LBP-03-03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 5735 **DOCKETED 02/14/03**

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 02/14/03

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Richard F. Cole
Dr. Thomas S. Elleman

In the Matter of	Docket No. 50-336-OLA-2
DOMINION NUCLEAR CONNECTICUT, INC.	ASLBP No. 03-808-02-OLA
(Millstone Nuclear Power Station, Unit 2)	February 14, 2003

MEMORANDUM AND ORDER
(Ruling on Standing of Petitioners to Proceed and
Setting Deadlines for Supplemented Petition and Contentions)

This proceeding involves a September 26, 2002, application of Dominion Nuclear Connecticut, Inc. (Dominion), to amend the operating license for Millstone Power Station, Unit No. 2, by changing certain technical specifications, based upon a re-analysis of the limiting design basis Fuel Handling Accident (FHA) using an Alternative Source Term in accordance with 10 C.F.R. § 50.67 and NRC Regulatory Guide 1.183. This application was among those included in a November 2002 NRC "Biweekly Notice" regarding "Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations." 67 Fed. Reg. 68,728, 68,731 (Nov. 12, 2002). On December 12, 2002, in response to this notice and Dominion's application, the Connecticut Coalition Against Millstone (CCAM) and the STAR Foundation (STAR) filed an "Amended Petition to Intervene and Request for Hearing" (hereinafter Petition). For the reasons stated herein, we conclude that Petitioner CCAM has standing to participate in this proceeding, and establish certain deadlines for further pleadings in the proceeding, as set forth below.

BACKGROUND

Dominion in its license amendment application requests approval of its "re-analysis of the Millstone Unit No. 2 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 and Regulatory Guide 1.183," and approval of certain changes to the Technical Specifications (TSs) consistent with that reanalysis. Dominion License Amendment Request (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 - Fuel Handling Accident Analyses" (Sept. 26, 2002)), at 1 (hereinafter LAR). Specifically, Dominion requests amendments 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." *Id*.

As noted by the Staff, the LAR is based on a 1999 amendment of NRC regulations, permitting 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 Alternative Source Terms at Operating Reactors, 64 Fed. Reg. 71,990 (Dec. 23, 1999); *see* NRC Staff's Response to Amended Petition to Intervene and Request for Hearing Filed by [CCAM] and [STAR], Jan. 2, 2003, at 2-3 (hereinafter Staff Response). The new "Alternative Source Term" rule, codified at 10 C.F.R. § 50.67, permits utilities with nuclear power plant operating licenses to replace the prior, 1962-era source term in their licenses with a revised one. 64 Fed. Reg.

71,990-92. Under the new rule, at 10 C.F.R. § 50.67(b), dose limits to (1) individuals located at any point on the boundary of the exclusion area for any two-hour period following the onset of the postulated fission product release, (2) individuals located at any point on the outer boundary of the low population zone exposed to the radioactive cloud resulting from the release, and (3) persons working in the control room under accident conditions, are stated in terms of single total effective dose equivalents (TEDEs). This approach replaces that used in the original design basis for operating reactors, the terms of which provided for two different doses, to the whole body and to the thyroid. *See* 64 Fed. Reg. at 71,992-93; *see also* 10 C.F.R. § 100.3, for definitions of "Exclusion area" and "Low population zone."

Petitioners challenge proposed changes to technical specifications that would 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, allow containment penetrations including the equipment door and personnel airlock door to be left open under administrative control, and eliminate requirements for automatic closure of containment purge during Mode 6 fuel movement, as well as the deletion of TSs associated with storage pool area ventilation. Petition at 1-2. Petitioners seek to intervene and request a hearing "because of concerns of adverse health and safety risks to their membership," alleging various harms, which are summarized below. *Id.* at 3.

ANALYSIS

Legal Standards

A petitioner's standing to participate in an NRC licensing proceeding is grounded in Section 189a of the Atomic Energy Act (AEA), 42 U.S.C. § 2239(a)(1)(A), which requires the Commission, "[i]n any proceeding under [the Act], for the granting, suspending, revoking, or amending of any license," to provide a hearing "upon the request of any person whose interest

may be affected by the proceeding . . . ." The Commission has implemented this requirement in its regulations at 10 C.F.R. § 2.714.

Under section 2.714(a)(2), an intervention 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)," along with "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2). Subsection (d)(1) provides in relevant part that the Board shall consider the following three factors when deciding whether to grant standing to a petitioner:

> (i) The nature of the petitioner's right under the [AEA] 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.

10 C.F.R. § 2.714(d)(1).

When determining whether a petitioner has established the necessary "interest" under subsection (d)(1), licensing boards are directed by Commission precedent to look for guidance to judicial concepts of standing. *See, e.g., Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998); *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6 (1998); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). According to these concepts, to qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision. *See, e.g., Steel Co. v. Citizens for a*

Better Environment, 523 U.S. 83, 102-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995).

