UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

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

UNITED STATES COURT OF APPEALS
FILED
JAN 15 2004
Roseann B. MacKechnie, CLERK
SECOND CIRCUIT

CLI-03-14

MEMORANDUM AND ORDER

I. Introduction

In this decision we review an Atomic Safety and Licensing Board Memorandum and Order, LBP-03-12, ___ NRC ___ (Aug. 18, 2003), that denied a supplemented petition for leave to intervene and request for hearing filed by the Connecticut Coalition Against Millstone ("CCAM"). The Licensing Board found that CCAM had not submitted an admissible contention, and therefore denied its request for hearing. Pursuant to 10 C.F.R. § 2.714a, CCAM has appealed the Board's ruling. Both Dominion Nuclear Connecticut, Inc. ("DNC") and the NRC staff support the Board's decision. We affirm the decision, for the reasons we give below.

II. Background

In this license amendment proceeding, DNC seeks to change several technical specifications. The changes are based on DNC's re-analysis of the Millstone Unit No. 2 limiting design basis fuel handling accidents (FHA) using an alternative source term. Below we provide

a description of the concepts underlying DNC's license amendment request, and then a short history of this proceeding.

1. Alternative Source Term

In 1999, the Commission amended its regulations to allow operating reactor licensees to replace the traditional source term used in "design basis accident" analyses.[1] The replacements are known as "alternative source terms." "Source term" refers to a fission product release from the reactor core into containment.[2] Specifically, it is characterized by the magnitude and mix of the radionuclides released from the fuel, their physical and chemical properties, and the timing of their release.[3] An accident source term is used to assess the radiological consequences of postulated design basis accidents.

Many regulatory requirements rest on the postulated radiological consequences of design basis accidents.[4] Therefore, the accident source term serves as a design parameter for accident mitigation features, equipment qualification, control room operator radiation doses, and post-accident vital area access doses.[5] For example, the accident source term plays a large role in establishing the measurement range and alarm setpoints of some monitors and in the

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[1] Statements of Consideration, Final Rule, "Use of Alternative Source Terms at Operating Reactors," 64 Fed. Reg. 71,990 (Dec. 23, 1999)("Final Rule"). Design basis accidents are not intended to be actual event sequences, but instead "surrogates to enable deterministic evaluations of a facility's engineered safety features." *See* Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors" (July 2000) at 1.183-2 ("Reg. Guide").

[2] *See* 64 Fed. Reg. at 71,991; *see also* 10 C.F.R. § 50.2.

[3] 64 Fed. Reg. at 71,991.

[4] *Id.*

[5] *Id.*

actuation of other plant safety features.[6] The design basis accident source term, therefore, is a "fundamental assumption upon which a large portion of the facility design is based."[7] As such, it is an integral part of the design basis because it "sets forth specific values (or a range of values) for controlling parameters that constitute reference bounds for design."[8] Licensees also use it to show compliance with applicable regulatory requirements.[9]

In 1995, recognizing significant advances in understanding the timing, magnitude, and chemical form of fission product releases that may result from severe nuclear power plant accidents, the Commission issued NUREG-1465, "Accident Source Terms for Light-Water Nuclear Power Plants."[10] NUREG-1465 presented a revised representative accident source term for a boiling-water reactor and for a pressurized-water reactor. The intent of NUREG-1465 was to provide "a more realistic source term based on the insights gained from extensive accident research activities."[11] While the NRC decided that it would not be necessary to require all operating reactor licensees to re-analyze design basis accidents using the revised source terms, it concluded that "some licensees may wish to use an alternative source term in [accident] analyses to support operational flexibility and cost-beneficial licensing actions."[12]

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[6] *Id.*

[7] Regulatory Guide 1.183 at 1.183-6 ("Reg. Guide 1.183").

[8] *Id.* at 1-183-1 n.2; *see also* 10 C.F.R. § 50.2.

[9] "Final Rule," at 71,991.

