

RAS 5725

February 12, 2003
DOCKETED 02/12/03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
MAINE YANKEE ATOMIC)	Docket Nos. 50-309-OM
POWER COMPANY)	72-30-OM
)	
(Maine Yankee Atomic Power Station))	ASLBP No. 03-806-01-OM
)	
Facility Operating License No. DPR-36)	

NRC STAFF'S RESPONSE TO FRIENDS OF THE COAST - OPPOSING
NUCLEAR POLLUTION'S AMENDED AND SUPPLEMENTED PETITION FOR HEARING

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's (Board) decision in the January 16, 2003, telephonic status conference, confirmed by the Board's Order dated January 27, 2003, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the January 30, 2003, Amended and Supplemented Petition for Hearing (Amended Petition) filed by the Friends of the Coast - Opposing Nuclear Pollution (Petitioner). For the reasons set forth below, the Staff submits that the Petitioner has failed to adequately cure the defects of its non-timely filed request for hearing. The Petitioner has failed to demonstrate good cause as to why its late filed petition should be considered, still seeks remedies outside the scope of this proceeding, and has failed to demonstrate standing to intervene in this matter, as required by 10 C.F.R. § 2.714(a).

BACKGROUND

On October 23, 2002, the Staff issued an immediately effective Order modifying licenses of all 10 C.F.R. Part 50 licensees who currently store or have near-term plans to store spent fuel in an independent spent fuel storage installation (ISFSI) under the general license provision of

10 C.F.R. Part 72.¹ The deadline for filing challenges to the Order expired on November 12, 2002.² On November 22, 2002, ten days after the deadline to file a challenge had expired, the Petitioner requested an extension of time to respond to the Order.³ The Petitioner filed its original Petition for Hearing on December 2, 2002. (Original Petition) On December 3, 2002, an Atomic Safety and Licensing Board (Board) was established to rule on the earlier filed "State of Maine's Petition for Hearing and Request for Commission Action," dated November 15, 2002 (State Petition).⁴ The Staff filed its response to the Petitioner's Original Petition on December 17, 2002 (Staff Response).

On January 16, 2003, the Board conducted a telephonic status conference to deal with preliminary concerns related to the two requests for hearing filed by the State of Maine and the Petitioner. The Board issued a confirmatory Order concerning matters discussed at the January 16, 2003 status conference.⁵ The Board permitted the Petitioner to file an amended and supplemented petition in order to address the untimely filing of Petitioner's original request for hearing, standing concerns as impacted by the ruling in *Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983), and the treatment of Safeguards Information contained in Attachment 2 of the Order.

¹ Order Modifying Licenses (Effective Immediately), issued October 16, 2002. (Order). The Order and Attachment 1 to the Order were published in the *Federal Register* on October 23, 2002. 67 Fed. Reg. 65,150 (October 23, 2002).

² In response to a request for an extension of time from the State of Maine, the staff of the Office of Nuclear Materials Safety and Safeguards, extended the deadline for the State of Maine to submit its hearing request to November 15, 2002.

³ Letter from Raymond Shadis to Martin Virgilio, Director, Office of Nuclear Material Safety and Safeguards, "Request for Extension of Time", dated November 22, 2002. (Request for Extension) (attached). The Request for Extension was dated ten days after the November 12, 2002 deadline for filing challenges to the Order.

⁴ Order, Establishment of Atomic Safety and Licensing Board, dated December 3, 2002. 67 Fed. Reg. 72,983 (December 9, 2002).

⁵ Order Confirming Matters Addressed at January 16, 2003, Conference; Setting Certain Deadlines; and Scheduling February 19, 2003, Conference, dated January 27, 2003 (Confirmatory Order).

Confirmatory Order at 2. Petitioner filed its Amended Petition on January 30, 2003. The Confirmatory Order set a deadline of February 12, 2003, for responses to the Petitioner's Amended Petition.