These three criteria are commonly referred to, respectively, as "injury in fact," causality, and redressability. The requisite injury may be either actual or threatened, *Yankee*, CLI-98-21, 48 NRC at 195 (citing, e.g., *Wilderness Society v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)), but must arguably lie within the "zone of interests" protected by the statutes governing the proceeding — here, either the AEA or the National Environmental Policy Act (NEPA). *See Yankee*, CLI-98-21, 48 NRC at 195-196; *Ambrosia Lake Facility*, CLI-98-11, 48 NRC at 6. This showing must be made by both individual petitioners and organizational petitioners such as the petitioners herein. *See Private Fuel Storage, L.L.C.*, (Independent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

An organization may demonstrate standing in its own right, or claim standing through one or more individual members who have standing. *Georgia Tech*, CLI-95-12, 42 NRC 111 at 115. The alleged injury to a member must fall within the purposes of the organization. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33-34 (1998); *see Curators of the University of Missouri* (TRUMPS-S Project), LBP-90-18, 31 NRC 559, 565 (1990). 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). When an organization relies upon the interests of its members to confer standing, it must show that at least one member who would possess standing in an individual capacity has authorized the organization to represent the member. *Private Fuel Storage,* CLI-98-13, 48 NRC 26 at 31; *Georgia Tech.*, CLI-95-12, 42 NRC at 115; *Turkey Point*, ALAB-952, 33 NRC 521 at 530; *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979).

The injury required to be shown by any petitioner has been described as "concrete and particularized" and "actual or imminent," rather than merely "conjectural or hypothetical." *See Lujan v. Defenders of Wildlife*, 504 U.S. at 555, 560 (1992); *see also 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). A petitioner must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing, and while this stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Houston Lighting and Power*, LBP-79-10, 9 NRC 439 at 447-48. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; rather, 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).

In addition to the traditional standing requirements, standing may also be 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 __ (July 2, 2002), slip op. at 6. 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 & 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). This geographic presumption has generally been applied to petitioners in reactor licensing proceedings who reside within 50 miles of a reactor. *Sequoyah Fuels Corp. & Gen. Atomic* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n. 22 (1994). It 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. NRC*, 203 F.3d 52 (D.C. Cir. 2000).

The Commission has articulated the following 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 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, 329-30 (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 Tech*, CLI-95-12, 42 NRC 111 at 115. 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-case basis, by "examining the significance of the radioactive source in relation to the distance involved and the type of action proposed." *Sequoyah,* LBP-02-14, slip op. at 10, citing *Georgia Tech*, CLI-95-12, 42 NRC 116-117.

Finally, while a petitioner bears the burden of establishing standing, Commission case law provides that in making a standing determination a presiding officer is to "construe the petition in favor of the petitioner," *Georgia Tech*, CLI-95-12, 42 NRC at 115; *Atlas Corporation* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 424 (1997); and, "[r]elative to a threshold standing determination, . . . [that] even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury in fact." *General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 158 (1996); *Atlas*, LBP-97-9, 45 NRC at 425.

Arguments of Parties

Petitioners

In challenging various TS changes involved in the LAR, *see* Background section above, the Petitioners assert concerns "of adverse health and safety risks to their membership, as well as the health and safety of Millstone workers and the surrounding community, should the amendment be granted." Petition, at 3. They also raise issues "concerning reduction of protection to workers and the public from unnecessary environmental releases of fission products," and assert that the amendment application fails "to identify and define administrative measures to be implemented to protect the public health and safety," and "to address the public health and safety consequences relative to the potential of a terrorism attack upon the Millstone Nuclear Power Station during Unit 2 fuel movements and the likelihood of increasing peril to the community should the amendment be granted." *Id.*

Petitioners attach to their Petition the Declarations of Joseph H. Besade and Christine Guglielmo. Mr. Besade, a member of CCAM and a former employee of Millstone, declares that he lives in Waterford, Connecticut, within two miles of Millstone. Ms. Guglielmo declares that she lives in East Hampton, New York, within 23 miles of Millstone, and that she submits her declaration in support of intervention by STAR, although she does not specifically state that she is a member of STAR.[1] Petition at 4, 9. Both declare that the LAR "seeks to eliminate, erode and relax existing standards of radiological protection for workers and the public," through proposed changes to the Millstone TSs "to 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," "to allow containment penetrations, including the equipment door and personnel airlock door, to be maintained open under administrative control," "to eliminate the requirements for automatic closure of containment purge during Mode 6 fuel movement," and "to delete the technical specifications associated with storage pool area ventilation," *Id.* at 6, 9-10.