[10] The goal of NUREG-1465 was to identify revised accident source terms to be used in the regulation of future light water reactors (LWRs), but the study also considered how revised source terms could be used at operating reactors. *Id.* at 71,992.

[11] *Id.* at 71,999; *see also id.* at 71,992.

[12] *Id.* at 71,999; *see also id.* at 71,992.

Design basis accident analyses utilizing an alternative source term potentially could show a greater safety margin than previously calculated. As a result, particular equipment or procedures identified in the technical specifications may no longer need to be credited to maintain the required safety parameters. Revised accident analyses using an alternative source term therefore may support changes to technical specifications.

Since 1999, the NRC has permitted operating reactor licensees to revise the accident source term used in design basis radiological consequence analysis. A change to the design basis to use an alternative source term requires NRC review and approval in the form of a license amendment.[13] In addition, any proposed facility modifications or changes to procedures based upon an alternate source term should maintain "sufficient safety margins ... including a margin to account for analysis uncertainties." [14]

Under 10 C.F.R. § 50.67, a licensee must provide specified information justifying a license amendment application to use an alternative source term. A licensee seeking to revise its accident source term must re-analyze the radiological consequences of all applicable design-basis accidents previously assessed in the facility's safety analysis report,[15] and "submit a description of the analysis inputs, assumptions, methodology, and results."[16] Design basis accident analyses are "intentionally conservative to compensate for known uncertainties in accident progression, fission product transport, and atmospheric dispersion."[17] The licensee must demonstrate that use of the alternative source term and any associated proposed

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[13] *Id.* at 71,996.

[14] Regulatory Guide 1.183 at 1.183-4.

[15] 10 C.F.R. § 50.67(b).

[16] "Final Rule," 64 Fed. Reg. at 71,996.

[17] *Id.* at 71,991; Reg. Guide 1.183 at 1.183-2.

modifications will not result in accident conditions exceeding the criteria specified in section 50.67.[18] Those criteria include limits on radiological dose at the exclusionary area boundary (EAB), low population zone (LPZ), and the control room.[19] Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors" (July 2000), provides additional guidance.

2. History of this Proceeding

On September 26, 2002, DNC filed a license amendment application seeking to revise various technical specifications.[20] The proposed changes would modify requirements pertaining to containment closure and spent fuel pool area ventilation during movement of irradiated fuel assemblies.[21] As described generally in a *Federal Register* notice, the proposed changes would allow "containment penetrations" (e.g. equipment door, personnel air lock doors), to remain open during fuel handling:

> [The changes] will allow Containment penetrations, including the equipment 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

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[18] *See* 10 C.F.R. § 50.67(b)(2); "Final Rule," 64 Fed. Reg. at 71,994.

[19] It bears noting that section 50.67 also directs licensees seeking to use an alternative source term to calculate doses in Total Effective Dose Equivalent (TEDE) at the LPZ, EAB and the control room. Previous dose calculations, associated with the traditionally used source term, focus on doses to the whole body and to the thyroid. Use of the TEDE, which assesses the impact of all relevant nuclides upon all body organs, replaces the single critical organ concept for assessing exposure. *See* "Final Rule" at 71,993-94, 71,996-97.

[20] Letter, J. Alan Price, Site Vice President, DNC, to NRC Document Control Desk (9/26/02)("Application"); *see also* Notice of Issuance of Amendments to Facility Operating Licenses, 67 Fed. Reg. 68,728, 68,731 (Nov. 12, 2002).

[21] 67 Fed. Reg. at 68,732.