DISCUSSION

Petitioner was granted the opportunity to file an amended and supplemented request for hearing in order to cure the multiple defects of its original filing. In its Amended Petition, the Petitioner restates its original hearing request with only minor alterations, and attempts to address the Board's concerns regarding untimeliness, standing concerns in light of *Bellotti*, and the treatment of Safeguards Information. The Petitioner's arguments regarding its non-timely filed petition fail to meet the burden incumbent upon the Petitioner as set forth in 10 C.F.R. § 2.714(a)(1). Petitioner continues to challenge the sufficiency of the Order, raises issues outside the scope of this proceeding, and fails to establish that it meets the requirements for standing as set forth in 10 C.F.R. § 2.714. Petitioner's suggestion that the Safeguards Information be redacted to allow Petitioner access is impracticable and unwarranted considering Petitioner's failure to demonstrate standing or meet the criteria for acceptance of a late filed petition.

A. Petitioner Has Failed to Cure the Defect Of Non-Timely Filing

The Petitioner filed its Original Petition twenty days after the deadline for filing challenges to the Order had expired, without providing any reasons or good cause as to why it should be considered. In its Amended Petition the Petitioner attempts to cure the defect in its original hearing request by addressing the criteria of 10 C.F.R. § 2.714(a)(1). Despite its opportunity to amend its petition, Petitioner fails to adequately address the criteria of 10 C.F.R. § 2.714(a)(1)⁶, and therefore

⁶Section 10 C.F.R. § 2.714(a)(1) provides that non-timely requests for hearing will not be considered absent a determination that the request should be granted based upon a balancing of the following factors:

- (i) Good cause, if any, for failure to file on time.

(continued...)

fails to demonstrate why its late-filed request for hearing should not be summarily rejected. See *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-11, 37 NRC 251, 255 (1993). The burden is on the petitioner to demonstrate that balancing all of these factors will weigh in favor of granting the late-filed petition. See *Citizens for Fair Utility Regulation v. NRC*, 898 F.2d 51, 54 (5th Cir. 1990), citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327 (1985).

The first of the five criteria in 10 C.F.R. § 2.714(a)(1) is whether there is good cause, if any, for failure to file on time. The Petitioner attempts to demonstrate good cause by alleging that it filed a request for extension that is similar to the request for extension filed by the State of Maine.⁷ See Amended Petition at 2-3. The Petitioner, however, fails to address important distinctions between the requests for extension of time submitted by the State of Maine and by the Petitioner. These distinctions explain why the State of Maine's request was granted and why the Petitioner's request was not granted. Whereas the State of Maine filed its request before the deadline for filing hearing

⁶(...continued)

- (ii) The availability of other means whereby the petitioner's interests will be protected.
- (iii) The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which petitioner's participation will broaden the issues or delay the proceeding.

⁷ The State of Maine requested an extension of time on November 1, 2002, prior to the expiration of deadline for filing hearing requests. The Staff granted the State of Maine's request for extension on November 14, 2002, extending the date of filing to November 15, 2002. The Petitioner, however, requested an extension on November 22, 2002, ten days after the deadline for filing requests for hearing had already expired. The Staff never granted the Petitioner an extension of time to file its request for hearing. A letter denying the request for an extension of time was not issued due to the lateness of the request, and the fact that the Petitioner had nevertheless subsequently submitted its untimely filed Petition on December 2, 2002, making the request for an extension of time moot.

requests had expired, the Petitioner chose to wait for ten days after the deadline, when all hearing requests were required to be submitted, before seeking an extension. Furthermore, whereas the State of Maine requested an extension of time in order to examine the extent of its obligation under the Order, the Petitioner stated that its purpose in seeking an extension of time was to facilitate the formulation of additional requirements that should be implemented in addition to the requirements contained in the Order. See Request for Extension at 2. Petitioner's stated purpose for seeking an extension was to pursue matters that are clearly outside the scope of this proceeding. This attempt to assert good cause is meritless, ignoring significant distinctions which explain why the State of Maine's request for an extension of time was granted, and the Petitioner's request not granted.

