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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

OFFICE
OF THE
ADMINISTRATIVE
JUDGES

SERVED OCT 28 1999

In the Matter of

NORTHEAST NUCLEAR ENERGY
COMPANY

(Millstone Nuclear Power
Station, Unit No. 3;
Facility Operating License
NPF-49)

Docket No. 50-423-LA-3

ASLBP No. 00-771-01-LA

October 28, 1999

MEMORANDUM AND ORDER
(Intervention Petition)

This proceeding involves the proposed increase in capacity (through the addition of high-density storage racks) of the spent fuel storage pool of the Millstone Nuclear Power Station, Unit No. 3, a pressurized water reactor located in New London County, Connecticut. In response to a notice of opportunity for hearing, 64 Fed. Reg. 48672 (September 7, 1999), two organizations--the Connecticut Coalition Against Millstone (CCAM) and Long Island Coalition Against Millstone (CAM)--have jointly filed a request for hearing/petition for leave to intervene, dated October 6, 1999, pursuant to 10 C.F.R. § 2.714(a).

As set forth in 10 C.F.R. § 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding (i.e., its standing),

and how that interest may be affected by the results of the proceeding. The petition must also identify the specific aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.

The CCAM/CAM intervention petition is opposed both by Northeast Nuclear Energy Co. (NNECO or Licensee) and by the NRC Staff, for lacking an adequate demonstration of standing as well as an adequate showing of how the petitioners' interests may be affected by the results of the proceeding. Both NNECO and the NRC Staff acknowledge that the CCAM/CAM petition, through the attached declaration of David A. Lochbaum, satisfies the Commission's "aspects" requirement.

The Licensing Board here agrees that, as filed, the CCAM/CAM petition adequately identifies (through the declaration of Mr. Lochbaum) the aspects of the proceeding in which the petitioners wish to participate. But we also agree that, as filed, the petition fails to set forth adequately the standing of the organizations to intervene.

The Commission has long required that, to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to its interest and that the injury is arguably within the "zone of interests" sought to be protected by the Atomic Energy Act or the National Environmental Policy Act (NEPA). Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282 (1985). The aspects identified by Mr. Lochbaum

appear to fall within the purview of either the Atomic Energy Act or NEPA.

As for "injury in fact," however, an organization such as CCAM or CAM may set forth its standing either by showing the licensing action's effect on its organizational interests (organizational standing) or on the interest of at least one member who has authorized the organization to represent him or her (representational standing). Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-96 (1998); Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987). From statements in Mr. Lochbaum's declaration attached to the petition (at 2, ¶ 8 ("significant safety concerns for persons living near the facility")), CCAM/CAM here do not appear to be seeking organizational standing but, rather, representational standing. This type of standing, however, requires identification of an individual member or members, by name and address as well as authorization of the organization(s) to represent such member(s). As noted by the Licensee (NNECO Response, at 6-8) and Staff (Staff Response, at 5), to demonstrate such effect an individual will also have to show how far from the facility he or she lives or engages in

activities. These requisites are currently lacking from the petition before us.

The appropriate course of action to reflect these undeniable deficiencies in the petition, however, is not outright denial of the petition, as sought by both the Licensee and Staff. Rather, in the absence of some other specific Commission or Board directive, the NRC Rules of Practice afford a petitioner the right to amend its petition, without prior approval of the Licensing Board, at any time prior to 15 days before the first prehearing conference. 10 C.F.R. § 2.714(a)(3). In addition, before being granted intervention, a petitioner must also, prior to the first prehearing conference, set forth at least one valid contention meeting the requirements of 10 C.F.R. § 2.714(b).

We are here scheduling the first prehearing conference, for December 13-14, 1999, beginning at 2:00 p.m. on December 13, 1999, and continuing (if necessary) at 9:00 a.m. on December 14, at a location to be announced (in or near New London, CT.) The petitioners may file amendments to their petition, together with proposed contentions, by no later than Wednesday, November 17, 1999. The Licensee and NRC Staff may file responses by November 30, 1999, and December 7, 1999, respectively.¹ All filings should be served on the

¹If CCAM's or CAM's amendments on their face appear not to remedy the existing deficiency in their statements on

(continued...)

Board and parties by e-mail or fax, as well as first class mail. The e-mail addresses of the Licensing Board members are: Judge Bechhoefer, CXB2@nrc.gov; Judge Cole, RFC1@nrc.gov; Judge Kelber, CNK@nrc.gov. The Licensing Board's fax number is (301) 415-5599.

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board²


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 28, 1999

¹(...continued)
standing (e.g., failure to identify at least one affected individual), we may elect not to hold a prehearing conference but, instead, to dismiss the petition. If that situation arises, all parties will be notified.

²Copies of this Memorandum and Order have on this date been e-mailed or faxed (depending on address information available to the Licensing Board) to the parties' and petitioners' representatives.

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NUCLEAR REGULATORY COMMISSION

In the Matter of
NORTHEAST NUCLEAR ENERGY COMPANY
(Millstone Nuclear Power Station,
Unit No. 3)

Docket No.(s) 50-423-LA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (INTERVENTION PETITION) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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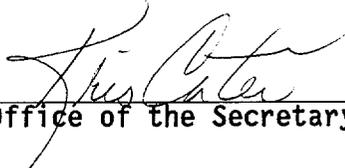
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Dated at Rockville, Md. this
28 day of October 1999


Office of the Secretary of the Commission