

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of	)	
	)	
DOMINION NUCLEAR	)	Docket No. 50-336
CONNECTICUT, INC.	)	
	)	
(Millstone Power Station, Unit No. 2)	)	

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

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the December 12, 2002, Amended Petition to Intervene and Request for Hearing (Amended Petition) filed by the Connecticut Coalition Against Millstone (CCAM) and the STAR Foundation (STAR) (jointly "Petitioners").<sup>1</sup> The Staff herein addresses Petitioners' standing to intervene. 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). Accordingly, Staff opposes the Amended Petition and requests that it be denied.

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<sup>1</sup> As of this date, CCAM and STAR have not served the Office of General Counsel with their Petition to Intervene and Request for Hearing (Petition), filed December 12, 2002, or with their Amended Petition to Intervene and Request for Hearing, filed later the same day. On December 13, 2002, staff counsel was able to obtain a copy of the Amended Petition from the Office of the Secretary. The *Federal Register* Notice to which both the Petition and Amended Petition expressly relate provides that copies of the petition should be served on the Office of General Counsel. See Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 67 Fed. Reg. 68728 (2002).

## BACKGROUND

On September 26, 2002, Dominion Nuclear Connecticut, Inc. (Dominion or Licensee) proposed to amend its operating license for the Millstone Power Station, Unit 2 (Millstone). It requested the NRC to approve its reanalysis of limiting design-basis Fuel Handling Accidents, using a selective implementation of the Alternative Source Term methodology in accordance with 10 C.F.R. § 50.67.<sup>2</sup> It also requested changes to the Technical Specifications (TSs) to reflect the results of that reanalysis. More specifically, Dominion requested an amendment to TS 3.3.3.1, "Monitoring Instrumentation, Radiation Monitoring," TS 3.3.4, "Instrumentation, Containment Purge Valve Isolation Signal," TS 3.7.6.1, "Plant Systems, Control Room Emergency Ventilation System," TS 3.9.4, "Refueling Operations, Containment Penetrations," TS 3.9.8.1, "Refueling Operations, Shutdown Cooling and Coolant Circulation - High Water Level," TS 3.9.8.2, "Refueling Operations, Shutdown Cooling and Coolant Circulation - Low Water Level," and TS 3.9.15, "Refueling Operations, Storage Pool Area Ventilation System." See Letter, J. Alan Price to U.S. Nuclear Regulatory Comm'n Document Control Desk, B18763, "Millstone Unit No. 2, License Basis Document Change Request (LBDCR) 2/18/02, Selective Implementation of the Alternative Source Term in Fuel Handling Accident Analyses" (Sept. 26, 2002) (Application).

The Licensee's amendment request finds its basis in the NRC's 1999 amendment of its regulations that permits nuclear power plant licensees to voluntarily replace the traditional source term used in design basis accident analyses with alternative source terms. Final Rule, Use of

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<sup>2</sup> The NRC has approved similar applications pertaining to the reanalysis of fuel handling accidents based on alternative source term assumptions. See, *Virginia Electric And Power Company* (Surry Power Station), on March 8, 2002 (Biweekly Notice, Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 67 Fed. Reg. 15,619, 15,635 (2002)); *Omaha Public Power District* (Fort Calhoun Station), on March 26, 2002 (Biweekly Notice, Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 67 Fed. Reg. 18,641, 18,653 (2002)); and *Carolina Power and Light Company* (Shearon Harris Nuclear Power Plant), on July 30, 2001 (Biweekly Notice, Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 66 Fed. Reg. 44,161, 44,178 (2001)).

Alternative Source Terms at Operating Reactors, 64 Fed. Reg. 71,990 (1999).

The “Alternative Source Term” rule, codified at 10 C.F.R. § 50.67, permits utilities with nuclear power plant operating licenses to replace the 1962-era source term in their licenses with a revised one. Dose limits to an individual located at any point on the boundary of the exclusion area for any two hour period following the onset of the release, to an individual located at any point on the outer boundary of the low population zone exposed to the radioactive cloud, and to persons working in the control room under accident conditions are given in terms of a single total effective dose equivalent (TEDE) rather than in terms of the two different doses, whole body and thyroid, used in the original design basis of all reactors now operating. 10 C.F.R. § 50.67(b). Therefore, calculated doses from the original accident analyses and reanalyses using the alternative source term are not directly comparable. The two methods are discussed at length in the Background for the Final Rule, 64 Fed. Reg. 71990, 71992-71993.

