In their proposed “contention,” Petitioners refer to alleged increases in “individual and cumulative occupational radiation exposures.” To the extent the Petitioners would rely on such alleged injuries, they would need to establish that the organizations represent plant workers. There is no such suggestion in the Petition and, therefore, it is unclear how Petitioners could have standing to intervene in matters related to worker safety. *Compare Yankee Atomic Electric Company* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 70 n.4 (1996) (finding standing to intervene on matters related to injuries to the public, but not with respect to matters involving worker occupational radiation exposure).

The Petitioners also claim that granting of the LAR will deprive the members of CCAM and STAR of the opportunity for hearing and comment opportunities on any *future* changes to radiological monitoring or effluent requirements at Millstone Station. This claim of injury is as unavailing as the other claims and also fails to meet the injury-in-fact test. First, the injury claimed is a future one, hypothesizing changes to the Millstone Station radiological effluents. No such changes are involved in the present proposal. Although a future injury can meet the injury-in-fact test, it must be one that is “threatened,”⁸ “certainly impending,”⁹ and “real and immediate.”¹⁰ In the present case, the Petitioners’ asserted future injury is entirely speculative. Any future changes to the REMODCM would be subject to the programmatic controls to be included in the revised Technical Specifications and ultimately would be limited

⁸ *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973).

⁹ *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979) (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)).

¹⁰ *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983).

(as they are now) by the threshold and dose limits set forth in the appropriate sections of the Code of Federal Regulations.

Petitioners also suggest future speculative harm in that there will be no hearing rights attached to any future changes to the REMODCM. As discussed below in response to the proposed “contention,” however, there is no right to notice and a hearing on such future changes and, therefore, there is in this claim no “injury.” Petitioners fail to cite any legal authority for the claim that they are entitled to participate in NRC license amendment proceedings related to these speculative changes to the Millstone REMODCM. The Atomic Energy Act of 1954, as amended (“AEA”), and Section 189a of the AEA in particular, does not bestow an automatic right to a hearing on plant and procedure changes.¹¹ Rather, as relevant in this context, Section 189a bestows a right to a notice and hearing only for changes to the license. Future operational changes that do not affect the license (including the Technical Specifications) or raise an unreviewed safety question do not confer hearing rights. *See* 10 C.F.R. § 50.59. Petitioners do not allege and cannot establish that the relocation of the requirements as proposed in the LAR violates 10 C.F.R §§ 50.36 or 50.36a, which describe the matters that must be addressed in a plant’s Technical Specifications. Standing surely cannot be based on the denial of a purported procedural right that does not exist.¹²

¹¹ *See Union of Concerned Scientists v. NRC*, 920 F.2d 50, 55 (D.C. Cir. 1990) (quoting *BPI v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974)) (Section 189a does not confer the automatic right of intervention upon anyone).

¹² NNECO is aware that in a previous proceeding the Commission held that the purported loss of the rights to notice, opportunity for a hearing, and opportunity for judicial review constitutes a discrete injury. *Cleveland Electric Illuminating Company, et al.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87 (1993). NNECO’s position however, is that given the ultimate decision in that case (discussed below), there is no longer any legal basis for the injury alleged in the present case. *See Cleveland Electric Illuminating Company, et al* (Perry Nuclear Power Plant Unit 1), CLI-96-13, 44 NRC 315 (1996).

Consequently, the Petitioners have failed to satisfy the Commission's injury-in-fact test for standing in this proceeding. Therefore, pursuant to 10 C.F.R. § 2.714, the Petition should be denied.

IV. ADMISSIBILITY OF CONTENTIONS

A. NRC Requirements for Admission of Contentions

To gain admission as a party, a petitioner for intervention must proffer at least one admissible contention for litigation. 10 C.F.R. § 2.714(b)(1). A contention must specify the particular issue of law or fact the petitioner is raising and must contain: (1) a brief explanation of the basis for the contention; and (2) a concise statement of the alleged facts or expert opinion that supports the contention and upon which the petitioner will rely in proving the contention at the hearing. 10 C.F.R. § 2.714(b)(2). The contention should refer to those specific documents or other sources of which the petitioner is aware and upon which he "intends to rely in establishing the validity of [the] contention." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *see also* Final Rule, Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process, 54 Fed. Reg. 33168, 33170 (Aug. 11, 1989) ("Final Rule"). The contention and bases offered must establish that a "genuine dispute" exists with the applicant on a "material" issue of law or fact. 10 C.F.R. § 2.714(b)(2)(iii). The dispute at issue is "material" if its resolution would "make a difference in the outcome of the licensing proceeding." *See* Final Rule, 54 Fed. Reg. at 33172.