Both Petitioner declarants assert that the applied-for amendment "proposes to permit increased radiological emissions to the environment above current levels," and that as nearby residents to Millstone they believe that they "will be at a heightened risk of radiological contamination from Millstone operations if the amendment is issued, with consequent increased risk to [their] health and the health of [their] famil[ies]." *Id.* at 6, 10. The Petitioners also make reference to, among other things, "negative biological effects of radiological contamination,"

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[1]We note that Mr. Besade does not appear to have signed the copy of his Declaration provided to the Board, and that Ms. Guglielmo has not stated in hers that she is a member of STAR. The first of these in particular appears to be an easily curable defect, and we note Mr. Besade's prior participation in proceedings such as the instant one on more than one occasion in a similar capacity. With regard to Ms. Guglielmo, the issue with her membership in STAR may also be easily curable, and so also note that our finding herein as to her standing is not based on this defect in her Declaration.

"licensee reports [from 1991-2001] of radioactive effluent releases," "routine emissions," alleged increase in releases, "the potential prospect of a terror attack [on Millstone] during a fuel movement activity at Unit 2," and "many cases [of] administrative measures not [being] identified nor defined," that are asserted to render the application "substantially incomplete." *Id*. at 7-8, 10-11.

CCAM is described by Mr. Besade as "an organization of environmental advocacy and safe-energy groups, former employees of [Millstone] and families and individuals who reside within and beyond the five-mile emergency evacuation zone of Millstone." *Id.* at 4. Ms. Guglielmo describes STAR Foundation as "a grass-roots environmental organization Concerned [sic] with the effects of power plants on local communities," which "has been involved during the past four years in educating the public and elected officials about the risks that [Millstone] poses," and has more than 3000 members, "the majority of whom are from the tri-state area including New York, Connecticut and New Jersey, including locations close to Millstone." *Id.* at 11.

Dominion

Dominion argues that the Petitioners have not demonstrated standing because they have not shown a potential for increased off-site radiological consequences that would cause injury to persons off-site or that could be redressed in this proceeding. Answer of Dominion Nuclear Connecticut, Inc. to Amended Petition to Intervene and Request for Hearing of Connecticut Coalition Against Millstone and STAR Foundation, Inc., Dec. 27, 2002, at 4. Dominion asserts that the conclusion for which it argues "follows from the very nature of the license amendment at issue," *id.*, and describes the rule revision that permits their LAR as offering "the potential to reduce regulatory burden without compromising any margin of safety," and indeed as allowing for analyses that "may demonstrate greater safety margin than

previously calculated." *Id.*, citing 64 Fed. Reg. 71,990. Dominion states that "calculated doses from the original accident analyses and a re-analysis are not directly comparable," and notes that its application has applied the alternative source term in a re-analysis of "only the *design basis Fuel Handling Accidents*," relating to fuel movements in the Containment Building and the Spent Fuel Pool Building, which are "made only while the reactor is in Mode 6 (refueling mode) or a defueled condition." *Id*. at 5-6.

Dominion further states that the accident re-analysis involves no physical modifications to plant equipment, including that used in the movement or storage of irradiated fuel, nor does it "alter the flowpath or the methods of processing and disposal of radioactive waste or byproducts, or increase the type and amounts of effluents that may be released off-site." *Id.* at 6, citing Application, Cover Letter at 2; Attachment 2 at 16. Dominion asserts that "[l]ocal area radiation monitors, effluent discharge monitors, and Containment gaseous and particulate radiation monitors, provide a defense-in-depth in monitoring Containment atmosphere and identifying the need for establishing the Containment atmosphere boundary"; that the Millstone Unit 2 "stack gaseous and particulate monitoring systems [will] continue to monitor any releases from normal or accident conditions"; and that "Health Physics practices and the Millstone Station Effluent Control Program monitor discharge paths and areas within the plant in which increases in radioactivity could occur when normal monitoring equipment is not available." Dominion Answer at 6-7, citing Application, Attach. 1 at 9. In addition, Dominion states that no physical design changes are proposed for the Spent Fuel Pool Building ventilation systems, exhaust paths, or area radiation monitors. Dominion Answer at 7.

Dominion acknowledges that the re-analysis "does support certain certain proposed changes to the operability and surveillance requirements" of Millstone Unit 2 TSs, "with related changes to the [TS] bases," but argues that the "re-analysis demonstrates that the radiological consequences of a Fuel Handling Accident — including postulated control room doses and

doses at the exclusion area and low population zone boundaries — will be within the limits of 10 C.F.R. § 50.67, Reg. Guide 1.183, and 10 C.F.R. Part 100 without taking credit for Containment boundaries and certain equipment or automatic actions presently governed by the Technical Specifications." *Id.* Thus, the applicant argues, "these features are no longer required to be included in Technical Specifications (*i.e.*, because they are not credited in the revised accident analyses)." *Id.*

As an example, Dominion notes that in the revised analyses a Containment penetration is assumed to be open for the full, 2-hour duration of a postulated Fuel Handling Accident release, allowing (for the sake of analysis) release of all available radioactivity from the accident, and asserts that the Containment boundary therefore need not be credited or controlled by TSs during fuel movements in order to meet the new NRC criteria — but explains that, "as defense-in-depth and consistent with Reg. Guide 1.183, [it] has proposed . . . to implement certain administrative controls," which are "not required," but which would "limit actual releases much lower than derived in the revised Fuel Handling Accident analysis dose calculations." *Id.* at 7-8.

