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October 26, 1999

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

CONFIDENTIAL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
)  
NORTHEAST NUCLEAR ENERGY COMPANY ) Docket No. 50-423-LA3  
)  
(Millstone Nuclear Power Station, Unit No. 3) )

NRC STAFF'S RESPONSE TO THE PETITION  
TO INTERVENE FILED BY CONNECTICUT COALITION AGAINST  
MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the October 6, 1999 petition for leave to intervene filed by the Connecticut Coalition Against Millstone (CCAM) and the Long Island Coalition Against Millstone (CAM) (Petition). For the reasons set forth below, the Staff submits that petitioners have not demonstrated their standing to intervene in this matter, as required by 10 C.F.R. § 2.714. Accordingly, the petition for leave to intervene should be denied.

BACKGROUND

On March 19, 1999 Northeast Nuclear Energy Company (NNECO) submitted a request for a license amendment pursuant to 10 C.F.R. § 50.90 for Millstone Nuclear Power Station, Unit No. 3. On September 7, 1999, the NRC 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.*

64 Fed. Reg. 48672. The Notice provided a description of the amendment request:

The proposed amendment would change Technical Specification (TS) 1.40, "Spent Fuel Pool Storage Pattern"; 1.1, "3-OUT-OF-4 AND 4-OUT-OF-4"; 3/4.9.1.2 "Boron Concentration"; 3/4.9.7, "Crane Travel-Spent Fuel Storage Areas"; 3/4.9.13, "Spent Fuel Pool--Reactivity"; 3.9.14, "Spent Fuel Pool--Storage Pattern"; 5.6.1.1 "Design Features--Criticality"; and 5.6.3. "Design Features -- Capacity." In addition, the proposed amendment would replace figures 3.9-1 and 3.9-2 with 4 new figures and make changes to TS Bases consistent with changes to their respective TS sections. These changes are being made to support the proposed increase in the capacity of spent fuel from 756 assemblies to 1,860 assemblies (an increase of 1,104).

*Id.*

The Notice further provided that by October 7, 1999:

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 48674.

As stated above, on October 6, 1999, CCAM and CAM filed a petition. On October 19, 1999, an Atomic Safety and Licensing Board (Board) was established to preside over the proceeding. For the reasons set forth below, petitioners have not met the standing requirements of 10 C.F.R. § 2.714. The Board should, therefore, deny the petition.

DISCUSSION

A. Legal Requirements for Intervention

Any person or entity who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate standing.

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) implement Section 189a (1) of the Atomic Energy Act of 1954, as amended, and 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 10 C.F.R. § 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.

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. *Id.* 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). *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985). The alleged interest must be concrete and particularized, fairly traceable to the challenged action, and likely to be redressed by a favorable decision. *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993) *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). To establish injury in fact and standing, a petitioner must establish (a) that the petitioner 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. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993).

Where an organization seeks 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 and Power Co.* (South Texas Project Units 1 and 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 Atomic Energy Act or the National Environmental Policy Act. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 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. *Georgia Institute of Technology*, 42 NRC at 115; *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979).

Previous standing rulings regarding spent fuel pool expansion and reracking amendments indicate that standing has been accorded to interested persons within approximately ten miles of the reactor facility. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant) LBP-99-25, 50 NRC \_\_\_\_ (July 12, 1999, slip op. at 5), *citing Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 1), LBP-88-10A, 27 NRC 452, 455, *aff'd*, ALAB-893, 27 NRC 627 (1988); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-17, 25 NRC 838, 842, *aff'd in part and rev'd in part on other grounds*, ALAB-869, 26 NRC 13 (1987); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987).

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” is broader than a “contention” but narrower than a general reference to the Commission’s operating statutes. *Consumers Power Co.* (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 278 (1978). A Board lacks jurisdiction to consider an intervention petition in which the aspect of the proposed intervention is not within the scope of the proceeding. *Philadelphia Electric Co.* (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 273, 277 (1986).

