

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
NORTHEAST NUCLEAR	)	Docket No. 50-336
ENERGY COMPANY	)	50-423
	)	
(Millstone Nuclear Power Station,	)	
Units 2 and 3)	)	
	)	

NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE  
AND REQUEST FOR HEARING FILED BY THE  
CONNECTICUT COALITION AGAINST MILLSTONE AND THE STAR FOUNDATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the September 8, 2000, petition for leave to intervene and request for hearing ("Petition") filed by the Connecticut Coalition Against Millstone ("CCAM") and the STAR Foundation ("STAR") (jointly "Petitioners"). Further, the Petitioners have filed a contention. The Staff herein addresses Petitioners' standing to intervene, as well as their proffered contention. For the reasons set forth below, the Staff submits that Petitioners have not demonstrated standing to intervene in this matter, as required by 10 C.F.R. § 2.714 (a), and that their proffered contention does not satisfy the Commission's standards for the admission of contentions set forth in 10 C.F.R. § 2.714 (b). Accordingly, their petition for leave to intervene should be denied.

## BACKGROUND

On February 22, 2000, Northeast Nuclear Energy Company (“NNECO”) submitted an application, pursuant to 10 C.F.R. § 50.90, to amend Operating Licenses DPR-65 and NFP-49. The proposed changes would relocate selected Technical Specifications related to Radiological Effluent and the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual in accordance with NRC Generic Letter 89-01, “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, 1989. The proposed changes would also add two Technical Specifications to each of the Administrative Controls sections of the Unit 2 and 3 Technical Specifications. On August 28, 2000, NNECO submitted an update to the proposed amendment, including clarifications of the discussion of Technical Specification changes.

On August 9, 2000, the Staff published in the Federal Register a “*Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.*” 65 Fed. Reg. 48,744-745 and 48,754-755 (2000)(“Notice”). The Notice provided that by September 8, 2000:

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission’s ‘Rules of Practice for Domestic Licensing Proceedings’ in 10 C.F.R. Part 2.

*Id.* at 48,744.

As stated above, on September 8, 2000, CCAM and STAR filed a Petition to Intervene and Request for Hearing. On September 19, 2000, an Atomic Safety and Licensing Board (“Board”) was established to preside over the proceeding. 65 Fed. Reg. 57,627-628 (2000). For the reasons set forth below, Petitioners have not met the standing requirements of 10 C.F.R. § 2.714(a) and have failed to file a contention that is admissible pursuant to the standards for admission of contentions in 10 C.F.R. § 2.714(b).

### DISCUSSION

#### 1. Legal Requirements for Intervention

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he has standing to do so. Section 189a.(1) of the Atomic Energy Act of 1954, as amended (“Act” or “AEA”), 42 U.S.C. § 2239(a), states:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interests may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.”

*Id.* (emphasis added).

The Commission’s regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, *inter alia*, “shall set forth with particularity the interest of the petitioner in the proceeding, [and] 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 set forth in [§ 2.714(d)(1)].” Pursuant to section 2.714(d)(1), in ruling on a petition for leave to intervene or a request for hearing, the presiding officer or Licensing Board is to consider:

- (i) The nature of the petitioner’s right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner’s property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Finally, a petition for leave to intervene must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2). An aspect must be within the scope of the proceeding to be valid. *Philadelphia Electric Co.* (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 273, 277 (1986). A petitioner must also advance at least one admissible contention in order to be permitted to intervene in a proceeding. 10 C.F.R. § 2.714(b).

To determine whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Org. v. NRC*, 996 F.2d 1224 (9th Cir. 1993).

In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest, and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. *See, e.g., Georgia Power Co.* (Vogtle Elec. Generating Plant, Units 1 & 2), CLI-93-16, 38 NRC 25, 32 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991), *citing Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

To establish injury in fact, the petitioner must establish (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1988) (“Yankee Rowe”), citing *Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988). A determination that the injury is fairly traceable to the challenged action does not depend “on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels Corp.* (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 75 (1994). Finally, it must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Sequoyah Fuels*, CLI-94-12, 40 NRC at 71-72.