Another example provided by Dominion relates to the proposed deletion of a requirement under current TSs for an "operable automatic purge valve isolation signal, as it would apply during fuel movement at Mode 6 or defueled conditions." *Id.* at 8. Dominion asserts that this deletion is appropriate, because under the revised analyses Containment purge is not credited to be operating or assumed to automatically isolate in the event of an accident, but further asserts that the manual capability will remain available "as a measure consistent with Reg. Guide 1.183," and that "the revised Technical Specifications will require administrative controls to assure that the Containment boundary can be promptly established within 30 minutes." *Id.*

A further defense-in-depth measure described by Dominion involves "procedural guidance related to the Spent Fuel Pool area atmosphere integrity." *Id.* at 9. This measure is asserted to "further limit releases below those shown in the calculations," even though, in its re-analyses of both a fuel assembly drop and a cask drop, applying a "number of conservatisms," it found "radiological consequences . . . within the limits of 10 C.F.R. § 50.67, Reg. Guide 1.183, and Part 100, without any credit for Spent Fuel Pool area atmosphere integrity."

Dominion argues that the Petitioners "have not demonstrated how, in any sense, the Application and, more precisely, the challenged administrative controls involve an obvious potential for off-site consequences that could lead to a [sic] off-site radiological injury that would therefore confer standing based on their residence — at either 2 or 23 miles from the station." *Id.* at 9-10. Distinguishing its application, which involves only fuel handling accidents, from "any at-power accidents, loss-of-coolant accidents, or other severe accident involving the reactor core," Dominion argues that its application is "in no sense . . . comparable to an operating license application." *Id.* at 10. The Applicant in its argument further relies on the Petitioners' lack of explanation of how the changes that will allow for open containment penetrations under administrative control during fuel movements, eliminate automatic closure requirements for the containment purge valve during Mode 6 fuel movement, and delete TSs associated with storage pool area ventilation "would lead to increased potential for off-site radiological injuries." *Id.*

Dominion asserts that "none of the proposed changes to Technical Specifications in this area will lead to any significant increase in probability or consequences of off-site exposures," and that they "merely reflect the revised assumptions of the accident analyses which show that, *even without the defense-in-depth administrative controls that will be implemented as part of the amendment*, the design basis accidents will not lead to any exposures in excess of NRC criteria." *Id.* at 10-11 (emphasis in original). Dominion argues that, in the face of the no-

significant-hazards determination in the November 12, 2002, Federal Register Notice, the Petition is "inadequate in its face to demonstrate an obvious potential for off-site consequences," and that various assertions made by Declarants Besade and Guglielmo are "without foundation" and/or "simply untrue." *Id.* at 11-12. Contending that the revised accident analysis "does not alter the design of the equipment at the plant used to monitor and process off-site releases, or the procedures or equipment for handling fuel," the applicant asserts that "there is no showing of how the amendment would lead to significantly increased releases above current levels or radiological injury." *Id*. at 12.

Dominion argues in conclusion that a "challenge to existing regulatory siting requirements, exposure limits, release criteria, or the 10 C.F.R. § 50.67 criteria would not provide a basis for standing"; that a "challenge to the controls themselves could not lead to relief in this proceeding because the controls are unnecessary to meet NRC requirements"; that the residence presumption is "unavailable to the Petitioners"; that Petitioners have not shown any "plausible chain of causation [or] scenario suggesting how these particular license amendments would result in a distinct new harm or threat," citing *Zion*, CLI-99-4, 49 NRC at 192; and that given the Petitioners' "minimal showing" and the "nature of the Application," the Petitioners have failed to establish "any credible likelihood of off-site injury that could be traced to the accident re-analysis or [proposed TS changes], or that could be redressed in this proceeding," and have thereby failed to meet their burden of demonstrating standing. Dominion Answer at 12-13.