> movement. The technical specifications associated with storage pool area ventilation will be deleted.[22]

DNC seeks these changes to enhance operational flexibility.[23]

The proposed changes are based on DNC's re-analysis of "the limited design basis Fuel Handling Accident using an Alternative Source Term."[24] In other words, DNC redid its design basis fuel handling accident analyses using an alternative source term, and, taking credit for the results of the re-analysis, proposed to modify several existing requirements. According to DNC's application, under the proposed changes a fuel handling accident would not result in radiological doses -- in the control room or to the public -- in excess of the limits specified in 10 C.F.R. 50.67 and Regulatory Guide 1.183.[25]

CCAM and the STAR Foundation jointly petitioned for a hearing to challenge the license amendment application.[26] In a Memorandum and Order, the Licensing Board found that CCAM, but not the STAR Foundation, had shown standing to intervene, and directed CCAM to file a supplemented petition with contentions.[27] CCAM then proffered a single contention claiming that the amendment has the potential for "significant" radiation releases:

> The amendment involves the potential of significant increase in the amounts of radiological effluents that may be released offsite and thus the amendment involves an adverse impact on the public

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[22] *Id.*

[23] *See* Transcript (June 5, 2003) at 76-77.

[24] 67 *Fed. Reg.* at 68,731.

[25] *See, e.g.*, Application, Attachment 1, p. 20; Attachment 2, pp. 11-16.

[26] Amended Petition to Intervene and Request for a Hearing (Dec. 12, 2002).

[27] LBP-03-3, 57 NRC 45 (2003).

health and safety and does involve a Significant Hazards Consideration.[28]

In LBP-03-12, the Licensing Board ruled the contention inadmissible. The Board found that CCAM had not provided support for its claims of a "significant increase" in effluents or an "adverse impact" on public health. In short, the Board stressed that CCAM had not, "under the contention requirements of 10 C.F.R. § 2.714, specifically or directly challenged or controverted any particular part of the application with regard to any legal or factual issue that would make a difference in the outcome of this proceeding."[29] The Board also noted that CCAM during oral argument had withdrawn the last portion of its contention, challenging the staff's "No Significant Hazards Consideration."[30]

On appeal, CCAM essentially reiterates claims made earlier before the Board. The NRC staff and DNC support the Board's decision. We affirm, for reasons cited by the Board and those we provide below.

III. Analysis

To be admissible, a contention must specify the particular issue of law or fact the petitioner is raising and contain: (1) a brief explanation of the bases of the contention; and (2) a concise statement of the alleged facts or expert opinion that support the contention and upon which petitioner will rely in proving the contention at the hearing.[31] The contention should refer to

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[28] Petitioner, CCAM, Supplemented Petition and Contention (Mar. 10, 2003)("Supplemented Petition").

[29] LBP-03-12, slip op. at 19.

[30] *Id.* at 7 (citing Transcript at 30, 97-98).

[31] 10 C.F.R. § 2.714(b); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328 (1999).

those specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contention.[32] In addition, a contention must show that a "genuine dispute" exists with the applicant on a material issue of law or fact.[33]

As the Commission repeatedly has made clear, our contention rule is "strict by design."[34] It thus insists upon "some reasonably specific factual or legal basis" for a petitioner's allegations.[35] Contention requirements seek to assure that NRC hearings "serve the purpose for which they are intended: to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors."[36]

On appeal, CCAM presents the same claims it made before the Board. The appeal does not, however, as the NRC staff points out, "explain why the Licensing Board's decision was erroneous."[37] CCAM's appeal -- as was its case before the Board -- rests entirely on general and speculative statements about an alleged "significant increase in the amounts of radiological effluents that may be released offsite" that will cause an "adverse impact" on public health and safety.[38] But as the Board found, CCAM never provided the necessary alleged facts or expert opinion to support its claims.

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[32] *Oconee*, 49 NRC at 333 (quotations and citations omitted).

[33] 10 C.F.R. § 2.714(b)(2)(iii).

[34] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001); *see also Oconee*, 49 NRC at 334-35.

[35] *Millstone*, 54 NRC at 359 (citation omitted).

[36] *Oconee*, 49 NRC at 334 (quoting H.R. Rep. No. 97-177, at 151 (1981)).

[37] NRC Staff's Brief Opposing CCAM's Appeal of LBP-03-12 (Sept. 11, 2003)("Staff's Appeal Brief") at 5.

