

November 17, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c) and the Atomic Safety and Licensing Board's Order of October 6, 2000, the NRC Staff ("Staff") hereby responds to the Connecticut Coalition Against Millstone and STAR Foundation Amended Petition to Intervene and Request for Hearing ("Amended Petition"), filed on October 27, 2000. For the reasons set forth below, the Staff submits that the Amended Petition does not demonstrate that Connecticut Coalition Against Millstone (CCAM) and STAR Foundation (jointly "Petitioners") have standing to intervene, in that it does not satisfy the requirements of 10 C.F.R. § 2.714(a), and that Petitioners' contention as supplemented does not satisfy the Commission's standards for admission of contentions set forth in 10 C.F.R. § 2.714(b). Accordingly, the Licensing Board should deny the Amended Petition.

BACKGROUND

On September 8, 2000, Petitioners filed a Petition to Intervene and Request for hearing concerning Northeast Nuclear Energy Company's ("NNECO") application, submitted on February 22, 2000, for a license amendment for Millstone Units 2 and 3, noticed in the Federal Register on August 9, 2000. 65 Fed. Reg. 48,744-745; 48,754-755 (2000). As stated in the Notice, the proposed changes would relocate selected radiological effluent Technical Specifications and

the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual in accordance with the Nuclear Regulatory Commission's (NRC) Generic Letter 89-01. 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). On September 25, 2000, NNECO filed its Answer to Request for a Hearing and Petition for Leave to Intervene and, on September 28, 2000, the Nuclear Regulatory Commission staff ("Staff") filed its Response to Petition for Leave to Intervene and Request for Hearing Filed by the Connecticut Coalition Against Millstone and the STAR Foundation ("Response"). Both NNECO and the Staff opposed the Petition on the basis that Petitioners had not shown standing and that the contention they had submitted did not meet the criteria for admission of contentions set forth in the Commission's regulations.

On October 6, 2000, the Board issued an Order (Setting Schedule for Proceedings). In the Order, the Board set a deadline of October 27, 2000, for the filing of Petitioners' amended and supplemented petition. The Board directed the Petitioners, in amending their petition, to address, pursuant to 10 C.F.R. § 2.714(a)(2) and (d)(1), the type of standing they wished to establish and to provide the required particulars of such standing, including filing appropriate affidavits demonstrating how they met the requirements of the rule. The Board directed the Petitioners, in supplementing their petition with regard to contentions, to comply fully with the requirements of 10 C.F. R. § 2.714(b)(2), including providing a concise statement of all appropriate facts and expert opinion supporting such contentions with specific reference to documentary, expert and other sources of such facts and opinion. The Board requested NNECO and the Staff to address two questions related to the citation in their responses to the Petition of *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87 (1993) ("*Perry I*") and *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315 (1996) ("*Perry*

II"). The Board indicated that it would hear oral argument on the issues of standing and the admissibility of contentions in a telephone prehearing conference on November 30, 2000.

### DISCUSSION

As noted above, the Staff opposed CCAM and STAR's Petition as originally submitted because, among other things, it failed to show that Petitioners had standing to intervene. In its response of September 28, 2000, the Staff noted that Petitioners had neither asserted an injury to their organizational interests nor identified members of CCAM and STAR who had authorized those organizations to represent them. Staff Response at 7. In addition, Petitioners had failed to show standing in that they had 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 their associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual ("REMOCDM"). *Id.* As noted above, on October 27, 2000, Petitioners filed an amended and supplemented petition pursuant to the Board's Order of October 6, 2000.

#### 1. Standing

Regarding standing, Petitioners state that they have attached the affidavits of Joseph H. Besade and John Thatcher. Amended Petition at 2. The affidavit of Mr. Besade, who states that he is a member of CCAM, is, in fact, attached. However, Petitioners have not provided an affidavit for Mr. Thatcher.<sup>1</sup> Because STAR has not shown either organizational standing or representational

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<sup>1</sup> On November 14, 2000, after having prepared its response to the Amended Petition, the Staff received from Petitioners a filing postmarked November 8, 2000, which appears to be a further amendment to Petitioners' original filing. The further amendment provides an affidavit for Christine Guglielmo, who states that she is a member of STAR, that she has authorized that organization to represent her interests in the proceeding, and that she lives in East Hampton, New York, twenty miles from the Millstone Nuclear Power Station. The Board should not accept this unauthorized filing, as it was filed beyond the deadline of October 27, 2000, established by the Board in its Order of October 6, 2000. Although 10 C.F.R. §2.714 permits the amendment of petitions to intervene and contentions up to 15 days prior to the first prehearing conference, the  
(continued...)

standing through a member who has shown an “injury in fact” to his interests that is fairly traceable to the license amendment request at issue, STAR has not satisfied the Commission’s requirements for standing.