The Commission adopted these contention standards in 1989 as a conscious attempt to raise the threshold for an admissible contention and ensure that only petitioners with genuine and particularized concerns participate in NRC hearings. *See* Final Rule, 54 Fed. Reg. at 33168. The petitioner must "be able to identify some facts at the time it proposes a contention to indicate that a dispute exists between it and the applicant on a material issue." *Id.*

Contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by “some alleged fact or facts” demonstrating a genuine material dispute. *Id.* at 33170.

In the Petition, the Petitioners offer only one proposed “contention.” The Petitioners argue that moving the RETS to the REMODCM “will deprive the public ... of notice of proposed changes to the radiological liquid and gaseous effluent monitoring instrumentation” and “will deprive them of the opportunity for hearing and to comment and object to [future] changes.” As a premise for their assertion, the Petitioners argue that the amendment “opens the door to increases in the type and amounts of effluents that may be released offsite as well as individual and cumulative occupational radiation exposures.” As is discussed below, there is no factual basis presented in the Petition, or available in the LAR, for the assertion of potential increased radiological effluents and exposures. But more to the point, the legal issue that is the thrust of the contention has already been decided by the Commission in a case involving an analogous proposed amendment.¹³ Therefore, Petitioners have not satisfied the Commission’s requirements for an admissible contention.

B. Alleged Increases in the Routine Radiological Effluents to the Air and Water

In the proposed Contention, Petitioners presume changes in radiological monitoring and increases in radiological effluents from the Millstone units. The presumption, however, is unfounded and in fact has no basis in the LAR. Petitioners contend only that “any increase in routine radiological effluent to the air and water by the Millstone nuclear reactors will expose the public to greater risk of cancer, immunodeficiency diseases and other adverse effects,” and offer unidentified “expert testimony” to address the “greater risk of cancer,

¹³ See *Cleveland Electric Illuminating Co.* (Perry Nuclear Plant), CLI 96-13, 44 NRC 315 (1996) and discussion *infra*, Section IV.C.

immunodeficiency diseases and other adverse effects.” However, these assertions are a red herring. In fact, as is clear on the face of the LAR as well as the *Federal Register* Notice, the proposed change is administrative only and does not involve any change to plant operation, radiation monitoring, or radiological effluent releases. *See, e.g.*, LAR, Attachment 1, page 11.

To support the assertion of increased effluents and other changes, Petitioners merely reference a statement in the LAR that there will be: “no significant increase in the type and amounts of effluents that may be released.” This statement is included in the summary of Environmental Considerations in the LAR cover letter (at page 3). From this statement Petitioners leap to the inference that there *will be* increases in radiological effluent releases. Petitioners fail to recognize that the “no significant increase” language is drawn from a requirement of 10 C.F.R. § 51.22 related to assessing the need for environmental review. The statement does not provide a basis to conclude that there will in fact be an increase (insignificant or otherwise) in radiological effluent releases. Petitioners offer no factual basis for their assertion and no expert opinion to support such an assertion.

For a contention to be admissible, the petitioner must provide a “basis” of alleged facts or expert opinion, with references to specific sources and documents that establish these facts or expert opinion, and show that a genuine dispute exists on a material issue of fact or law. *See* 10 C.F.R. §§ 2.714(b)(2), (d)(2). For this proposed contention, there is no factual basis provided by the Petitioners to establish a claim that there will be increased radiological releases and/or exposures.

C. Alleged “Deprivation” of Notice and Opportunity for Hearing on Future Changes

With respect to the claim that relocation of the RETS from the Millstone Technical Specifications will deny its members notice and an opportunity for hearing related to “changes to the Millstone radiological liquid and gaseous effluent monitoring instrumentation,”

the contention must fail as a matter of law. As mentioned above, and as discussed in more detail below, there is no legal requirement to include the details of the radiological effluent programs in the Technical Specifications. Hence, there is no right to a hearing on future changes to these details.

Section 182a of the AEA establishes the statutory requirements for the Technical Specifications for production and utilization facility license applications.¹⁴ Section 182a does not by its terms require that the details of the radiological effluent programs be included in the Technical Specifications. Moreover, Section 182a empowers the Commission with the discretion to determine, by rule or regulation, the content of the Technical Specifications.

In 1993, the Commission issued a Final Policy Statement which provided guidance for evaluating the required scope of the Technical Specifications and defined four guidance criteria to be used in determining which of the LCOs and associated SRs should remain in the Technical Specifications.¹⁵ The Commission's direction was that requirements that fall within or satisfy any of the criteria in the Final Policy Statement should be retained in the Technical Specifications, and those requirements that do not fall within or satisfy these criteria may be relocated to licensee-controlled documents.¹⁶ In 1995, the Commission codified the four

¹⁴ Section 182a of the AEA requires that "the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public."