[38] *See, e.g.*, Brief in Support of Notice of Appeal (Aug. 28, 2003)("CCAM Appeal") at 3-4.

The proposed license amendment would alter several different technical specifications.[39] While CCAM lists all of them in its contention, the contention apparently only focuses upon those changes relating to containment penetration closure. Specifically, CCAM's claims appear to center upon proposed changes to Technical Specification 3.9.4, titled "Refueling Operations, Containment Penetrations."

The proposed revision to Technical Specification 3.9.4 would allow "[c]ontainment penetrations, including the personnel airlock doors and equipment door" to be open during the movement of irradiated fuel, provided that administrative controls are in place to close manually "any of these containment penetrations ... within 30 minutes."[40] It goes on to list a number of procedural requirements intended to assure the capability to close all containment penetrations within 30 minutes, including the need for: (1) a review prior to opening any containment penetration; (2) designated individuals to be available to close their assigned openings; (3) closure plans for each containment opening; and (4) controls to ensure that cables and hoses that pass through a containment opening can be quickly removed.[41] The proposed technical specification further specifies that in the event of a fuel handling accident, "each penetration, including the equipment door, *is* closed" within 30 minutes.[42] If, however, "it is determined that closure of all containment penetrations would represent a significant radiological hazard to the

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[39] The proposed amendment would change the following technical specifications: 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"; 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."

[40] *See* Application, Attachment 4, Insert G to pg. B 3/4 9-1, at 1.

[41] *Id.*; *see also id.*, Attachment 2, at 7.

[42] *See id.*, Insert G to pg. B 3/4 9-1, at 1 (emphasis added).

personnel involved," the technical specification provides that a decision "may be made to forgo the closure of the affected penetration(s)." [43]

In support of the requested changes, DNC provided an analysis of the radiological consequences of a design basis fuel handling accident inside the containment. As a conservative measure, DNC's analysis assumes that the equipment door, personnel air lock door and other penetrations are left "open for the duration" of a fuel handling accident.[44] More specifically, it assumes that containment penetrations are left open for a full two hours during an accident, such that "all the available radioactivity is released over a 2 hour period."[45] No credit is taken for containment boundary integrity or automatic closure of the containment purge valves.

Even if the containment penetrations are kept open for two hours during an accident, DNC's calculations show that the postulated radiological dose to an individual located at the exclusionary area boundary (EAB) or the low population zone (LPZ) would fall well within the limits specified under 10 C.F.R. § 50.67 and Regulatory Guide 1.183.[46] Although DNC's calculations show that offsite radiological doses would not exceed regulatory requirements -- even without crediting containment closure -- the proposed technical specifications nonetheless provide for closing containment penetrations within 30 minutes of a fuel handling accident.[47]

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[43] *Id.*; *see also id.*, Attachment 2, at 8.

[44] *See id.*, Attachment 1, at 6.

[45] *Id.* at 18.

[46] *Id.* at 9, 12, 16, 20; *id.* at Attachment 2, pp. 15-16.

[47] While CCAM's claims focus upon fuel handling accidents inside the containment and the related controls on containment penetrations, DNC's application also analyzes a fuel handling accident in the spent fuel area. DNC's spent fuel pool accident analysis similarly takes no credit for containment or filtering of releases by the fuel handling building, and assumes "a 2 hour unrestricted release." That analysis also finds that radiological releases to the exclusionary area boundary and low population zone would fall well below applicable limits. *See* Application, Attachment 1, pp. 10-12.

DNC's application characterizes the 30-minute closure provision as a "defense-in-depth measure to limit actual releases to the outside atmosphere [to even] much lower than assumed" in the fuel handling accident analysis, and thus even further below regulatory limits.[48]

In challenging this license amendment, it was CCAM's burden to point out how the application is deficient. CCAM's contention, however, never challenges any of DNC's accident analyses, dose calculations, or its conclusion that postulated radiological releases from a fuel handling accident would not exceed applicable limits even *without* closing containment penetrations. Indeed, CCAM has not demonstrated any specific knowledge or understanding of the accident analyses provided in the application. Nor does its contention address the regulatory criteria for use of an alternate source term (found in 10 C.F.R. § 50.67), or the standards for technical specifications (found in 10 C.F.R. § 50.36).

