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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Northeast Nuclear Energy Company)	Docket No. 50-423-LA
)	
(Millstone Nuclear Power Station,)	
Unit No. 3))	

NORTHEAST NUCLEAR ENERGY COMPANY'S
SUPPLEMENTAL ANSWER REGARDING STANDING ISSUES
(RECIRCULATION SPRAY SYSTEM MATTER)

I. INTRODUCTION

In accordance with the Order of the Atomic Safety and Licensing Board ("Licensing Board") issued on June 15, 1998, Northeast Nuclear Energy Company ("NNECO") hereby files its partial reply to the Supplement to Intervention Petition ("Supplemented Petition") filed on July 6, 1998, by the Citizens Regulatory Commission ("CRC"). This partial reply addresses only issues related to CRC's standing to intervene in this matter. NNECO will reply to CRC's proposed "contentions" in accordance with the schedule established by the Licensing Board's June 15th Order.

The Supplemented Petition supplements CRC's initial petition of April 23, 1998.^{1/} CRC is seeking a formal hearing, and intervenor status, with respect to NNECO's operating license amendment application related to one aspect of the operation of the Millstone Unit 3 Recirculation

^{1/} CRC's petition responds to the Notice of Opportunity for Hearing published in the *Federal Register* on March 25, 1998, (63 Fed. Reg. 14487) ("Notice").

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Spray System (“RSS”). NNECO responded to CRC’s initial petition on May 22, 1998 (“NNECO’s Response”) and opposed CRC’s petition for lack of a demonstration of standing to intervene. Notwithstanding the information provided in the Supplemented Petition, NNECO continues to believe that CRC has failed to demonstrate its standing on this matter. Under 10 C.F.R. §2.714, CRC’s request for a hearing and intervenor status should be denied.

II. DISCUSSION

A. Organizational Standing

The Supplemented Petition addresses the issue of CRC’s organizational standing raised in NNECO’s Response by providing affidavits from three members who have authorized CRC to represent their interests in this proceeding. The copies of the affidavits provided to NNECO are not signed. Assuming that CRC has provided signed originals to the Licensing Board, or that it can produce signed copies, the procedural defect in the initial petition with respect to CRC’s organizational standing would be cured. CRC, however, would still need to show that the individual members on whom they rely for standing indeed have standing as individuals with respect to this matter. Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

B. Particularized Harm

As discussed in NNECO’s Response, to establish the standing of individual members, a petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision. Georgia Tech, CLI-95-12, 42 NRC at 115; see also Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992). CRC in the Supplemented Petition has still failed to demonstrate with particularity the individual interests that might be

affected by the results of this proceeding. CRC has failed to meet its burden of showing offsite harm that could result from the amendment at issue.

The members identified by CRC allege that they live from 2 to 5 miles from the Millstone Station. They are relying upon nearby residence as their basis for asserting an injury that could flow from the license amendment at issue in this proceeding. All three members assert in their affidavits that “[a]pproval of such amendment, without adequate and appropriate testing, will have the effect of reducing safety margins at Millstone and will impact me should an accident result from the reduced safety margins.” However, in addressing standing in license amendment cases where standing is to be based on nearby residence, the Commission has held that “[a]bsent situations involving such obvious potential for offsite consequences, a petitioner *must allege some specific ‘injury in fact’ that 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)(emphasis added).^{2/} With respect to the current amendment, there is neither an obvious potential for offsite consequences (i.e., akin to an operating license application or an amendment application related to a major facility alteration) nor an allegation of a specific injury in fact *associated with the RSS amendment*.

As discussed in NNECO’s Response, the approval in this case relates to a change that has been in place since 1986. The current amendment involving a licensing basis change (i.e., documentation update) relates to a specific change in the way the RSS would be utilized, or aligned, during the recirculation phases of postulated design basis accident mitigation. NNECO’s

^{2/} Compare Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 2), LBP-92-28, 36 NRC 202, 212-213 (1992).

amendment application demonstrates that from NNECO's perspective the change was acceptable.^{3/}

Among other things, NNECO concluded that:

. . . the modified [RSS] alignment delivered sufficient flow to meet the long term cooling requirements after a LOCA, and the results of the containment analysis show that the design basis of maintaining subatmospheric containment pressure was unchanged.

Application, Attachment 3, at pages 3-4.

In addition, as explained in the Application, the operational modification did not eliminate direct injection from emergency operating procedures. It was recognized that cold-leg injection might be warranted in certain cases, and therefore provisions were maintained for direct cold-leg injection "as a contingency action, should one be required." *Id.* at page 2.