As regards his standing, Mr. Besade states in his affidavit that he lives two miles from the Millstone Nuclear Power Station, Affidavit, ¶ 3, that he is a member of the Connecticut Coalition Against Millstone, *Id.*, ¶ 5, and that he authorizes Connecticut Coalition Against Millstone to represent his rights and interests in these proceedings, *Id.*, ¶ 9. Thus, through its member, Mr. Besade, CCAM satisfies one of the requirements for representational standing.

With regard to an injury in fact to his interests that is fairly traceable to the license amendment request at issue, Mr. Besade states that it is his belief that an increase in radiological discharges and a lowering of the standards that limit such discharges are contemplated in the present applications, *Id.*, ¶ 18, and that, if the amendments are granted, he and his family will suffer increased risk of hazard from radiological release from Millstone Units 2 and 3 and consequent adverse health effects with no opportunity for comment or objection, *Id.*, ¶ 13. Mr. Besade’s affidavit merely repeats the allegations made in the original petition that the Staff addressed in its Response. The Staff stated that Petitioners had not demonstrated any reason to believe that the

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<sup>1</sup>(...continued)

presiding board may set a different time period pursuant to 10 C.F.R. §2.711. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 NRC 196, 198 (1992); *General Electric Co.* (GETR Vallecitos), LBP-83-19, 17 NRC 573, 578 (1983); *see also*, *National Whistleblower Center v. NRC*, 208 F.3rd 256 (DC Cir, 2000). The Board did, in fact, establish a different time period in its Order of October 6, 2000.

If the Board should determine to accept the filing despite its lateness, it should note that the affiant lives twenty miles from the plant. Petitioners have not shown how the proposed amendment, if granted, could result in offsite consequences, much less in consequences out to twenty miles. For all amendments except those proposing license termination plans, *Yankee Atomic Electric Co.* (Yankee Rowe Nuclear Power Plant), CLI-98-21, 48 NRC 195 (1998), petitioners must show the potential for offsite consequences. *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

Except with regard to residence and organizational membership, Ms. Guglielmo’s affidavit is identical to Mr. Besade’s, which is discussed below. Like Mr. Besade’s, it fails to establish standing to intervene.

proposed action, relocation of selected radiological effluent TSs and their associated Bases to the Millstone REMODCM, would cause distinct and concrete injury to the health of their members. Response at 9. Mr. Besade in his affidavit does not point to any place in the application where the licensee contemplates an increase in radiological effluent releases, and, indeed, the application does not propose any such increase. Similarly, there is no proposal to lower the standards that limit such discharges. Thus, Mr. Besade has offered no basis for his belief regarding the scope of the amendment request and there is nothing in the request itself to support Mr. Besade's belief.

Thus, Petitioners have not shown that either Ms. Guglielmo or Mr. Besade has standing to intervene with regard to the amendment request.

## 2. Petitioners' Contention

The Staff discussed Petitioners' contention in its Response to the original petition, and, inasmuch as Petitioners have not supplemented their contention except to add their expert's declaration which is addressed below, the Staff does not repeat that discussion here. In addressing Petitioners' statement that they would establish through expert testimony that any increase in routine radiological effluent to the air and water by the Millstone reactors would expose the public to greater risk of cancer, immunodeficiency diseases and other adverse health effects, the Staff pointed out that any such testimony would not be material to the amendment request in that the allegation regarding increases in routine radiological releases was unsupported. Response at 15.

Pursuant to the provision of the Board's Order of October 6, 2000, that required Petitioners to comply with 10 C.F.R. § 2.714(b)(2) regarding, among other things, expert opinion, Petitioners have now provided the declaration of Joseph Mangano, who states that he is a research associate with the Radiation and Public Health Project in New York City. Although Mr. Mangano states that he is familiar with the application that is the subject of the proceeding, Declaration, ¶ 3, his

declaration shows no such familiarity. Mr. Mangano states that the application, if granted, will eliminate the opportunity for public notice, hearing and comment regarding changes to the Millstone radiological liquid and gaseous monitoring instrumentation. *Id.*, ¶ 9. However, as this instrumentation is listed in the current TSs by function only and not by manufacturer, model number, etc., changing the instrumentation would not involve an amendment request and, thus, an opportunity for hearing. Thus, granting the current amendment request would not result in a loss of hearing opportunity concerning changes to monitoring instrumentation.

Mr. Mangano states that standards for effluent monitoring instrumentation should be tightened rather than "loosened," given the abundance of scientific evidence that has developed linking radiological discharges from commercial nuclear reactors, including Millstone, to adverse health effects, since the present standards were adopted. *Id.*, ¶ 15. To the extent that the Staff understands this vague and non-specific statement, it appears to be an attack on the Commission's regulations, as it is the Commission that sets the limits for radioactive effluent releases and, thus, indirectly, the performance standards for the instrumentation that monitors the releases to assure that those limits are met. Such attacks may only be pursued in accordance with 10 C.F.R. § 2.758. Further, although Mr. Mangano regards the standards as being outmoded in light of current science, the authorities on which he relies are considerably older than the Commission's regulations regarding routine releases of radioactive effluents. *See Id.*, ¶ 18. Beyond that, the authorities on which Mr. Mangano relies do not concern routine radioactive effluent release from nuclear reactors. Mr. Mangano's Declaration is not material to the application request, which concerns relocating the details of monitoring instrumentation out of TSs and which does not concern changes to dose rate and dose limits. Those latter requirements are retained in TSs in the Administrative Controls section, where any change would involve an amendment request and, thus, an opportunity for a hearing.