Petitioner also reasserts the delay was caused due to the inaccessibility of Attachment 2, containing Safeguards Information. See Amended Petition at 4. The fact that the Safeguards Information was not made public with the Order was evident on the face of the Order. 67 Fed. Reg. at 65,150 n.1. If the Petitioner believed that access to the Safeguards Information was necessary to construct a proper hearing request, they should have made such a concern known to the NRC. Furthermore, the Petitioner should have immediately sought an extension of time as soon as the Petitioner decided it might require access to Safeguards Information in order to file a proper hearing request. Instead, the Petitioner neither requested access to the Safeguards Information, nor sought a timely extension request. The fact that the Petitioner took additional time to formulate what it believed would be additional beneficial security upgrades, matters clearly outside the scope of this proceeding, cannot provide a basis for good cause for considering a late filed petition.

As stated above, the burden of showing good cause is on the petitioner. Whether there is "good cause" for a late filing depends entirely upon whether the reasons for not filing at an earlier date can be substantiated by the petitioner. *South Carolina Electric and Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981). Attempting to explain its failure

to seek a timely extension request, the Petitioner states that it “did not want to burden NRC Staff with a request for an extension of time without certainty that a petition would be forthcoming.” Amended Petition at 4. This statement by the Petitioner would seem to suggest that the real delay, causing the Petitioner to file its Extension Request ten days late, and its Original Petition twenty days late, was simple uncertainty as to whether the Petitioner desired to become a party. Accepting such an excuse as good cause would be improper. Institution of deadlines for the submission of hearing requests would be moot if the Board were to consider simple indecision or indifference to deadlines as amounting to good cause. In such a case, it is difficult to imagine that any petitioner that filed a non-timely hearing request could not meet such a broad definition of good cause. Furthermore, the idea that the Petitioner did not wish to *burden* the Staff by submitting an extension request is incongruous with its actions since the Petitioner did in fact submit such a request. It is difficult to imagine how the Petitioner would possibly believe that a late-filed extension request would burden the Staff less than a properly filed extension request.

Having failed to establish any good cause for its late filing, the Petitioner is required to make a "compelling showing" on the other four factors stated in 10 C.F.R. § 2.714(a) governing late intervention. See *Mississippi Power & Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982), citing *South Carolina Electric and Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 894 (1981), *aff'd sub nom. Fairfield United Action v. Nuclear Regulatory Commission*, 679 F.2d 261 (D.C. Cir. 1982).

Petitioner maintains there are no other available means whereby the petitioner can itself protect its interest other than through this hearing, and therefore it asserts that it meets the second factor of 10 C.F.R. § 2.714(a)(1). The Petitioner rejects the Staff's assertion that recommendations of additional security enhancements should be raised through the process codified in 10 C.F.R.

§ 2.206, rather than attempting to use this hearing opportunity to raise issues clearly outside the scope of the proceeding.⁸

Petitioner seems to question the Staff's discretion under the 10 C.F.R. § 2.206 process, and claims that no other avenue exists since the Staff has rejected a 10 C.F.R. § 2.206 petition, submitted by the Petitioner raising related issues, in the past. See Amended Petition at 5. The fact that the Petitioner has been unable to submit an adequate petition under 10 C.F.R. § 2.206 does not mean that the 10 C.F.R. § 2.206 process does not, in fact, provide alternate means for potential redress. The Petitioner is attempting to define the notion of 'other means to protect petitioner's interest' as meaning that the only adequate alternative means is one which *guarantees* Petitioner redress. The process set forth in 10 C.F.R. § 2.206 does provide an alternative means if Petitioner's request meets certain guidelines, as described in NRC Management Directive 8.11, "Review Process for 10 C.F.R. 2.206 Petitions."⁹ If the Petitioner has valid concerns that warrant consideration concerning security requirements which are outside the scope of this proceeding, then they should be raised through the 10 C.F.R. § 2.206 process.

When a petitioner addresses the third criterion for late filing requiring a showing of how its participation may reasonably be expected to assist in developing a sound record, "it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.... Vague assertions regarding petitioner's ability or resources... are insufficient." *Mississippi Power and Light Co.* (Grand Gulf Nuclear

⁸ The process codified in 10 C.F.R. § 2.206 provides the means by which members of the public may request that the Commission take enforcement action, such as modifying, suspending or revoking licenses, or any other enforcement-related action that may be proper. The Commission may grant a request for action, in whole or in part, take other action satisfying the concerns raised by a petitioner, or deny the request.