Instead, CCAM's appeal -- as does its contention -- relies heavily upon the Licensing Board finding that the potential for offsite radiation releases sufficed for *standing*:

> In LBP-03-03, the Panel stated that if, after the proposed changes at issue are implemented, in fuel movement operations, "containment penetrations are left open ... 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."
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> The Panel also stated that "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."[49]

Contrary to CCAM's view, the Board's finding of *standing* -- based on a construction of the intervention petition in a light most favorable to CCAM -- does not equate to a Board finding

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[48] *Id.* at 20; *see also* Attachment 2 at pp. 3, 15; Regulatory Guide 1.183 at B-3 n.3.

[49] *See* CCAM Appeal at 5 (internal citations omitted).

that CCAM's contention was "plausible as a matter of common sense."[50] A threshold finding of standing does not render contentions admissible.[51] While a petitioner may have a sufficient "interest" in a proceeding for standing, he or she may have no genuine material dispute to adjudicate, or no specific factual or legal support to bring an issue to hearing. As the Board explains, even a "minor radiological exposure[] resulting from a proposed licensee activity" can be enough for standing,[52] but a contention must allege, with some basis, that the licensee's application is deficient. This CCAM did not do.

CCAM's initial objection to the license amendment is that the amendment allows containment penetrations to be left open during fuel handling operations. But CCAM entirely ignores DNC's fuel handling accident analysis, which finds that even if containment penetrations are *left open for two hours during an accident*, postulated offsite radiological doses would not exceed regulatory limits. In fact, according to DNC's analysis, the postulated offsite doses do not come close to exceeding applicable limits.[53]

DNC's analysis therefore concludes that having all penetrations closed during fuel handling is unnecessary to meet accident dose limits. The petitioner provides no basis for questioning that conclusion. At oral argument before the Board, CCAM's counsel at best could only speculate about a potential for excessive radiation releases:

> [i]f there is a door ... and that door is ... left open, it seems to us to defy logic not to accept that there thereby exists great potential to allow the release of radiation to the site, to beyond the site, to the community at levels which are *very likely to be far beyond* the

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[50] *Id.* at 6.

[51] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), 54 NRC 3, 26 (2001).

[52] LBP-03-3, 57 NRC at 62 (citations omitted).

[53] *See, e.g.*, Application, Attachment 1 at pp. 9, 12, 16.

> standards that Dominion apparently applied in its purported analysis supporting this application.[54]

At no point, however, did CCAM provide any expert opinion or other factual basis suggesting that DNC's accident analyses are inaccurate or apply the wrong criteria. To trigger an adjudicatory hearing, a petitioner must do more than submit "'bald or conclusory allegations' of a dispute with the applicant."[55] A contention alleging that an application is deficient must identify "each failure and the supporting reasons for the petitioner's belief."[56]

Again relying on the Board's standing decision, CCAM stresses that DNC has "acknowledged 'some increase in projected doses' assuming approval of the requested amendment[]." [57] But despite frequent claims of a "significant" increase in radiation to the community, CCAM never directly challenges DNC's accident analyses or dose calculations, never provides any accident or dose analysis of its own, and therefore never indicates how a "significant" radiological release may occur as a result of the proposed changes. At bottom, DNC's license amendment application concludes that under both the existing technical specifications (based upon the original source term), and the proposed technical specifications (based upon an alternative source term), the postulated offsite doses from a fuel handling accident are a relatively small percentage of applicable limits.[58] Nothing CCAM provided in this proceeding suggests otherwise. Additional dose comparisons provided by DNC at the Board's

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[54] Transcript at 15 (emphasis added).