On November 12, 2002, the Commission published a “Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations” (“Notice”) including the Dominion application. 67 Fed. Reg. 68728, 68731 (2002). Pursuant to the Notice, on December 12, 2002, CCAM filed its Petition to Intervene and Request for a Hearing and CCAM and STAR filed their Amended Petition.

## 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 the 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 Atomic Safety and Licensing Board (“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). In addition, a petitioner must 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., Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (“Yankee Rowe”); *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.* (Vogle Elec. Generating Plant, Units 1 & 2), CLI-93-16, 39 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). This showing is necessary whether an individual or an organization is petitioning to intervene. *Private Fuel Storage, L.L.C.*, (Independent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

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 Rowe, supra*, 48 NRC at 195, *citing Steele Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogle, supra*, 38 NRC at 32.<sup>3</sup> It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. at 555, 561 (1992);

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<sup>3</sup>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, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).

*Sequoyah Fuels, supra*, 40 NRC at 71-72.

The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan, supra*, 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; while this stake need not be a “substantial” one, it must be “actual,” “direct” or “genuine.” *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979). 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 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 410, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 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); *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff’d in part on other grounds*, CLI-92-11, 36 NRC 47 (1992) .

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. *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).<sup>4</sup>

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<sup>4</sup>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 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother cannot represent son attending university unless he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents).

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 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 AEA or NEPA. *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 and 4), ALAB-952, 33 NRC 521, 528-30 (1991) (Turkey Point). 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 Inst. of Tech.*, *supra*, 42 NRC at 115; *Turkey Point*, *supra*, 33 NRC at 530; *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979).<sup>5</sup>

In addition to the traditional standing requirements, licensing boards may also grant standing based on a petitioner’s proximity to the facility at issue. *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 55 NRC \_\_\_ (slip. op. July 2, 2002), at 6 (Sequoyah). This proximity or geographical presumption “presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity. *Id.*, *citing Florida Power*

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<sup>5</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* (TRUMPS-S Project), LBP-90-18, 31 NRC 559, 565 (1990).

& Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001).<sup>6</sup> This presumption does not apply in proceedings unless the proposed action “quite obvious[ly] entails an increased potential for offsite consequences.” *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999), *pet. for review denied sub nom. Dienethal v. United States Nuclear Regulatory Comm’n*, 203 F.3d 52 (D.C. Cir. 2000). The Commission has articulated a standard for applying the proximity presumption:

It is true that in the past, we have held that living within a specific distance from the plant is enough to confer standing on an individual or group in the proceedings for construction permits, operating licenses, or significant amendments thereto, such as the expansion of the capacity of a spent fuel pool. However, those cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences. Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific “injury in fact” which 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 (1989)(citations omitted). In a later case, the Commission indicated that the focus of the proximity presumption is upon whether “the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995) (Georgia Tech). The next step in the analysis is to determine whether the petitioner’s residence is within the potential “zone of harm” of the proposed action by examining the nature of the proposed action and the significance of the radioactive source. *Sequoyah*, LBP-02-14, slip op. at 7, *citing Georgia Tech.*, CLI-95-12, 42 NRC at 116-117. This must be determined on a case-by-

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<sup>6</sup>This geographic presumption generally applies to petitioners residing within 50 miles of a reactor. *Sequoyah Fuels Corp. & Gen. Atomic* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n. 22 (1994).



case basis by “examining the significance of the radioactive source in relation to the distance involved and the type of action proposed.” *Id.* at 10 *citing Georgia Tech*, CLI-95-12, 42 NRC 116-117.

1. 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 established standing based on proximity as they have not shown an obvious potential for offsite consequences attributable to the proposed amendment; (2) they have not shown an “injury in fact” to the interests of their members that is fairly traceable to Dominion’s license amendment request or that could be redressed in this proceeding; 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 Do Not Meet the Requirements for Standing Based on Proximity of Their Residences to Millstone Power Station.

As discussed above, in addition to traditional standing requirements, standing may be granted based on a petitioner’s proximity to the facility at issue. *Sequoyah*, LBP-02-14, slip op. at 6. In the present case, CCAM asserts standing based on the affidavit of Mr. Besade, who resides within two miles of Millstone, and STAR asserts standing based on the affidavit of Ms. Christine Guglielmo, who resides approximately 23 miles away from Millstone. Besade Affidavit at ¶ 5; Guglielmo Affidavit at 2. However, absent an obvious potential for offsite consequences, a petitioner must allege some specific injury in fact. *St. Lucie*, CLI-89-21, 30 NRC 325, 329 (1989). The Petitioners have not demonstrated how the granting of this amendment request could lead to any offsite consequences and, therefore, cannot achieve standing based on the proximity of their

residences to the Millstone facility.

