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October 21, 1999  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

|                                   |   |                       |
|-----------------------------------|---|-----------------------|
| In the Matter of:                 | ) |                       |
|                                   | ) | Docket No. 50-423-OLA |
| Northeast Nuclear Energy Company  | ) |                       |
|                                   | ) |                       |
| (Millstone Nuclear Power Station, | ) |                       |
| Unit No. 3)                       | ) |                       |

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

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Northeast Nuclear Energy Company ("NNECO"), licensee in the above-captioned matter, hereby files its answer to the request for hearing and petition for leave to intervene ("Petition") filed on October 6, 1999, by the Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone ("CAM") (hereinafter, "Petitioners" refers to CCAM and CAM). The Petition responds to the Notice of Opportunity for Hearing published in the *Federal Register* on September 7, 1999 (64 Fed. Reg. 48672) ("Notice") concerning NNECO's proposed amendment to the Millstone Unit 3 Facility Operating License No. NPF-49. As discussed below, the Petitioners have not satisfied the Commission's requirements for standing to intervene on this matter. Therefore, under 10 C.F.R. § 2.714, the Petition should be denied.

## II. BACKGROUND

### A. The Approval at Issue

The license amendment request (“LAR”) at issue, first submitted to the NRC on March 13, 1999, concerns a proposed increase in the capacity of the Unit 3 spent fuel storage pool (“SFSP”). Following the discharge of spent fuel assemblies into the SFSP during the next refueling outage, currently scheduled for the first quarter of 2001, Unit 3 will no longer have the capability to perform a full core off-load.<sup>1</sup> NNECO proposes additional high-density fuel storage racks, which will increase the SFSP capacity from 756 assemblies to 1,860 assemblies (an increase of 1,104).<sup>2</sup> The proposed amendment would also change several Technical Specifications (“TS”) and TS Bases to support the installation of the new fuel storage racks and to specify administrative controls for storage of spent fuel in the SFSP.

### B. The NRC’s Standing Requirements

The Petition must meet the NRC’s well-established standing requirements. Under 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,

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<sup>1</sup> The Unit 3 SFSP currently contains 497 spent fuel assemblies; a full core contains 193 fuel assemblies. Therefore, assuming 84 spent fuel assemblies are discharged during the next refueling outage (*i.e.*, 84 spent fuel assemblies will remain in the SFSP following completion of the refueling), full core off-load capability would be lost for the following operating cycle. The Notice and Petition incorrectly state that Unit 3 lost the capability for full core off-load following the last refueling outage, which ended in June 1999.

<sup>2</sup> The Unit 3 SFSP currently contains 21 spent fuel racks with a total storage capacity of 756 assemblies. The LAR proposes to immediately add 14 high-density racks with a capacity of 1,023 assemblies. A 15th high-density rack, with a capacity of 81 assemblies, is analyzed as part of the LAR safety evaluation, but would not be immediately installed.

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 Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992); Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant), CLI-93-21, 38 NRC 87, 92. 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 CAM, the Commission has 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 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.<sup>3</sup>

### III. DISCUSSION

#### A. 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

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<sup>3</sup> It appears that the declaration of David A. Lochbaum, attached to the Petition, meets the limited requirement of 10 C.F.R. § 2.714(a)(1) that a petition “set forth with particularity ... the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.” The declaration is not labeled as “proposed contentions” and does not conform to the format for proposed contentions specified in 10 C.F.R. § 2.714(b)(2). If either CCAM or CAM is found to have standing to intervene in this proceeding, NNECO would respond to any proposed contentions, on the issue of admissibility, pursuant to any schedule specified by the Licensing Board.

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.

First, Petitioners have not asserted any organizational interest at stake that would be threatened with injury by the approval at issue. Therefore, in this regard, the Petition is defective and does not demonstrate organizational standing. Second, Petitioners 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 individuals and families, including families with young children, who own property and reside in the immediate vicinity of the Millstone Nuclear Power Generating Station in Waterford, Connecticut.” Similarly, CAM claims that its “membership includes individuals and families, including families with small children, who own property and reside within the emergency evacuation zone of the Millstone Nuclear Power Generating Station.” 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.<sup>4</sup>

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<sup>4</sup> In at least two previous cases involving Millstone Station, wherein petitioners were represented by the present Petitioners’ counsel, 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), In the Matter of 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), In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 3), ASLBP No. 98-740-02-LA (1998).