Finally, with regard to the "specific aspects" requirement of 10 C.F.R. § 2.714(a)(2), Dominion makes the following arguments: It asserts that the Petitioners' proposed aspect relating to "reduction of protection . . . from unnecessary environmental releases of fission products" is "implausible," and that the aspect alleging failure of the application to identify administrative measures and controls is "overly generalized and vague, as well as irrelevant,"

since no such controls are necessary to meet NRC requirements and thus any challenge to completeness of the application is equivalent to a challenge to NRC regulations. And, citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC ___ (slip op. Dec. 18, 2002), Dominion argues that the aspect concerning alleged failure of the application to address the potential of a terrorism attack is outside the scope of this proceeding and an "impermissible attack on Commission regulations governing security and safeguards, in that it would require analysis of events that are not required to be considered." Dominion Answer at 14.

Staff

The Staff contends that the Petitioners have failed to establish standing in that they have neither (1) shown an obvious potential for off-site consequences that would give standing based on proximity, nor (2) shown an "injury in fact" to the interests of their members that is fairly traceable to Dominion's LAR or that could be redressed in this proceeding, nor (3) identified an aspect within the scope of the LAR. Staff Response at 9. Noting that the changes proposed to the TSs affect (a) containment purge valve isolation signal, (b) radiation monitoring, (c) control room emergency ventilation system, (d) containment penetrations, (e) shutdown cooling and coolant circulation for high and low water level, and (f) storage pool area ventilation, the Staff asserts with regard to potential off-site consequences that the proposed LAR "does not involve any physical changes to plant equipment," "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," and therefore "will not increase the type and amounts of effluents that may be released offsite." *Id.* at 10.

Noting, as does Dominion, that the Petition recites some language from the November 12, 2002, Federal Register notice relating to what the proposed changes to the technical specifications *do*, *see* third paragraph of Background section above, the Staff points out, as does Dominion, *see* Dominion Answer at 11, that the Petition omits to include language from the notice that states that "[t]hese 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 Containment or in the Spent Fuel Pool area," and that, "[a]s such, the proposed changes have no effect on the probability of the occurrence of any accident previously evaluated." Staff Response at 10-11, citing 67 Fed. Reg. at 68, 732. The Staff argues that Petitioners have provided no explanation of how the TS changes would injure the Petitioners or their members, noting, as Dominion does, that "the revised results of dose consequences from the reanalysis are within NRC acceptance criteria," and asserting on this basis that the Petitioners have failed to demonstrate any "obvious potential for offsite consequences" as required to establish standing by proximity. Staff Response at 11. The Staff also points out that "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." *Id*. at 13.

The Staff agrees with Dominion that the Petitioners have shown no causal nexus between any alleged injury and the challenged LAR, by, for example, showing any plausible way in which those activities that would be licensed by the challenged amendment would injure them. *Id.* at 11-12. Nor, asserts the Staff, does the Petition indicate that, or how, any Millstone workers or residents of the community surrounding Millstone have authorized the petitioning organizations CCAM and STAR to represent them. *Id.* at 12-13. Referring to Mr. Besade's allegation that NRC radiological emission standards are arbitrary, the Staff asserts that the

Petitioners fail to show that the alleged injuries would be redressed by a favorable Board decision, and further question Mr. Besade's and Ms. Guglielmo's allegations by reference to asserted confusion on their part between routine radiological emissions with accident doses in the event of a hypothetical accident. *Id.* at 13-15, citing Besade Declaration at ¶¶ 17, 20-22, Guglielmo Declaration at ¶ 13.

Summarizing, the Staff argues that the harms alleged by Mr. Besade and Ms. Guglielmo are without bases, establish no likelihood of specific injury or harm traceable to the requested LAR, and should not be found to confer standing in this proceeding, "because the proposed changes (1) do not impact routine releases or worker occupational exposure; (2) will not result in any significant increase [sic] 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." Staff Response at 15. In addition, the Staff challenges the aspects raised by the Petitioners much as Dominion does, noting that "[t]he 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," and stating that "[t]he requirement is satisfied by identifying general potential areas of concern that are within the scope of the proceeding." *Id*. at 16, citing *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990).

The Staff argues that the Petitioners' references to health and safety risks are "vague"; that routine releases are outside the scope of the LAR; that the assertion that the application is incomplete by virtue of its failure to identify and define administrative measures is without basis, because the application "explicitly defines such administrative measures" in that Dominion "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." Staff Response at 16-17, citing Application, Attachment 2 at 8. The Staff also cites, without direct reference to contents, page 7 of Attachment 2 to the Application, along with Attachment 4 (Insert G), and Attachment 5 (pages B3/4 9-1a and B3/4 9-1b). With regard to the likelihood of a terrorism attack, the Staff cites the Commission's recent ruling (issued the same day as *Private Fuel Storage*, CLI-02-25) in *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-02-27, 56 NRC __ (slip op. at 5) (Dec. 18, 2002), in which the Commission ruled such issues inadmissible under NEPA, finding them to be better addressed by other means. Staff Response at 17.