⁹ The NRC Management Directive 8.11, "Review Process for 10 C.F.R. 2.206 Petitions", is publicly available, and may be found in the Public Document Room, or accessed through the NRC's public internet website at <http://www.nrc.gov/reading-rm/doc-collections/petitions-2-206/md08-011.pdf>

Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982) (citations omitted). Despite the opportunity to amend its hearing request, Petitioner still provides only vague assertions as to how its participation would assist in developing a sound record. Petitioner states that it is “familiar with the site and the settings of the ISFSI, the affected community, the capabilities of explosives and projectiles, the storage cask and ISFSI construction, police response times, and the literature on radiological dispersal and effects.” Amended Petition at 5. No specific evidence or witness information is provided as support for its claims.

The Staff continues to believe that the Petitioner meets the fourth criterion of 10 C.F.R. § 2.714(a)(1), since there are no other parties in this proceeding that would protect the Petitioner’s interests. However, this alone does not provide the basis for accepting the clearly deficient, late filed request for hearing.

With regard to the fifth criterion in 10 C.F.R. § 2.714(a)(1), absent any good cause reasoning for accepting a late-filed petition, the Staff does not see how any delay can be justified in the circumstances presented. This is particularly true in light of the fact that the Petitioner fails to bring a proper challenge to the Order within the scope of this proceeding and fails to meet the requirements for standing. The original untimely-filed request for hearing will result in a delay for the Board in reaching a decision as to whether any proceeding will be held concerning a challenge to the Order.

The Petitioner, despite being given a second opportunity, has failed to assert any rational or legitimate good cause justification as to why it filed its request for hearing after the deadline for filing had already expired. Furthermore, other means to seek redress are available to the Petitioner. Petitioner also fails to establish with any specificity how it can assist in the creation of a sound record. Any delay caused by the consideration of this hearing request is not justified, particularly in light of the failure of the Petitioner to comply with basic procedural rules and requirements of filing on time. The Board should therefore reject the Petitioner’s request for hearing.

B. Petitioner Continues To Raise Issues Outside the Scope of This Proceeding And Fails to Meet the Requirements for Standing Set Forth in 10 C.F.R. § 2.714

Despite Petitioner's attempt to re-characterize its challenge to this Order in light of *Bellotti*, the Petitioner's challenge to the Order continues to question the sufficiency of the Order. Furthermore, the Petitioner continues to clearly state that it is attempting to challenge the Design Basis Threat in this proceeding. These attempted challenges to the Order were outside the scope of the proceeding when Petitioner attempted to raise them in its Original Petition, and Petitioner has done nothing to cure this defect in its Amended Petition. See Staff Response at 10-14. Furthermore, despite the opportunity to amend its petition, Petitioner has also still failed to meet the requirements for standing set forth in 10 C.F.R. § 2.714.

As the Staff has thoroughly briefed the Board on the legal requirements for intervention and the limitations of the scope of this proceeding in its original response, the Staff need not repeat itself in detail. *Id.* at 5-10. It is important to note, however, that the scope of this proceeding is limited by the Order which narrows the issues that could possibly be considered in a hearing held under 10 C.F.R. § 2.202. See *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980); *Public Service Company of Indiana* (Marble Hill Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York) LBP-98-21, 48 NRC 137, 143 (1998). The Order limits the scope of this proceeding, stating that "[i]f a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained." 67 Fed. Reg. at 65,151. The Order was intended to impose requirements that would address security concerns and the implementation of interim compensatory measures meant to provide adequate protection for public health and safety and common defense and security. Any request for a hearing that does not raise a challenge to the requirement that the delineated licensees implement the interim compensatory measures is outside the scope of this proceeding.

1. Petitioner's Challenges to the Sufficiency of the Order And The Underlying Basis of the Order Are Outside the Scope of this Proceeding

A petitioner cannot seek to intervene in an enforcement proceeding to have the NRC impose a stricter penalty or requirement than that set forth in the order. See *Bellotti*, 725 F.2d at 1382; *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980). The goal of such a policy is to avoid “a major diversion [sic] of agency resources from project inspections and engineering investigations to the conduct of hearings.” *Marble Hill*, 11 NRC at 441-42. Furthermore, the Commission wishes to “encourage licensees to consent to, rather than contest, enforcement actions.” *Id.* at 441. Therefore, the Petitioner is limited in the scope of concerns it may seek to address in this proceeding. Specifically, a request for the imposition of additional or alternative requirements other than those requirements contained in the Order is beyond the scope of the enforcement proceeding.