The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. A petitioner must have a “real stake” in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979). While the petitioner’s stake need not be a “substantial” one, it must be “actual,” direct” or “genuine.” *Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-74, 16 NRC 981, 983 (1982), citing *Allied General Nuclear Services* (Barnwell Fuel Receiving & Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *International Uranium Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116 (1998).

A person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *Umetco Minerals Corp.*, LBP-94-18, 39 NRC 369, 370 (1994). See, e.g., *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989)(individual could not represent plant workers without their express authorization; *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of constituents).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. See *Georgia Institute Of Technology*. (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Thus, an organization may meet the injury in fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *Houston Lighting & Power Co.* (South Texas Project Units 1 & 2), ALAB-549, 9 NRC 644, 646-47 (1979), *aff'g* LBP-79-10, 9 NRC 439, 447-48 (1979). An organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or the National Environmental Policy Act. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 528-30 (1991). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31 (1998); *Georgia Institute of Technology*, CLI-95-12, 42 NRC at 115; *Turkey Point*, ALAB-952, 33 NRC 521

at 530; *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979).<sup>1</sup>

2. Petitioners Have Failed to Establish Standing to Intervene

Petitioners have not established standing to intervene in this proceeding. They do not assert an injury to their organizational interests and, thus, limit their proposed participation in this proceeding to representing the interest of their members. In this regard, they have failed to establish standing to intervene in this proceeding in that (1) they have not identified members of CCAM and STAR who have authorized those organizations to represent them; (2) they have not shown an “injury in fact” to the interests of their members that is fairly traceable to NNECO’s license amendment request to relocate selected radiological effluent Technical Specifications and the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual (“REMODCM”); and (3) they have failed to identify an aspect within the scope of this amendment. Accordingly, Petitioners have not established standing to intervene in this proceeding.

A. Petitioners Have Not Identified Members of CCAM and STAR Who Have Authorized Those Organizations to Represent Them.

To establish representational standing, a group must show that the amendment they wish to challenge may injure the group or someone the group is authorized to represent. *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-97-14, 46 NRC 55, 57 (1997). In the case of a member of the group, a potential intervenor must identify at least one of its members by name and address, and demonstrate how that member may be affected (such as by activities on or near the site), and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of the member. *Houston Lighting and Power Co.* (South Texas Project, Units 1&2), ALAB-549, 9 NRC 644, 646-647 (1979); *Northern States Power Co.* (Independent Spent Fuel

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<sup>1</sup>The alleged injury in fact to the member must fall within the purposes of the organization. *Private Fuel Storage*, CLI-98-13, 48 NRC 26 at 33-34; see *Curators of the University of Missouri* (TRUMP-S Project), LBP-90-18, 31 NRC 559, 565 (1990).

Storage Installation), LBP-96-22, 44 NRC 138, 141 (1996); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 28 (1998). Moreover, where standing is based on nearby residence, the Commission has ruled that absent situations involving an obvious potential for offsite consequences (construction or operation of the reactor itself, or major alterations to the facility), a petitioner *must* allege some specific “injury in fact” that will result from the action taken. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

The Petition submitted by CCAM and STAR states that CCAM’s membership “includes whistleblowers who have been fired for raising legitimate safety issues at Millstone,” as well as “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, Connecticut.” Petition at 2. With regard to STAR, the Petition states that its membership includes “families with young children who own property and reside within the 10-mile emergency evacuation zone of the Millstone reactors.” *Id.*

This information fails to identify the names and addresses of any member of either group who will be affected, and no information at all is provided regarding how offsite consequences to those persons will result from the amendment in question. The Petition also fails to state that affected members have authorized CCAM and STAR to represent them in these proceedings. For these reasons, CCAM and STAR have failed to provide the basic information required to establish representative standing through their members.