Board Ruling on Standing

As discussed above, the Petitioners make various assertions of harm in their Petition and attached Declarations, including claims of "adverse health and safety risks to their membership," "increased radiological emissions," "heightened" and "increased risk," and "reduction of protection . . . from unnecessary environmental releases of fission products." They challenge various changes that would occur if the LAR is granted, including modifications to certain containment closure and spent fuel pool ventilation requirements during fuel movement operations that would allow doors and other penetrations to remain open under administrative control and eliminate requirements for automatic closure of openings. A member of Petitioner CCAM lives two miles from the plant; a person authorizing STAR to represent her lives 23 miles from the plant. With these circumstances in mind, along with the legal standards discussed above and the responding participants' arguments on standing, we begin our analysis with a consideration of whether a finding of standing based on proximity would be appropriate.

Viewing the issue in light of the Commission's direction that we focus, in such an inquiry, on the nature of the proposed action and the significance of the radioactive source, *see* "Legal Standards," above, we make the following observations: Dominion in its LAR proposes to make certain changes relating to fuel movement operations. If in such fuel movement operations, containment penetrations are left open, as challenged by Petitioners, rather than having automatic and other closing functions operable or in effect, it would seem self-evident that in the event of an accident there is a greater likelihood of a release of radioactivity that might have an impact on a person who lives near the plant, as alleged by Petitioners. For example, if a fuel handling accident occurs during refueling, and the containment door is left open, common sense indicates that more radioactivity is going to escape the containment than if the doors were closed. (Although the Petitioners have not made the distinction we draw between releases during normal fuel movements and releases resulting from fuel handling accidents, giving their arguments concerning "increased radiological emissions" the requisite favorable construction, it is apparent their concerns would apply not only to emission during normal fuel movement but also to releases resulting from an FHA.)

We agree with Dominion and the Staff that a sufficient showing has not been made with regard to the impact on one living 23 miles from the plant. STAR has presented no significant argument or scenario showing the impact of the actions at issue on such a person, assuming the proposed TSs were employed. Moreover, the likelihood of any normal releases, or releases arising from an FHA, during reactor shutdown conditions having any measurable effect at a distance of 23 miles would appear to be remote. Existing NRC case law involving actions other than reactor licensing, in which petitioning parties granted standing were closer than Ms. Guglielmo's 23-mile distance from the plant (in one instance considerably closer), supports such a conclusion. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-30 (1999), and cases cited therein (county with nearest

boundary 17 miles from power plant found to have standing in proceeding on request to increase spent fuel storage capacity of plant, in view of, among other things, the "strong interest that a governmental body . . . has in protecting the individuals and territory that fall under its sovereign guardianship," and an expert's affidavit explaining how offsite radiation doses could occur); *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-00-2, 51 NRC 25, 27-8 (2000) (standing found on the basis of residence 10 miles from reactor in proceeding on request to increase spent fuel storage capacity); *Pacific Gas & Electric Co.* (Diablo Canyon Independent Spent Fuel Storage Installation, LBP-02-23, 56 NRC __, __ (slip op. at 11-21) (Dec. 2. 2002) (Licensing Board in proceeding on application to license independent spent fuel storage installation utilized 17-mile mark established in *Shearon Harris* as limit in standing rulings).

As for a residence two miles from the plant, while the Licensee states that "[t]he Application does not alter any existing radiation protection standards nor does it *propose to increase* effluents or emissions," Dominion Answer at 12 (emphasis added), it would appear that even in normal fuel movement operations there would be *some* increase in release of radioactivity if penetrations previously kept closed were left open. Indeed, in the November 12, 2002, Notice, although the Staff stated that results of the new dose analyses would "in all cases . . . [be] within the 10 CFR 50.67 and Regulatory Guide 1.183 acceptance criteria," 67 Fed. Reg. at 68,732, and that "it is expected that the new analyses [sic] assumptions in some cases result in a decrease in dose at the site boundary," it also observed that "in some cases [the new analyses] *result in an increase in dose at the site boundary*." *Id.* (emphasis added). We note various arguments of Dominion and the Staff on the impossibility and/or implausibility of increased releases, but we find these arguments pertain more to potential merits issues, regarding the likelihood and extent of any increases under the proposed amendment, than to standing. Moreover, in considering whether threshold standing requirements have been met,

"even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury in fact." *Oyster Creek*, LBP-96-23, 44 NRC at 158; *Atlas*, LBP-97-9, 45 NRC at 425.

Considering the event of a fuel handling accident involving spent fuel, we find that this would "quite obviously entail an increased potential for offsite consequences," *see Zion*, CLI-99-4, 49 NRC at 191, at a distance of two miles. Thus, in the case of CCAM, we would find injury-in-fact and causality based on the 2-mile proximity of one of its members to the plant and the clear potential for increased offsite consequences arising from the open penetrations in the event of an FHA. With regard to redressability, a favorable Board ruling that, for example, disallowed leaving penetrations open, would obviously redress the harm alleged to arise from allowing the penetrations to remain open during movement of fuel.