As discussed in the licensee's application, the proposed amendment does not involve any physical changes to plant equipment. The proposed changes will not result in an increase in power level, will not increase the production of radioactive waste and byproducts, and will not alter the flowpath or method of disposal of radioactive waste or byproducts. Therefore, the proposed changes will not increase the type and amounts of effluents that may be released offsite.

The changes proposed to the TSs in the license amendment application affect containment purge valve isolation signal, radiation monitoring, control room emergency ventilation system, containment penetrations, shutdown cooling and coolant circulation for high and low water level, and storage pool area ventilation. *See, supra*, Background. Petitioners provide no explanation of how such changes to the TS's would lead to an increased potential for offsite consequences.

Further, the amended Petition merely recites language describing the amendment request and the NRC's basis for its proposed no significant hazards determination notice in the *Federal Register*. Petition at 1-2; 67 Fed. Reg. at 68731-2.<sup>7</sup> But, in fact, the Petitioners do not completely recite the paragraph from which the language used in their Petition is taken. The final two omitted sentences read as follows:

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<sup>7</sup>The language in the Federal Register, as recited in the Amended Petition, is as follows:

The proposed changes to the Technical Specifications modify requirements regarding Containment closure and Spent Fuel Pool area ventilation during movement of irradiated fuel assemblies in Containment and in the Spent Fuel Pool area. The proposed changes will allow Containment penetrations, including the equipment door and personnel airlock door, to be maintained open under administrative control. The proposed changes will eliminate the requirements for automatic closure of Containment purge during Mode 6 fuel movement. The technical specifications associated with storage pool area ventilation will be deleted.

67 Fed. Reg. at 68732; Petition at 1-2.

These proposed changes do not involve physical modifications to plant equipment and do not change the operational methods or procedures used for the physical movement of irradiated fuel assemblies in the Containment or in the Spent Fuel Pool area. As such, the proposed changes have no effect on the probability of the occurrence of any accident previously evaluated.

67 Fed. Reg. at 68732. Nothing in the Petition explains how these changes would injure the Petitioners or their members. In fact, in all instances the revised results of dose consequences from the reanalysis are within NRC acceptance criteria. *Id.* The Petition fails to demonstrate how an amendment request that does not propose any change in hardware or operational procedures involves an obvious potential for offsite consequences. The Petition on its face fails to demonstrate an obvious potential for offsite consequences. Therefore, Petitioners have not shown that the license amendment at issue has any obvious potential to cause any offsite consequences and, thus, they may not base standing on proximity to the reactor.

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

Because the Petitioners cannot successfully assert standing based on residential proximity, they must show that a specific injury in fact will result to them if the proposed amendment is granted. A petitioner seeking to intervene 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, supra*, 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 a showing, by the Petitioners, of 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 the license itself, which was granted previously. *Id.* The Petitioners have failed to establish their standing to intervene in this proceeding in that they 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.

In their Amended Petition, CCAM and STAR state that they seek to intervene in these proceedings and request a hearing “because of concerns of adverse health and safety risks to its membership as well [as] the health and [safety] of Millstone workers and the surrounding community.” Petition at 3. The Petitioners fail to identify any features of the proposed action that will cause injury to the health of their members. Furthermore, CCAM cannot base its standing on injury to Millstone workers or the surrounding community unless those persons are members of the organization and have authorized CCAM to represent them. *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, LBP-82-43A, 15 NRC 1423, 1437 (2002), *citing Warth v. Seldin*, 422 U.S. 490, 411 (1976); *Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972); *Consumers Power Co. (Palisades Nuclear Plant)*, LBP-79-20, 10 NRC 108, 113 (1979). There are no such authorizations mentioned in the Petition nor is affidavit support provided.

As discussed above, the Amended Petition recites language describing the amendment request and the NRC’s basis for its proposed no significant hazards determination notice in the *Federal Register*. See, *supra*, at 2.A. Nothing in the Petition explains how the proposed changes would injure the Petitioners or their members. In fact, in all instances the revised results of dose consequences from the reanalysis are within NRC acceptance criteria. *Id.*

In support of the Petition, CCAM provides the affidavit of Joseph H. Besade, who states that he is a member of CCAM and has authorized CCAM to represent him in this proceeding. Besade Affidavit at ¶¶ 3, 26. Mr. Besade’s affidavit fails to demonstrate that some “distinct and palpable” harm will result to him if the amendment is granted. With regard to the amendment at issue,

Mr. Besade asserts that “the license amendment seeks to eliminate, erode and relax existing standards of radiological protection for workers and the public” and states that the amendment “proposes to permit increased radiological emissions to the environment above current levels.” Besade Affidavit at ¶¶ 14, 15. Consequently, Mr. Besade says that he and his family will be at increased risk from radiological contamination from Millstone Nuclear Power Station. Besade Affidavit at ¶ 16.