The supplemented contention does not meet the Commission's requirements for admissibility of contentions in 10 C.F.R. § 2.714 (b), in that it does not consist of a specific statement of the issue of fact or law to be controverted, it does not explain the bases of the contention, there is nothing in the expert declaration that supports the contention, and it fails to show that a genuine dispute exists with the applicant on a material issue of law or fact, much less reference specific portions of the application that the petitioner disputes together with the supporting reasons for the dispute.

### 3. The Licensing Board's Questions

The Licensing Board requested that NNECO and the Staff address two questions based on the reliance of those two parties on the Commission's decisions in *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87 (1993) ("*Perry I*") and *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315 (1996) ("*Perry II*"): (a) How does standing in this case fit within the analysis provided by the Commission at pages 93 through 96 of *Perry I*, and how may this case be distinguished? and (b) How does the contention in this case fit within the reasoning provided by the Commission in the language quoted below from page 329 of *Perry II*, and how may this case be distinguished?

. . . If the Intervenors believed that the nature and significance of the material specimen withdrawal schedule was such that it needed to remain in the Perry technical specifications -as a specific term of the Perry license- the Intervenors could have raised that argument in this proceeding. They instead concurred with the NRC Staff that there is no statutory or regulatory requirement that the withdrawal schedule remain in the Perry license.

#### A. *Perry I*

In *Perry I*, the Commission found that the petitioners had standing because their pleadings before the Licensing Board sufficiently presented a link between the loss of procedural opportunities under section 189a of the Atomic Energy Act of 1954, as amended, and their asserted health and safety interests. *Id.* at 95. In the instant matter, Petitioners do not identify a

health and safety interest that is fairly traceable to the challenged action, in that the application request does not, as Petitioners seem to believe, involve any change to the radiological effluent release limits for the Millstone plants. Citing *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989), the Commission stated that, in deciding threshold standing, it could not conclude that no potential for offsite consequences was posed by the loss of notice and opportunity for hearing to challenge future changes to the material specimen withdrawal schedule, where the material condition of the plant's reactor vessel obviously bore on the health and safety of those members of the public residing in the plant's vicinity. *Id.* at 95-96. No such potential exists here, where the radiological effluent release limits will remain in TSs and the amendment request does not include a proposal to change those limits. Thus, the Staff's position regarding CCAM and STAR's standing in the instant matter, as set forth above and in the Staff's Response of September 28, 2000, is not inconsistent with the Commission's finding of standing in *Perry I*.

B. *Perry II*

Petitioners here have not argued that the nature and significance of the radiological effluent Technical Specifications proposed to be removed to the REMODCM is such that they need to remain in TSs. In fact, Petitioners have made no reference to the requirements of 10 C.F.R. §50.36 regarding the content of TSs. The Commission in *Perry II* does not suggest that such a contention would necessarily have been admissible in that proceeding, but merely indicates that the intervenors in *Perry II* had waived the right to raise that argument when they agreed with the Staff that there was no statutory or regulatory requirement that the withdrawal schedule remain in TSs. In its Response of September 28, 2000, the Staff relied on *Perry II* for the reasons discussed in that Response. See Staff Response at 13. That reliance, which for the most part concerns the Commission's determinations concerning the alleged loss of future hearing rights, is not

inconsistent with the passage from *Perry II* cited by the Board. Neither the Intervenors in *Perry II* nor the Petitioners here addressed in their contentions why the TSs proposed to be relocated to a licensee-controlled document are required by the Commission's regulations to remain in TSs.

CONCLUSION

For the reasons discussed, the Licensing Board should find that Petitioners CCAM and STAR have not shown that they have standing in this proceeding and have not filed an admissible contention. The Licensing Board should, therefore, deny the Petition.

Respectfully submitted,

  
Ann P. Hodgdon  
Counsel for NRC Staff

Dated at Rockville, Maryland this  
17<sup>th</sup> day of November, 2000.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ENERGY COMPANY ) 50-423-LA  
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(Millstone Nuclear Power Station, )  
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO AMENDED PETITION TO INTERVENE AND REQUEST FOR HEARING FILED BY COALITION AGAINST MILLSTONE AND STAR FOUNDATION" 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 17th day of November, 2000:

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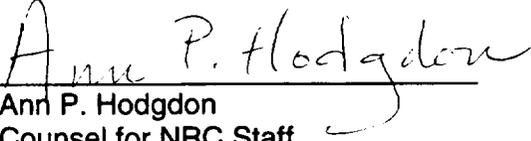
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