[55] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001)(citing Final Rule, "Rules of Practice for Domestic Licensing Proceedings," 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989)).

[56] 10 C.F.R. § 2.714(b)(2)(iii).

[57] CCAM Appeal at 3 (citation omitted).

[58] *See* Application, Attachment 1.

request only reinforce the notion that the increase in offsite accident doses is not significant. While there is a postulated increase in accident dose associated with the proposed technical specifications, the offsite doses to an individual located at the exclusionary area boundary or lower population zone remain well under the Regulatory Guide 1.183 criterion.[59]

CCAM, however, argues that *any* increase in dose, no matter the amount, and regardless of whether the change complies with NRC radiological dose requirements, is unacceptable:

> ADMIN. JUDGE COLE: Your objection is to any additional dose associated with this operation, this proposed operation.
>
> MS. BURTON: Any additional dose that could be .... that could be obviated if the requirements in the technical specifications were maintained.
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> ADMIN. JUDGE COLE: So it makes no difference that the doses [under the proposed technical specifications] are less than the applicable regulatory limits. It's the increase that you're objecting to.
>
> MS. BURTON: It's the increase and it's the removal of a barrier that logic dictates should [sic] be removed.[60]

But this kind of argument amounts to a collateral attack on NRC regulations governing public doses at operating nuclear plants.[61] This is impermissible. Petitioners may not seek an

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[59] *See* Affidavit William Eakin, DNC, attached to Letter David Repka, DNC, to Licensing Board (June 20, 2003). Pursuant to 10 C.F.R. § 50.67, DNC's accident dose analyses in support of the license amendment application are stated in terms of total effective dose equivalent (TEDE). As a result, the postulated offsite doses cannot be directly compared to earlier accident analyses that were based upon the original source term, for the latter applied a different dose methodology (whole body and thyroid). The Licensing Board requested DNC to provide a comparison of postulated offsite doses from a fuel handling accident under both the current technical specification and the proposed technical specification, but using the alternate source term and the TEDE dose methodology for both. See Transcript at 70, 78.

[60] Transcript at 44.

[61] *See* 10 C.F.R. § 2.758; *Millstone,* 54 NRC at 364.

adjudicatory hearing "to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." [62]

CCAM also argues that if, during an accident, radiation levels "exceed permissible levels for worker exposure, the licensee would not be required to have the capability to close the door to prevent radiation leakage directly into the environment."[63] That is incorrect. The proposed technical specifications *do* require the licensee to be fully capable of closing all containment penetrations within 30 minutes of a fuel handling accident.

The proposed technical specifications also would allow DNC flexibility to forgo closing one or more penetrations within 30 minutes of an accident, but only in special circumstances where personnel involved would face a significant radiological hazard. CCAM's contention, and its argument on appeal, do not specify how allowing DNC more time than 30 minutes to close one or more penetration(s) to protect workers is unsafe, particularly given the accident analyses' conclusion that closing all penetrations within 30 minutes "would not be necessary to assure that offsite doses are maintained below NRC requirements."[64] DNC has explained that "we don't need to [close the doors within 30 minutes] and cause somebody undue harm because it's not necessary to protect public heath and safety."[65] CCAM's contention provides insufficient reason to litigate the matter at an NRC hearing.

In short, the provision in DNC's proposed amendment that would protect workers in some situations by allowing more time to close penetrations does not relax radiological dose limits for the public. All such dose limits would remain in full effect. In addition, as the NRC staff

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[62] *Oconee*, 49 NRC at 334.

[63] CCAM Appeal at 2.

[64] Transcript at 52.