With regard to the "aspect" arguments posited by Dominion and the Staff, although we agree that radiation exposure to plant operating personnel, terrorism concerns, and some other issues raised by the Petitioners would seem to be outside the scope of this proceeding, we find the aspect relating to the potential for increased releases of fission products to be sufficient, at least in the event of a fuel handling accident, to establish a litigable aspect in accordance with 10 C.F.R. § 2.714(a)(2).

In conclusion, we find that Petitioner CCAM has sufficiently set forth its concerns that the proposed changes will place its membership at greater risk from increased radiological emissions to establish the necessary injury-in-fact, fairly traceable to the challenged LAR and likely to be redressed by a favorable decision, for us to conclude that CCAM has established standing to participate in this proceeding under Section 189a of the Atomic Energy Act and relevant NRC rules. On the other hand, based on the showing made relative to Ms. Guglielmo, we find that STAR has failed to establish its standing to intervene in this proceeding, and it must therefore be dismissed from this proceeding.

CONTENTION REQUIREMENTS and DEADLINES FOR ADDITIONAL FILINGS

Pursuant to 10 C.F.R. § 2.714(b)(1), petitioners have the right to supplement petitions with regard to contentions.

A. **Petitioner CCAM shall file its supplemented petition and contentions no later than March 7, 2003.**

B. **The Applicant and the Staff shall file their responses to the Petitioner's supplemented petition and contentions no later than March 28, 2003.**

With regard to the filing of contentions, we offer the following guidance, in order to facilitate a more orderly proceeding:

First, the standards that licensing boards must apply in ruling on the admissibility of contentions, and that we shall therefore apply in ruling on any contentions proffered in this proceeding, are defined at 10 C.F.R. § 2.714(b), (d). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. *Arizona Public Service Company* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). And, pursuant to section 2.714(b)(1), the failure of a petitioner to submit at least one admissible contention is grounds for dismissing the petition.[2]

In *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 67-68 (2002), the Licensing Board provided the following summary of the contention requirements as gleaned from case law that was also discussed in the Board's decision therein:

[2]Of course, if a petitioner should at a later date discover facts that might provide grounds for a contention, a petition containing such a contention could be submitted pursuant to 10 C.F.R. § 2.714(a)(1), and may be considered if the late-filed petition establishes that it is timely and appropriate under the factors listed in subsections (i)-(v) of section 2.714(a)(1). *See Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (1999); *Turkey Point*, CLI-01-17, 54 NRC at 24 n.18.

A contention must,

A. under section 2.714(b)(2), consist of a *specific* statement of the issue of law or fact the petitioner wishes to raise or controvert; and

B. under subsection 2.714(b)(2)(i), be supported by a brief *explanation* of the factual and/or legal basis or bases of the contention, which goes beyond mere allegation and speculation, is *not* open-ended, ill-defined, vague or unparticularized, and *is* stated with reasonable specificity; and

C. under subsection 2.714(b)(2)(ii), include a statement of the alleged facts or expert opinion (or both) that support the contention and on which the petitioner intends to rely to prove its case at a hearing, which must also be stated with reasonable specificity; and

D. also under subsection 2.714(b)(2)(ii), include references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish the facts it alleges and/or the expert opinion it offers, which must also be stated with reasonable specificity and, at a minimum, consist of a fact-based argument sufficient to demonstrate that an inquiry in depth is appropriate, and illustrate that the petitioner has examined the publicly available documentary material pertaining to the facility(ies) in question with sufficient care to uncover any information that could serve as a foundation for a specific contention; and

E. under subsection 2.714(b)(2)(iii), provide sufficient information to show that a *genuine dispute* exists with the applicant on a *material* issue of law or fact *(i.e.*, a dispute that actually, specifically, and directly challenges and controverts the application, with regard to a legal or factual issue, the resolution of which "would make a difference in the outcome of the licensing proceeding," 54 Fed. Reg. at 33,172), which includes either:

1. *references to the specific portions of the application* (including the applicant's environmental report and safety report) that the petitioner disputes *and the supporting reasons for each dispute*, or

2. if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the *identification of each failure and the supporting reasons for the petitioner's belief* ; and

F. under subsection 2.714(d)(2)(ii), demonstrate that the contention, if proven, would be of consequence in the proceeding because it would entitle the petitioner to specific relief.

Also, as indicated in the text of subsection 2.714(b)(2)(iii), for issues arising under NEPA, contentions must be based on the applicant's environmental report, and the petitioner can amend such contentions or file new contentions "if there

> are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document."