**B. Petitioners Have Failed to Demonstrate an “Injury in Fact.”**

A petitioner seeking to intervene bears the burden of establishing that injuries will occur to its AEA-protected health and safety interests or its NEPA-protected environmental interests. A petitioner must satisfy the three components of the injury in fact requirement: (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the

injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993); *Yankee Rowe*, CLI-98-21, 48 NRC at 195. To meet this burden, a petitioner must establish a causal nexus between the alleged injury and the challenged action. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 122 (1992). One way to establish a causal connection is through the petitioners' showing a plausible way in which activities licensed by the challenged amendment would injure them. *Energy Fuels Nuclear, Inc.* (White Mesa Uranium Mill), LBP-97-10, 45 NRC 429, 431 (1997). The injury must be due to the amendment and not to the license itself, which was granted previously. *Id.*

In their Petition, CCAM and STAR state that, if the amendment is granted, their members will "suffer increased risk of hazard from radiological releases from Millstone Units 2 and 3 and consequent adverse health effects with no opportunity for comment or objection." Petition at 3. Petitioners do not demonstrate, however, any reason to believe that the proposed action, i.e., relocation of selected radiological effluent TSs and the associated Bases to the Millstone REMODCM, will cause distinct and concrete injury to the health of their members. Thus, Petitioners have failed to demonstrate how granting the proposed amendment might result in adverse health effects and, consequently, have they failed to demonstrate an injury in fact.

#### C. Petitioners Have Failed to Identify an Aspect Within the Scope of This Amendment.

Pursuant to 10 C.F.R. § 2.714(a)(2), a petitioner is required to state the "specific aspect or aspects of the subject matter of the proceeding" as to which it wishes to intervene. The purpose of this requirement is not to judge the admissibility of the issues, but to determine whether the petitioner specifies "proper aspects" for the proceeding. *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). The requirement is satisfied by identifying

general potential areas of concern that are within the scope of the proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990).

Petitioners fear an increased risk of adverse health effects occasioned by an increase in radiological effluents from the two Millstone reactors. As there is no increase in routine releases contemplated by the amendment, Petitioners' concern is not within the scope of the amendment request. Thus, Petitioners have not identified an aspect within the scope of the proceeding.

As discussed, Petitioners have failed to satisfy the requirements of 10 C.F.R. § 2.714(a) concerning standing.

### 3. Legal Standards for the Admission of Contentions

To gain admission as a party, a petitioner for intervention, in addition to establishing standing and raising an aspect within the scope of the proceeding, must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.714(b). *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). For a contention to be admitted, it must meet the standards set forth in 10 C.F.R. § 2.714(b)(2), which provides that each contention must consist of "a specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

- (i) A brief explanation of the bases of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which supports the contention . . . together with references to those specific sources and documents of which the Petitioner is aware and on which the Petitioner intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute.

10 C.F.R. § 2.714(b)(2). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. 10 C.F.R. § 2.714(d)(2)(i); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

In order for a dispute to involve a material issue of law or fact, its resolution must make a difference in the outcome of the proceeding. *Oconee*, 49 NRC 328 at 333-34, *citing Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process*, 54 Fed. Reg. 33,168; 33,172 (1989). *See also* 10 C.F.R. § 2.714(d)(2)(ii) (a contention must also be dismissed where the "contention, if proven, would be of no consequence . . . because it would not entitle [the] Petitioner to relief.") Moreover, contentions that are not supported by some alleged fact or facts should not be admitted nor should the full adjudicatory hearing process be triggered by contentions that lack a factual and legal foundation. *Oconee*, 49 NRC 328 at 335, *citing* 54 Fed. Reg. at 33,170.

#### 4. Petitioners Have Not Submitted an Admissible Contention.

The notice that appeared in the Federal Register on September 8, 2000, concerning applications and amendments to facility operating licenses involving no significant hazards considerations, 65 Fed. Reg. 48,744, tracks the language of the regulations in 10 C.F.R. § 2.714(b) concerning the filing of contentions. That notice states, in pertinent part:

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter.