The Petitioner admits that if it were simply attempting to challenge the sufficiency of the Order, it would not have standing under *Bellotti*. Amended Petition at 6. Instead, the Petitioner “asserts a negative impact and a real harm from NRC’s imprimatur on a cumulative collection of advisories that do not address evident, blunt, and simple vulnerabilities to sabotage.” *Id.* at 7. The Petitioner is claiming it will suffer a harm based on the issuance of assurances of adequate protection, but has provided no factual basis. *Id.* at 6-7. The Petitioner states that “[b]y saying that there is adequate protection when entire categories of evident vulnerability are simply not addressed, NRC not only misleads the public... the agency also leaves open the door to sabotage both within and beyond the pre-9/11 design basis threat.” *Id.* at 7. Petitioner is still stating that the Order is insufficient to provide for adequate protection of public health and safety, due to the failure to account for “entire categories of evident vulnerability” which the Petitioner feels must be addressed if the Order is to be deemed sufficient. *Id.*

After attempting to address the specific issues raised by the Board, Petitioner includes the text of its original hearing request, with minor alterations. See Amended Petition at 8-17 (compare with Original Petition at 2-10). The Petitioner attempted to remove the phrase “are not adequate to provide reasonable assurance” without actually changing any of the context or meaning of its original hearing request, which even the Petitioner now admits is outside the scope of this proceeding under *Bellotti* as challenging the sufficiency of the Order. See Amended Petition at 8, 9 (compare with Original Petition at 2, 3 respectively). Petitioner also attempts to remove “enhancement” and “sufficient” while keeping the actual meaning and context of the request the same, mistakenly believing that simply removing keywords would be sufficient to change the meaning of their request for hearing,. *Id.* at 15 (compare with Original Petition at 9). Originally, the Petitioner stated as one of its remedies, “NRC must require immediate *enhancement of security forces and procedures at ISFSI’s sufficient to prevent loss of control of the facility*”. Original Petition at 9. The Petitioner replaced this request for redress with, “The NRC must require immediate security forces and procedures at ISFSIs to be able to prevent loss of control of the facility”. Amended Petition at 15. Despite the rewording, the Petitioner is still seeking to require additional or substitute enforcement.

Petitioner has apparently also attempted to address the Staff’s response to the Petitioner’s statement that “This Order provides the first offer of an opportunity for a hearing to Maine people and Maine officials on the entire question of dry spent fuel storage on our coast.” Original Petition at 3. The Staff thoroughly addressed the fallacy of this statement in its previous response. Staff Response at 8-10. Petitioner now attempts to state that “This Order provides the first offer of an opportunity for a hearing to Maine people and Maine officials on the entire question of the *security of dry spent fuel storage on our coast.*” Amended Petition at 9 (emphasis added). The Petitioner’s attempt to cure the fact that it has attempted to raise issues far outside the scope of this proceeding is insufficient.

The Petitioner's re-assertion and attempted re-characterization of its challenge to the Order still does not assert that the additional security measures required by the Order might cause injury to the Petitioner. Instead, the Petitioner continues to challenge the sufficiency of the adequate protection provided by this Order because, according to the Petitioner, the Order does not take into account various types of threats that the Petitioner asserts need to be addressed. The Petitioner also attempts to purge its Amended Petition of any overt references to "sufficiency" while repeating all of the same sufficiency based arguments of its Original Petition.