B. Offsite Harm is Not Demonstrated

Even if the procedural deficiency were remedied, and members were identified, the standing of CCAM, based in Mystic, Connecticut, and CAM, based on Long Island, is not clear. In license amendment cases, where standing would be based on the nearby residence of individuals, the Commission has held that petitioners must allege a clear potential for offsite consequences resulting from that amendment. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989). Although the NRC has applied a 50-mile proximity standard for reactor operating license proceedings, it has also held that a more stringent proximity standard applies to proceedings involving license amendments with less potential for off-site consequences. See, e.g., Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), aff'd on other grounds, ALAB-816, 22 NRC 461 (1985) (43 miles inadequate for standing because risk is less for a spent fuel pool expansion). Rather than the 50-mile proximity used for reactor licensing proceedings, petitioners in SFSP expansion proceedings must demonstrate "close proximity." Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979) ("zone of harm" is smaller for SFSP expansion proceeding than a reactor operating license proceeding). In North Anna, the Atomic Safety and Licensing Appeal Board found that

petitioners “living little more than a stone’s throw from the facility” meet the close proximity test. *Id.* at 56.<sup>5</sup>

The NRC has noted that “potential safety hazards associated with spent fuel pool expansions are not as large as those associated with the reactor operation because the purpose of the expansion is to allow longer term storage of aged spent fuel.” 51 Fed. Reg. 7744, 7754 (1986). The Commission has also granted exemptions from its regulations concerning the Emergency Planning Zone (“EPZ”) for at least three shutdown nuclear facilities. These facilities no longer have operating nuclear reactors, and consequently, the primary source of radionuclides is the spent fuel stored in each unit’s SFSP. *See, e.g.*, 63 Fed. Reg. 53940 (1998) (Big Rock Point); 63 Fed. Reg. 48768 (1998) (Maine Yankee); and 63 Fed. Reg. 47331 (Connecticut Yankee). These actions reflect the low potential for offsite consequences posed by a spent fuel pool.

Based upon the limited amount of information provided by the Petitioners, none of the individual members in either organization would appear to satisfy the “close proximity” test for SFSP expansion proceedings. Petitioners have not demonstrated that any of their members reside within “a stone’s throw of the facility.” According to the Petition, CCAM is based in Mystic, Connecticut, which is approximately 11 miles from the Millstone site. CAM, based in Westhampton, New York, is approximately 42 miles from the site. Both of these

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<sup>5</sup> In several other proceedings involving SFSP issues, the NRC addressed the standing of petitioners who lived or worked within several miles of the facility. *See, e.g.*, General Public Utilities Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 157-59 (1996) (petitioner working within one mile of the facility and another petitioner living within one half mile of the facility had established standing); and Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 1), LBP-88-10A, 27 NRC 452, 455 (1988) (parties conceded standing of petitioner who resided within 10 miles of the facility).

distances are well beyond the site boundary and beyond the distances that in previous proceedings were found to meet the "close proximity" test discussed above. The Petition does not address how the Petitioners would satisfy the "close proximity" test; rather, they appear to assume, mistakenly, that the 50-mile test for reactor operating license proceedings necessarily applies to this proceeding.

#### IV. 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,



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Lillian M. Cuoco  
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Berlin, Connecticut 06037

ATTORNEYS FOR NORTHEAST NUCLEAR  
ENERGY COMPANY

Dated in Washington, D.C.  
this 21st day of October, 1999



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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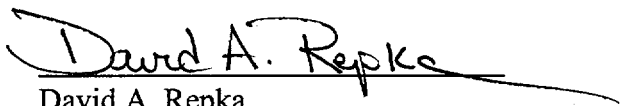
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'99 OCT 28 P4

In the Matter of: )  
)  
Northeast Nuclear Energy Company ) Docket No. 50-423-OLA  
) OFF  
) PUBLIC  
) ADJUDICATED  
(Millstone Nuclear Power Station, )  
Unit No. 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:

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Name of Party: Northeast Nuclear Energy Company  
107 Selden Street  
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David A. Repka  
Winston & Strawn  
Counsel for Northeast Nuclear Energy Company

Dated at Washington, District of Columbia  
this 21st day of October, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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0376

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'99 OCT 28 P4:59

In the Matter of: )  
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Northeast Nuclear Energy Company )  
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(Millstone Nuclear Power Station, )  
Unit No. 3) )

Docket No. 50-423-OLA  
OFFICE OF PUBLIC ADJUDICATION

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:

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District of Columbia Court of Appeals  
Name of Party: Northeast Nuclear Energy Company  
107 Selden Street  
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Donald P. Ferraro  
Winston & Strawn  
Counsel for Northeast Nuclear Energy Company

Dated at Washington, District of Columbia  
this 21st day of October, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'99 OCT 28 P4:59

In the Matter of: )  
)  
Northeast Nuclear Energy Company ) Docket No. 50-423-OLA  
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(Millstone Nuclear Power Station, )  
Unit No. 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:

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District of Columbia Court of Appeals  
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\_\_\_\_\_  
Lillian M. Cuoco  
Senior Nuclear Counsel  
Northeast Utilities Service Company  
Counsel for Northeast Nuclear Energy Company

Dated in Washington, D.C.  
this 21<sup>st</sup> day of October, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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10/28/99

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(Millstone Nuclear Power Station, )  
Unit No. 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, Lillian M. Cuoco, and Donald P. Ferraro in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 21st day of October, 1999. In addition, for those parties marked by an asterisk (\*), a courtesy copy has been provided this same day by e-mail.

Nancy Burton, Esq.  
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Dr. Richard F. Cole\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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

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

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.

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Winston & Strawn  
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