[65] *Id.* at 53.

indicated at oral argument before the Board, DNC already has the authority -- granted by an NRC rule -- to deviate from technical specifications in emergency situations to the extent necessary to protect public health and safety or to "prevent injury to personnel."[66]

CCAM and its counsel are no strangers to the NRC adjudicatory process. CCAM recently challenged another proposed technical specification change at the Millstone facility.[67] Then, as now, CCAM took the view that once an item originally is inserted in the technical specifications it must never be altered.[68] But, as we said in our prior *Millstone* case, "[s]imply because a set of procedural items was commonly inserted in technical specifications in the past does not mean that they must remain there,"[69] or that they should never be changed. Over time, the NRC has gained significant technical knowledge from extensive accident research that may, in particular instances, justify changing a plant's original design basis and amending the technical specifications. An acknowledged goal of permitting licensees to use an alternative source term and modify a plant's design basis, including operating and maintenance procedures, is to reduce existing requirements that may be unnecessary to maintain sufficient safety margins and defense in depth.[70] CCAM's highly generalized concerns do not amount to a litigable "contention" under our strict pleading rule.

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[66] *See* 10 C.F.R. § 50.54x; *see also* Statements of Consideration, "Final Rule, Applicability of License; Conditions and Technical Specifications in an Emergency," 48 Fed. Reg. 13,966, 13,968 (Apr. 1, 1983); Transcript at 107. The purpose of § 50.54x is "to provide flexibility in situations that cannot be anticipated." 48 Fed. Reg. at 13,968.

[67] *See Millstone*, CLI-01-24, 54 NRC 349.

[68] *See, e.g., id.* at 360-61; Transcript at 26.

[69] *Millstone,* CLI-01-24, 54 NRC at 360.

[70] *See, e.g.,* "Final Rule," 64 Fed. Reg. at 71,992; Reg. Guide 1.183 at 1.183-4, 1.183-6.

We reserve our hearing process for genuine, material controversies between knowledgeable litigants.[71] Throughout this proceeding, CCAM has shown little knowledge of the technical issues pertaining to the proposed license amendment. As support for its contention, for example, CCAM alluded generally, with no explanation, to an "October 2000 report prepared by the Sandia National Laboratories." [72] The cited report apparently is a decommissioning risk study focusing upon beyond design basis spent fuel pool accidents.[73] It has no bearing on the fuel handling events at issue in the proposed license amendment, as the Licensing Board correctly found.[74] CCAM's appeal no longer references this document and instead relies largely upon the Licensing Board's decision on standing.

Prior to the Board's standing decision, there is little indication that CCAM was even aware that the license amendment application centers on fuel handling accident analyses. CCAM's petition included an affidavit vaguely referencing "licensee reports of radioactive effluent releases," alleged to "document[] enormous routine emissions into the environment by the Millstone facility."[75] The affidavit declares it "unacceptable that these releases should increase by virtue of the present license amendment," and further declares the NRC's

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[71] Our standing and contention rules are designed to screen out those without sufficient interest or knowledge to litigate safety or environmental issues meaningfully. *See, e.g., Oconee*, 49 NRC at 334-35, 338-39, 342. The absence of a hearing, of course, does not mean the absence of a safety issue. The NRC staff reviews every license amendment application to ensure compliance with NRC safety rules.

[72] Supplemented Petition at 6.

[73] *See* NUREG-1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants" (Feb. 2001)(draft issued Oct. 2000).

[74] LBP-03-12, slip op. at 20.

[75] Declaration of Joseph H. Besade at 7.

"radiological emissions standards ... arbitrary in nature."[76] But beyond merely reciting *verbatim* a *Federal Register* notice on the proposed license amendment, CCAM's intervention petition demonstrated no knowledge of the actual changes proposed -- changes that relate only to fuel movements in the containment building or spent fuel building, and analyses of fuel handling accidents, and not to the "routine emissions" from the facility referred to in the petition.

In short, it is evident that when CCAM first sought the hearing, it did not understand the nature of the amendment. Individuals or organizations invoking the NRC hearing proceeding should themselves demonstrate at least minimal knowledge of the particular actions that they wish to litigate.

IV. Conclusion

For the reasons given in this decision, the Commission *affirms* LBP-03-12.

IT IS SO ORDERED.

For the Commission

/RA/

Andrew L. Bates
Acting Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of October 2003

[76] *Id.*