Id. In addition to the requirements of 10 C.F.R. § 2.714, contentions are necessarily limited to issues that are germane to the application pending before the Board. *Yankee*, CLI-98-21, 48 NRC at 204 n.7.

The Licensing Board in *Duke* noted the Commission's recent guidance that the "contention rule is strict by design," having been "toughened . . . in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation'." *Duke*, LBP-02-4, 55 NRC at 64; *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 1 and 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)).

Thus, a petitioner must do more than merely make unsupported allegations. Contentions must *specifically* state the issue a petitioner wishes to raise and, in addition to providing support in the form of expert opinion, document(s) and/or a fact-based argument, a petitioner must provide reasonably specific and understandable *explanation* and *reasons* to support its contentions. If a petitioner in a contention "fail[s] to offer any specific explanation, factual or legal, for why the consequences [the petitioner fears] will occur," the requirements of the contention rule are not satisfied. *Millstone*, CLI-01-24, 54 NRC at 359. "An admissible contention must *explain*, *with specificity*, particular safety or legal reasons requiring rejection of the contested [licensing action]." *Id.* at 359-60 (emphasis added). The contention rule does not require "a specific allegation or citation of a regulatory violation," but a petitioner is obliged, under 10 C.F.R. § 2.714(b)(2)(iii), either "to include references to the specific portion of the application . . . that the petitioner disputes and the supporting *reasons* for each dispute," *id.* (emphasis added), or, if a contention alleges that an application "fails to contain information on

a relevant matter as required by law," *id.*, to identify "each failure and the supporting *reasons* for the petitioner's belief." *Id.*; *Millstone*, 54 NRC at 361-62 (emphasis added).

There are various other sources that provide some elucidation in interpreting and applying the contention requirements, including the Statement of Considerations (SOC) for the final 1989 rule amendments, 54 Fed. Reg. 33,168 (Aug. 11, 1989), which provides guidance that is entitled to "special weight" under the authority of *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290-291 (1988), *review declined*, CLI-88-11, 28 NRC 603 (1988). In the SOC the Commission stated that a "contention will be dismissed if [a petitioner] sets forth no facts or expert opinion on which it intends to rely to prove its contention, or if the contention fails to establish that a genuine dispute exists between the intervenor and the applicant," and that petitioners must do more than submit "bald or conclusory allegation[s]" of a dispute with the applicant. 54 Fed. Reg. at 33,171. They must "read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view," *Millstone*, CLI-01-24, 54 NRC at 358 (citing 54 Fed. Reg. at 33,170), and "explain[ ] why they have a disagreement with [the applicant]." 54 Fed. Reg. at 33,171.

The Commission's *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998), provides further guidance. Therein, the Commission emphasized that a "contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement" of the rule. *Id.* at 22. Finally, the Petitioner may wish to consult the Commission's recent decision in *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC ___ (2002), for additional discussion of NRC contention requirements.

FURTHER PROCEEDINGS

After receipt of the Petitioner's supplemented petition and contentions, and responses thereto, the Board will schedule any oral argument that may be needed in this proceeding.

ORDER

Based upon the analysis set forth above, the Licensing Board hereby (1) finds that Petitioner CCAM has standing to participate in this proceeding; (2) finds that Petitioner STAR lacks standing, so that it must be dismissed from the proceeding; and (3) sets the above stated deadlines of March 7 and 28, 2003, respectively, for the submission of a supplemented petition and contentions, and responses thereto.

This Order is subject to appeal in accordance with the provisions of 10 C.F.R. § 2.714a(a). Any petitions for review meeting applicable requirements set forth therein must be filed within 10 days of service of this Memorandum and Order.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD[3]

/RA/

_____
Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Thomas S. Elleman
ADMINISTRATIVE JUDGE

[3]Copies of this Memorandum and Order were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON STANDING OF PETITIONERS TO PROCEED AND SETTING DEADLINES FOR SUPPLEMENTED PETITION AND CONTENTIONS) (LBP-03-03) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Ann M. Young, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas S. Elleman
ASLBP
704 Davidson Street
Raleigh, NC 27609-5543

Ann P. Hodgdon, Esq.
Brooke G. Smith, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Nancy Burton, Esq.
147 Cross Highway
Redding Ridge, CT 06876

Docket No. 50-336-OLA-2
LB MEMORANDUM AND ORDER
(RULING ON STANDING OF PETITIONERS TO
PROCEED AND SETTING DEADLINES FOR
SUPPLEMENTED PETITION AND CONTENTIONS)
(LBP-03-03)

Lillian M. Cuoco, Esq.
Senior Nuclear Counsel
Millstone Power Station
Rope Ferry Road
Waterford, CT 06385

David A. Repka, Esq.
Brooke D. Poole, Esq.
Winston & Strawn
1400 L Street, NW
Washington, DC 20005

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of February 2003