*Id.* Petitioners have chosen to file their contention together with their request for hearing and petition to intervene. The Staff, accordingly, addresses the contention herein.

##### A. Alleged Deprivation of Future Hearing Opportunity

Petitioners' contention set forth in the first paragraph under the heading, "Contention," reads as follows:

“Relocating” the selected radiological effluent Technical Specifications and the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual will deprive the public, and the membership of the Connecticut Coalition Against Millstone and STAR foundation, of notice of proposed changes to the Millstone radiological liquid and gaseous effluent monitoring instrumentation. It will deprive them of the opportunity for hearing and to comment and object to changes, which can only be projected to lower standards of radiological effluent monitoring in the era of deregulation and electric restructuring. The amendment request is particularly objectionable in light of the record levels of radiological effluent released to the environment by the Millstone reactors.

Petitioners’ statement that the granting of the amendment will deprive them of the opportunity for hearing is, in part, correct; if the amendment is granted, there will be no opportunity for hearing on future changes to requirements moved to the REMODCM that do not otherwise require a license amendment.

Petitioners also allege that future changes to the REMODCM will lower standards of radiological effluent monitoring. Petitioners offer no basis for this allegation, and, in reaching this conclusion, they ignore both the applicable regulations in 10 C.F.R. Parts 20 and 50 that set the radiological effluent monitoring standards and the fact that, if the amendment is granted, future changes to the REMODCM can be made only in accordance with the Administrative Controls section of the Technical Specifications.

The final sentence in the paragraph refers to “record levels” of radiological effluent released to the environment by the Millstone reactors at some unspecified time in the past. This unsupported allegation is not germane to the amendment request.

To the extent that Petitioners’ contention reflects a belief that the Atomic Energy Act guarantees a hearing on any change in reactor operation, that belief is not well taken. Here, Petitioners claim hearing rights to challenge future changes in monitoring instrumentation. However, monitoring instrumentation is the kind of detail that does not need to be in Technical Specifications, because the performance-based standards for that instrumentation is set forth in the regulations in 10 C.F.R. Parts 20 and 50. 10 C.F.R. § 50.36 sets out requirements for inclusion in Technical Specifications

and 10 C.F.R. § 50.36a establishes requirements for inclusion in technical specifications on effluents from nuclear power reactors.

The Commission considered a similar matter in *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315 (1996). There the Commission reversed and vacated a Licensing Board decision granting summary disposition to Intervenor on their claim of a right to notice and hearing on changes to the withdrawal schedule for reactor vessel material specimens after that schedule was removed from Technical Specifications to a licensee-controlled document. The Commission stated that such a change would not require a hearing where it would not result in “greater operating authority” than previously authorized. 44 NRC at 326-327.

Here, as in *Perry*, any future change would not involve greater operating authority than previously authorized by the license, and the Commission need not offer hearing rights on such a change.

In *Perry*, the regulations in 10 C.F.R Part 50, Appendix H established the schedule for withdrawal of reactor material specimens and there was, thus, no need that the schedule be in Technical Specifications. *Id.* at 328. Similarly, there is no need for the Millstone Technical Specifications to include the details of radioactive effluent monitoring instrumentation, since the regulations in 10 C.F.R. Parts 20 and 50 establish performance standards. See 10 C.F.R. § 50.36a. Accordingly, any future change in the REDOCDM must be made in accordance with the regulations.