¹⁵ *Final Policy Statement on Technical Specification Improvements for Nuclear Reactors*, 58 Fed. Reg. 39132 (1993).

¹⁶ The four criteria for assessing inclusion in the Technical Specifications are: (1) installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary; (2) a process variable,

criteria in 10 C.F.R. § 50.36(c)(2)(ii).¹⁷ In addition, specific regulatory requirements for Technical Specification content applicable to radioactive effluent control programs are included in 10 C.F.R. § 50.36a. There are no provisions in either Section 50.36 or Section 50.36a that require the operational details for the radiological effluent programs, of the type to be relocated by NNECO to the REMODCM, be included in the Technical Specifications.

As specifically addressed in the NNECO LAR, the details associated with the RETS that are being relocated to the REMODCM do not meet the four criteria and therefore are appropriately being removed from the Technical Specifications. *See* LAR, Attachment 1, page 9. Petitioners have not alleged and have not provided any facts or expert opinion that would establish that the requirements of the RETS to be moved to the REMODCM meet the regulatory criteria and must instead remain in the Technical Specifications. Because there is no basis in the AEA, or in the applicable NRC regulations, or in the Petitioners' brief, to suggest that the details of the radiological effluent programs must be included in the Technical Specifications, there is no legal basis to contend that notice and an opportunity for hearing is required for future changes to these programs. Section 189a of the AEA requires that the Commission provide notice and an opportunity for hearing to any member of the public whose interest might be affected by a proceeding to grant, revoke, renew, or amend an operating license. In the absence of an amendment to the license, there is no right to notice and opportunity for hearing.

design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier; (3) a structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier; and (4) a structure, system, or component which operating experience or probabilistic risk assessment has shown to be significant to public health and safety.

In an analogous case, *Cleveland Electric Illuminating Co.* (Perry Nuclear Plant), CLI 96-13, 44 NRC 315 (1996), the Commission addressed whether information could be removed from the Technical Specifications notwithstanding the potential impact on future Section 189a notice and hearing rights. In that case the intervenors asserted that removal of the material specimen withdrawal schedule from the Technical Specifications would deny Section 189a notice and hearing rights for any future changes to that schedule. The intervenors argued that, because the NRC would be required to approve any future changes to that schedule, any future approval would be a *de facto* license amendment triggering Section 189a notice and hearing rights. *Id.* at 326.¹⁸ The Commission rejected the argument. The Commission recognized that Congress provided hearing rights for only certain classes of agency actions and that if a form of action does not fall in those categories, there are no hearing rights. *Id.* Further, the Commission found that, even though future changes were subject to NRC review, the NRC's approval would not permit the licensee to operate "in any greater capacity" than originally prescribed and all relevant safety regulations and license terms would remain applicable. Accordingly, the NRC approval of future changes would not "amend" the license and Section 189a rights would not apply. *Id.*

In the present case, consistent with GL 89-01, the NNECO LAR provides the programmatic controls for any future changes to the specific requirements of the REMODCM. These controls will be included in the Technical Specifications. For example, the NNECO LAR

¹⁷ 60 Fed. Reg. 36953 (1995).

¹⁸ The intervenors in the *Perry* case did not argue that it was improper to remove the withdrawal schedule from the license. *Id.* at 320. Rather, the argument centered on the fact that material specimen withdrawal schedules (and by implication, changes to the schedules) require NRC approval in accordance with Appendix H to 10 C.F.R. Part 50. In the present case, there is no requirement for an NRC approval of future changes that could even be argued, as in *Perry*, to be an amendment.

includes requirements in Section 6 (“Administrative Controls”) of the Technical Specifications that will ensure that all licensee initiated changes to the REMODCM are justified, documented, and reported to the NRC as part of or concurrent with the Radioactive Effluent Release Report for the period in which any change to the REMODCM was made. In addition, Section 6 requires a determination that licensee initiated changes will maintain the level of radioactive effluent control as required by the existing regulations.¹⁹ See LAR, Section 6.15, Technical Specifications, page 6-24. Unlike *Perry*, future changes to the details of the radiological effluents programs will not involve any NRC licensing action or approval. But, in any event, future changes will not amount to operation “in any greater capacity” than is presently allowed because changes will not and cannot impact compliance with existing regulations. Therefore, as in *Perry*, there would be no license amendment — *de facto* or otherwise — and Section 189a notice and hearing rights are not remotely applicable.

In sum, this proposed contention is inadmissible because it fails to establish that a genuine dispute exists on a material issue of fact or law. See 10 C.F.R. §§ 2.714(b)(2), (d)(2).