2. Petitioner Fails to Meet the Requirements for Standing

As discussed above, all of the challenges to the Order raised by the Petitioner in its Amended Petition are outside the scope of this proceeding. Furthermore, the Petitioner still fails to meet the requirements for standing as set forth in 10 C.F.R. §2.714(a), in that it has failed to demonstrate a palpable injury-in-fact to its organizational interests or interests of its members that is within the zone of interests protected by the Atomic Energy Act of 1954. As the Staff has previously briefed the legal requirements for intervention and standing, the Staff will not repeat itself. See Staff Response at 5-8. Despite its opportunity to amend and supplement its deficient standing arguments in its Original Petition, Petitioner simply repeats the identical standing basis with the simple addition of two affidavits of members who also fail to describe a distinct and palpable harm that constitutes an injury-in-fact, that is fairly traceable to the challenged action, and which could be redressed by a successful decision in this proceeding, sufficient to confer standing upon the Petitioner.¹⁰

In order for an organization to meet the injury-in-fact test required for standing it may either (1) show an effect upon its organizational interests, or (2) show that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or

¹⁰ Petitioner does not address why it failed to provide these affidavits with its Original Petition.

“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). 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); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 50 (1994).

Therefore, the individual member must assert that he or she would suffer injury as a result of the challenged action. The affidavits included, however, fail to assert that the individual members will be harmed by this Order. Instead, the members claim that they and their financial interests will be harmed by radiological release caused through an act of sabotage. See Affidavit of Ann D. Burt, and Affidavit of Raymond Shadis. A general challenge to the security of dry spent fuel storage is outside the scope of this proceeding and is clearly inadequate to establish standing, as has been discussed above. Failing to assert that the individual members will suffer a palpable injury caused by the issuance of this Order, the Petitioner fails to demonstrate that it should have standing based on the interests of its members.

Petitioner’s arguments meant to predicate organizational standing still fail to demonstrate that it will suffer an injury in fact, in that it personally has suffered or will suffer a “distinct and palpable” harm to its organizational interests that can fairly be traced to the challenged action, and that the injury is likely to be redressed by a decision not to sustain the Order. The Staff has already addressed claims that the Petitioner would suffer injury because of its agreements and contracts with Maine Yankee Atomic Power Company to “secure radiological environmental standards” and agreements requiring the donation of a portion of the Maine Yankee site to a non-profit group. See

Staff Response at 14-16. The Petitioner still fails to tie the danger of a radiological release to the sustaining of the Order.

C. Treatment of Safeguards Information

Finally, the Petitioner states that access to the Safeguards Information is the key to addressing whether the NRC is “issuing false assurances based on bad information and ill-derived assumptions”. Amended Petition at 7. Petitioner suggests that it be allowed to view a redacted version of the Safeguards Information. This request presupposes that there is information contained in Attachment 2 that has been improperly withheld from the public. The Board has requested that at the February 19, 2003, status call the parties be prepared to address the means by which the Board can receive Attachment 2 for review and also to address the timing of any briefing and oral argument on the issue of protection of Safeguards Information. Tr. At 61. At that time, as deemed necessary by the Board for its standing determination, the Staff will be prepared to address the reason why Attachment 2 to the Order has been completely withheld from public disclosure.

As the Staff has argued above, the Petitioner has failed to raise any permissible challenge within the scope of this proceeding. As even the Petitioner admits, Safeguards Information must be protected, and to allow access to a party that has not demonstrated standing or raised a permissible challenge to the Order, would be to grant access to an organization that clearly cannot demonstrate the requisite ‘need to know’ required in 10 C.F.R. § 73.21(c).

CONCLUSION

For the reasons set forth above, the Staff submits that despite Petitioner’s opportunity to supplement and amend its hearing request, Petitioner still seeks to raise matters outside the scope of this enforcement proceeding, and furthermore, has failed to establish standing to intervene in this proceeding. The Petitioner has also failed to cure the defects of its non-timely filed request

for hearing, and as such it should not be considered. Accordingly, the Staff submits that the Friends of the Coast - Opposing Nuclear Pollution's amended and supplemented petition for leave to intervene and request for hearing should be denied.

Respectfully submitted,

/RA/

David A. Cummings
Counsel for NRC Staff

Dated at Rockville, Maryland
this 12th day of February, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Maine Yankee Atomic Power Station)) ASLBP No. 03-806-01-OM
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO FRIENDS OF THE COAST - OPPOSING NUCLEAR POLLUTION'S AMENDED AND SUPPLEMENTED PETITION FOR HEARING" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 12th day of February, 2003.

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