Mr. Besade does not satisfy any of the components of the injury in fact requirement. As discussed above, Mr. Besade can only assert standing for himself and cannot speak for Millstone employees or the public. *Limerick, supra*, 15 NRC at 1437, *citing Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1976). Mr. Besade fails to provide or explain any causal connection between the proposed license amendment and the anticipated harm he fears. For example, Mr. Besade does not articulate how the license amendment will relax existing radiological protection standards for Millstone workers and the public with resultant harm to him. In fact, as noted above, the estimated doses remain within the dose limits in the applicable NRC regulations. Routine radiological effluents from Millstone, which continue to be controlled by the licensee’s approved offsite dose calculation manual and associated administrative controls, are not affected by the changes requested in this amendment request. Application at 3. Occupational radiation exposures, which continue to be controlled by the licensee’s radiation protection program, pursuant to the standards for radiation protection in 10 C.F.R. Part 20 of the Commission’s regulations, are not increased. *Id.*

In addition to failing to establish a required causal connection, CCAM fails to show that the alleged injuries would be redressed by a favorable Board decision. Millstone is a licensed operating reactor and the likelihood of the injuries articulated by Mr. Besade (i.e., heightened risk of radiological contamination if the amendment is issued, as stated in the Besade Affidavit ¶ 16)

are unsupported.

Further, there is no basis for Mr. Besade's assertion that the radiological emission standards used by the NRC are arbitrary in nature. Besade Affidavit at ¶ 17. Pursuant to 10 C.F.R. § 2.758(a), agency regulations cannot be attacked in this adjudicatory proceeding. Consequently, a favorable decision for CCAM would not redress these alleged injuries.

Moreover, in his affidavit, Mr. Besade appears to confuse routine radiological emissions, which are not affected by the changes proposed in the amendment request, with accident doses in the event of a hypothetical accident. Besade Affidavit at ¶¶ 20-22. This confusion demonstrates that Mr. Besade is not "familiar with the license amendment application" as sworn to in his affidavit. Besade Affidavit ¶ 12. Mr. Besade is unable to articulate any concrete or particularized injury as he lacks a basic understanding of what the proposed license amendment purports to do.

For the reasons stated, CCAM's claimed potential harm does not establish a concrete, actual harm that is traceable to the challenged action that would be redressed by a favorable decision. CCAM, through Mr. Besade's Affidavit, therefore, has failed to demonstrate standing in this proceeding.

Likewise, in support of the Petition, STAR provided the affidavit of Christine Guglielmo, who states that she has authorized STAR to represent her in this proceeding. Guglielmo Affidavit at ¶ 21. However, Ms. Guglielmo does not state that she is a member of STAR. In order for STAR to demonstrate organizational standing, it must either demonstrate standing through its own right or claim standing through one or more individual members who have standing. STAR has failed to meet this basic requirement.<sup>8</sup>

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<sup>8</sup> Additionally, Ms. Guglielmo asserts through her affidavit that STAR participated as a party intervenor in past NRC proceedings. Guglielmo Affidavit at ¶ 18. While STAR sought to intervene in a previous NRC proceeding, it was denied leave to do so. *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273 (2001), *aff'd*, CLI-01-24, 54 NRC 349.

The assertions set forth in Ms. Guglielmo's affidavit are essentially identical to those of Mr. Besade and fail to establish standing for the same reasons cited above. Thus, like Mr. Besade, Ms. Guglielmo fails to assert how she will be harmed by the proposed amendment. In her affidavit, she asserts that she will be "at heightened risk of radiological contamination from Millstone operations . . . with consequent increased risk" to her health. Guglielmo Affidavit at ¶ 7. Nowhere does Ms. Guglielmo provide or explain the nexus between the proposed amendment and the anticipated harm she fears. Ms. Guglielmo has provided no basis for this allegation.