¹⁹ The existing regulations cited in Section 6 that apply to controlling and monitoring radiological effluents are: 10 C.F.R. § 20.1302, 40 C.F.R. Part 190, 10 C.F.R. § 50.36a, and Appendix I to 10 C.F.R. Part 50. The NRC Staff will monitor continued compliance with the regulations as part of the inspection and enforcement program. Interested parties can address potential compliance issues through the process afforded by 10 C.F.R. § 2.206.

V. CONCLUSION

For reasons set forth above, Petitioners' request for a hearing and intervenor status does not satisfy the requirements of 10 C.F.R. § 2.714. Accordingly, the Petition should be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style and is underlined with a single horizontal line.

David A. Repka
Donald P. Ferraro
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005-3502

Lillian M. Cuoco
NORTHEAST UTILITIES SERVICE COMPANY
107 Selden Street
Berlin, Connecticut 06037

ATTORNEYS FOR NORTHEAST NUCLEAR
ENERGY COMPANY

Dated in Washington, D.C.
this 25th day of September 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
Northeast Nuclear Energy Company) Docket Nos. 50-336
) 50-423
(Millstone Nuclear Power Station,)
Units 2 and 3))

NOTICE OF APPEARANCE

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

Name: David A. Repka
Address: Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005
E-Mail: drepka@winston.com
Telephone Number: (202) 371-5726
Facsimile Number: (202) 371-5950
Admissions: District of Columbia Court of Appeals
Name of Party: Northeast Nuclear Energy Company
107 Selden Street
Berlin, Connecticut 06037


David A. Repka
Winston & Strawn
Counsel for Northeast Nuclear Energy Company

Dated at Washington, District of Columbia
this 25th day of September 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

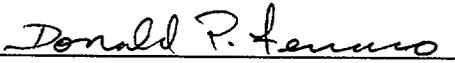
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
Northeast Nuclear Energy Company) Docket Nos. 50-336
) 50-423
(Millstone Nuclear Power Station,)
Units 2 and 3))

NOTICE OF APPEARANCE

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

Name: Donald P. Ferraro
Address: Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005
E-Mail: dferraro@winston.com
Telephone Number: (202) 371-5838
Facsimile Number: (202) 371-5950
Admissions: Commonwealth of Massachusetts
District of Columbia Court of Appeals
Name of Party: Northeast Nuclear Energy Company
107 Selden Street
Berlin, Connecticut 06037


Donald P. Ferraro
Winston & Strawn
Counsel for Northeast Nuclear Energy Company

Dated at Washington, District of Columbia
this 25th day of September 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

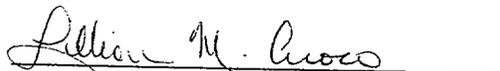
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
Northeast Nuclear Energy Company) Docket Nos. 50-336
) 50-423
(Millstone Nuclear Power Station,)
Units 2 and 3))

NOTICE OF APPEARANCE

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

Name: Lillian M. Cuoco
Address: Senior Nuclear Counsel
Northeast Utilities Service Company
107 Selden Street
Berlin, Connecticut 06037
Telephone Number: (860) 665-3195
Facsimile Number: (860) 665-5504
E-Mail: cuocolm@nu.com
Admissions: Court of Appeals for the State of New York
District of Columbia Court of Appeals
Superior Court of Connecticut
Name of Party: Northeast Nuclear Energy Company
107 Selden Street
Berlin, Connecticut 06037


Lillian M. Cuoco
Senior Nuclear Counsel
Northeast Utilities Service Company
Counsel for Northeast Nuclear Energy Company

Dated at Berlin, Connecticut
this 20th day of September 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
Northeast Nuclear Energy Company) Docket Nos. 50-336
) 50-423
(Millstone Nuclear Power Station,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NORTHEAST NUCLEAR ENERGY COMPANY'S ANSWER TO REQUEST FOR A HEARING AND PETITION TO INTERVENE" and a "NOTICE OF APPEARANCE" for David A. Repka, Donald P. Ferraro, and Lillian M. Cuoco in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 25th day of September 2000. In addition, for those parties marked by an asterisk (*), a courtesy copy has been provided this same day by e-mail.

Nancy Burton, Esq.*
147 Cross Highway
Redding Ridge, CT 06876
(nancyburtonesq@hotmail.com)

Thomas S. Moore*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(tsm2@nrc.gov)

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service Section
(original + two copies)

Dr. Charles N. Kelber*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(cnk@nrc.gov)

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

Ann M. Young*
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(amy@nrc.gov)

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

Ann P. Hodgdon*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(aph@nrc.gov)

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David A. Repka
Winston & Strawn
Counsel for Northeast Nuclear Energy Company