#### B. Allegation of Future Increase in Routine Radiological Releases

The Petitioners allege, incorrectly, that the instant amendment will result in increased radiological releases. The second paragraph of the contention states:

This amendment will degrade protection of the public health and safety from radiological effluents. Even according to the applicant, NNECO, 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. NNECO’s amendment request states

that increases will not be “significant.” (Application, February 22, 2000, cover letter, page 3.) However, as there will be no opportunity for hearing or public comment, the public will be exposed to greater risk of radiation doses from the routine operation of the Millstone nuclear reactors if NNECO obtains the amendment requested. The Petitioners are prepared to establish through expert testimony that any increase in routine radiological effluent to the air and water by the Millstone nuclear reactors will expose the public to of greater risk of cancer, immunodeficiency diseases and other adverse health effects.

Petition at 4.

The second and third sentences of the paragraph appear to offer additional bases for Petitioners’ contention. However, when one looks at Petitioners’ reference, page 3 of the licensee’s cover letter accompanying its application, what one finds there is quite different from the Petitioners’ characterization. The licensee’s letter does not state that the amendment request includes an increase in the releases of radiological effluents offsite and in individual and cumulative occupational exposures but rather provides a recital of the standards for categorical exclusion, pursuant to 10 C.F.R. § 51.22(c)(9), from the need for the Staff to prepare an environmental assessment in connection with the proposed action. In other words, there is nothing in the cited language on page 3 of the cover letter that Petitioners reference that would support their contention. Nor do Petitioners point to any other place in the application where the licensee proposes any increase in radiological releases or exposures offsite.

As noted above, 10 C.F.R. § 2.714(b)(ii) requires that each contention provide a concise statement of the alleged facts or expert opinion that support the contention together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioners state, in the fifth sentence of the second paragraph under “Contention,” that they are prepared to establish through expert testimony 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 health effects. However, Petitioners ignore 10 C.F.R. § 2.714 (b)(iii),

requiring sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Petitioners have not pointed to any potential to increase routine radiological releases. Thus, any expert testimony regarding greater risks from greater releases would not be material to the amendment request.

As discussed above, Petitioners' contention fails to satisfy the requirements of 10 C.F.R. § 2.714(b)(2)(i), (ii) and (iii). The Licensing Board should not, therefore, admit the contention.

CONCLUSION

Petitioners have failed to establish their standing to intervene and have failed to file an admissible contention. Therefore, the Licensing Board should deny their Petition.

Respectfully submitted,

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

Dated at Rockville, Maryland  
this 28<sup>th</sup> day of September 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Units 2 and 3) )  
)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name: Ann P. Hodgdon  
Address: Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Telephone Number: (301) 415-1587  
Admissions: District of Columbia, Court of Appeals  
Name of Party: NRC Staff

Respectfully submitted,

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

Dated at Rockville, Maryland  
this 28th day of October 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING FILED BY THE CONNECTICUT COALITION AGAINST MILLSTONE AND THE STAR FOUNDATION" and "NOTICE OF APPEARANCE" for Ann P. Hodgdon in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service as indicated by a double asterisk, with copies by electronic mail as indicated, this 28th day of September, 2000:

Ann M. Young, Chairman\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail copy to [amy@nrc.gov](mailto:amy@nrc.gov))

Thomas S. Moore\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail copy to [tsm2@nrc.gov](mailto:tsm2@nrc.gov))

Dr. Charles Kelber\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail copy to [cnk@nrc.gov](mailto:cnk@nrc.gov))

Office of the Secretary\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attn: Docketing and Service  
(E-mail copy to [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov))

Adjudicatory File  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Nancy Burton, Esq.\*\*  
147 Cross Highway  
Redding Ridge, CT 06876  
( E - m a i l c o p y t o  
[nancyburtonsq@hotmail.com](mailto:nancyburtonsq@hotmail.com))

Lillian M. Cuoco, Esq.\*\*  
Northeast Utilities Service Company  
107 Selden Street  
Berlin, Connecticut 06037  
(E-mail copy to [cuocolm@nu.com](mailto:cuocolm@nu.com))

David A. Repka\*\*  
Donald P. Ferraro  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005-3502  
(E-mail copy to [drepka@winston.com](mailto:drepka@winston.com))

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