Similarly, Ms. Guglielmo appears to confuse routine radiological emissions, which are not affected by the changes proposed in the amendment request, with accident doses. Guglielmo Affidavit at ¶ 13. This indicates that she has not read or understood the amendment application and does not understand what action is proposed. Thus, Ms. Guglielmo is unable to establish a causal connection between the amendment request and any injury to herself.

For the reasons stated above, STAR, through Ms. Guglielmo's affidavit, has failed to meet the standing requirements to intervene in this proceeding.

To summarize, the harms alleged by both Mr. Besade and Ms. Guglielmo through their respective affidavits are without bases because the proposed changes (1) do not impact routine releases or worker occupational exposure; (2) will not result in any significant increase doses to the public should a fuel handling accident occur; and (3) do not relax technical specification requirements on equipment shown to be necessary for maintaining public doses within NRC regulations. CCAM and STAR's petition to intervene should be denied because neither has established any likelihood of specific injury or harm traceable to the requested license amendment. As such, both have failed to meet the basic standing requirements.

#### 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 set forth three proposed aspects in their petition: (1) “issues . . . concerning reduction of protection to workers and the public from unnecessary environmental releases of fission products;” (2) “the incompleteness of the application . . .[for] its failure . . .to identify and define administrative measures to be implemented to protect the public health and safety” if the amendment is granted; and (3) “the complete failure of the licensee to address public health and safety consequences relative to the potential of a terrorism [sic] attack . . . during Unit 2 fuel movement and the likelihood of increasing peril to the community . . . .” Petition at 3.

Petitioners have failed to specify proper aspects for the proceeding. The petition makes vague reference to adverse health and safety risks to CCAM and STAR membership (as well as to Millstone workers and the general community, whom Petitioners do not represent) “from unnecessary environmental releases of fission products.” Petition at 3. As there is no increase in routine releases contemplated by the amendment and as the amendment request concerns doses from postulated accidents, Petitioners’ concern regarding routine releases (Besade affidavit) is not within the scope of the amendment request.

The allegation that the amendment application is incomplete “by virtue of its failure *inter alia* to identify and define administrative measures to be implemented to protect the public health and safety in the event the amendment is granted” is without basis. In fact, there is no indication that the Petitioners even looked at or read the license amendment application because the application



explicitly defines such administrative measures. The proposed amendment would allow containment penetrations, including the equipment door and personnel airlock door, to be maintained open under administrative controls. As discussed in Attachment 2, page 8, of the application, Dominion Nuclear Connecticut will establish administrative controls to ensure that any containment penetration which provides direct access to the outside atmosphere, including the equipment door and personnel airlock door, can be manually closed within 30 minutes of a fuel handling accident. The administrative controls are explicitly discussed in the application in Attachment 2 (pages 7 and 8), Attachment 4 (Insert G), and Attachment 5 (pages B 3/4 9-1a and B 3/4 9-1b).

The Petitioner's final asserted interest focuses on general concerns relating to terrorism. Petition at 3. There is no indication that the granting of this license amendment will have any impact on terrorism or the likelihood of a terrorist attack. Beyond that, the Commission recently decided that such contentions are inadmissible under the National Environmental Policy Act (NEPA), *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-02-27, 56 NRC \_\_ (slip op. Dec. 18, 2002), at 5, or the Atomic Energy Act, Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC \_\_ (slip op. Dec. 18, 2002) at 7-9, 20-21. The Commission stated that such issues are better addressed by other means and in public hearings. *Id.*

Thus, Petitioners have not identified any general areas of concern that are within the scope of this proceeding.

CONCLUSION

As discussed above, Petitioners, CCAM and STAR, have failed to satisfy the requirements of 10 C.F.R. § 2.714(a) concerning standing. Therefore, the Staff submits that their amended petition to intervene and request for hearing should be denied.

Respectfully submitted,

***/RA/***

Ann P. Hodgdon  
Counsel for NRC staff

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of January 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of )  
 )  
DOMINION NUCLEAR ) Docket No. 50-336  
CONNECTICUT, INC. )  
 )  
(Millstone Power Station, Unit No. 2) )

NOTICE OF APPEARANCE

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

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Respectfully submitted,

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

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of January 2003

UNITED STATES OF AMERICA  
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CONNECTICUT, INC. )  
)  
(Millstone Power Station, Unit No. 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO AMENDED PETITION TO INTERVENE AND REQUEST FOR HEARING FILED BY CONNECTICUT COALITION AGAINST MILLSTONE AND STAR FOUNDATION" 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 2<sup>nd</sup> day of January 2003. Additional e-mail service has been made this same day as shown below.

Office of the Secretary  
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