B. Petitioners Have Failed to Establish Standing to Intervene.

Petitioners 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, petitioners have failed to establish their standing to intervene in this proceeding in that (1) they have not identified members of their organizations who have authorized CCAM and CAM to represent them, and (2) petitioners have not shown an “injury in fact” to their interests or an interest of their members that is fairly traceable to the license amendment request. Accordingly, even if petitioners have set forth an aspect within the scope of this amendment, standing to intervene has not been established.<sup>1</sup>

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<sup>1</sup> In an affidavit of David A. Lochbaum filed with the petition, six “deficiencies” are asserted with regard to the amendment. It is not clear whether these “deficiencies” are intended to represent aspects or proposed contentions. However, for the purpose of responding to this petition, the staff has accepted for the sake of argument that an aspect within the scope of this amendment request has been set forth.

1. Petitioners have not identified members of their organizations who have authorized CCAM and CAM to represent them.

The petition states that CCAM's 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." Petition at 1. With regard to Long Island CAM, the petition states, "Long Island CAM is an organization of individuals and groups located on Long Island in the State of new York concerned about the safe operations of the Millstone Nuclear Power Generating Station. It is based at 66 Newtown Lane, East Hampton, New York." Petition at 2-3. The petition asserts further with regard to Long Island CAM's membership that it 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. Petition at 3. The information noted above is all the information that petitioners have provided concerning the membership of their organizations. They have failed to provide the information required for a finding that CCAM and CAM have demonstrated representative standing through their members. *See Georgia Institute of Technology*, 42 NRC at 115.

2. Petitioners have not shown injury in fact.

Although petitioners state that, "[w]ere such licensing amendment to be issued," they would be subject to "great risk of injury to life, limb and property, which risk they are unwilling to assume" (Petition at 4), they do not identify how that risk of injury relates to the actions proposed by the amendment request. They assert that the proposed activities will

increase risk to the general public (Petition at 2-3), and such risks are “foreseeable and potentially catastrophic”) (Petition at 3). But this is not the “distinct and palpable” harm spoken of in *Dellums v. NRC, supra*. Petitioners have not shown how they might be injured by the proposed amendment. Also, they have failed to provide information concerning the proximity to Millstone 3 of the residence of a named member of their organization. Thus, petitioners have failed to identify the injury they might suffer if the amendment request were to be granted.

#### CONCLUSION

Petitioners have failed to establish their standing to intervene in this proceeding by not identifying members of CCAM and Long Island CAM who have authorized those organizations to represent them and by not showing an “injury in fact” to their interest or an interest of their members. As noted above, the Staff does not contest petitioners’ showing regarding the aspect requirement for intervention. Because petitioners have not established standing, the Licensing Board should deny the petition.

Respectfully submitted,



Ann P. Hodgdon  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 26<sup>th</sup> day of October, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

NORTHEAST NUCLEAR ENERGY COMPANY )

(Millstone Nuclear Power Station, Unit No. 3) )

OF  
ADJ.

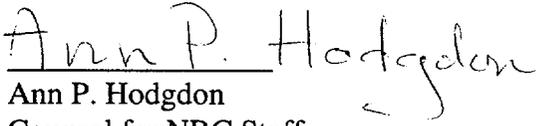
Docket No. 50-423-LA3

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  
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Name of Party: NRC Staff

Respectfully submitted,

  
Ann P. Hodgdon  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 26th day of October, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 OCT 28 P5:01

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ADJL

In the Matter of )  
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NORTHEAST NUCLEAR ENERGY COMPANY ) Docket No.50-423-LA3  
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO THE PETITION TO INTERVENE FILED BY CONNECTICUT COALITION AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE" and "NOTICE OF APPEARANCE" for Ann P. Hodgdon in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by an asterisk, by first-class mail this 26th day of October, 1999:

Thomas S. Moore, Chairman  
Administrative Judge  
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Office of the Secretary  
ATTN: Rulemaking and Adjudications  
Staff  
Mail Stop: O 16-C-1  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

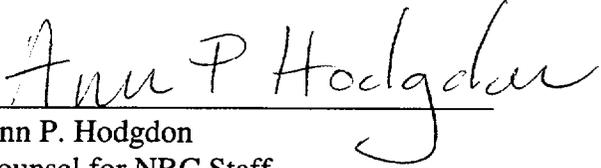
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