As with CRC's initial petition, neither the Supplemented Petition nor the included affidavits focus on these facts. CRC and its members assert a reduction in a "safety margin" that purportedly would result from the amendment (Affidavits, at paragraph 10). But it is not apparent what reduction or margin of safety is or could be involved. *Cf. Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72-74 (1994) (focusing on whether alleged injury is "concrete and particularized" and whether there is a "realistic threat" of a direct injury). Accordingly, in this case CRC has not met its burden of demonstrating its standing.

C. Nexus to Amendment

NNECO does not address here the admissibility of CRC's proposed contentions. (That issue will be addressed fully in NNECO's forthcoming response to the contentions.)

^{3/} NNECO's amendment application is dated March 3, 1998. *See* NNECO (M.L. Bowling, Jr.) Letter to NRC (Document Control Desk), B17044, "Proposed License Amendment Request // Recirculation Spray System Direct Injection Change (PLAR 3-98-1)," Docket 50-423, March 3, 1998 ("Application").

Nonetheless, the proposed contentions might be offered as an assertion of particularized harm to support CRC's standing. Accordingly, NNECO responds here to the proposed contentions in that sense. The proposed contentions are completely insufficient as a basis for standing, because they lack any nexus to the amendment at issue in the *Federal Register* Notice giving rise to this proceeding.

CRC's entire Supplemented Petition is built around two proposed contentions, both of which assert the need for testing of the Millstone Unit 3 RSS in light of several modifications that have been made to the system. CRC in Proposed Contention I alleges "a physical reduction of the flow within the system by half, modifications of piping, [and] a reduction in the number of spray ring holes" Supplemental Petition, at page 1. An alleged reduction in flow is also the premise for the similar Proposed Contention II. The problem with CRC's petition, however, is that none of these referenced RSS modifications relates to the March 3, 1998, NNECO amendment application.

CRC refers (Supplemental Petition, at page 2) to a February 16, 1998, NNECO submittal to the NRC Staff^{4/} and lists eighteen RSS modifications made prior to the 1996 Millstone Unit 3 shutdown. However, these are not the modifications at issue in the Application or the *Federal Register* Notice. The February 16, 1998, NNECO submittal, by its terms, provided information to the NRC Staff on the Unit 3 RSS configuration, including an "integrated safety analysis" of modifications to the system since the issuance of the NRC Safety Evaluation Report. This included assessments pursuant to 10 C.F.R. §50.59. As described in the submittal, one of the modifications reviewed -- the 1986 modification related to RSS direct injection -- involved an unreviewed safety

^{4/} NNECO (M.L. Bowling, Jr.) letter to NRC (Document Control Desk), B17050, "Response to Notice Request for Information on the Recirculation Spray System," Docket 50-423, February 16, 1998.

question. Accordingly, that particular modification was submitted to the NRC Staff for review and approval in the March 3, 1998, amendment application and became the subject of the Notice. The February 16, 1998, submittal, and the RSS modifications described there that do not involve unreviewed safety questions, are not subject to the NRC hearing process and are outside the scope of this proceeding.

Therefore, to the extent that these proposed contentions represent “specific aspects” of the proceeding which CRC wishes to contest, or to the extent they form the basis for alleged injuries that would confer standing in this proceeding, they are insufficient. To establish injury in fact and standing, a petitioner must establish that (a) he or she will suffer a “distinct and palpable” harm; (b) the injury can fairly be traced to the challenged action; and (c) the injury is likely to be redressed by a favorable decision in the proceeding. Lujan, 112 S.Ct at 2136. Here, CRC, by focusing on the February 16, 1998, submittal rather than the March 3, 1998, amendment application, and by casting its net so widely over the entire RSS rather than the one licensing basis change at issue, has failed on all three points.

III. CONCLUSION

For the reasons set forth above, CRC's request for a hearing and intervenor status does not satisfy the requirements of 10 C.F.R. § 2.714. Accordingly, CRC's petition should be dismissed.

Respectfully submitted,



David A. Repka
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005-3502
(202) 371-5726

Lillian M. Cuoco
NORTHEAST UTILITIES SERVICE COMPANY
107 Selden Street
Berlin, Connecticut 06037

ATTORNEYS FOR NORTHEAST NUCLEAR
ENERGY COMPANY

Dated in Washington, D.C.
this 20th day of July, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NORTHEAST NUCLEAR ENERGY COMPANY'S SUPPLEMENTAL ANSWER REGARDING STANDING ISSUES (RECIRCULATION SPRAY SYSTEM MATTER)," in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 20th day of July, 1998. In addition, for those parties marked by an asterisk (*), a courtesy copy has been provided this same day by e-mail.

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

Thomas S. Moore*
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemaking and Adjudications
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Dr. Charles N. Kelber*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Richard F. Cole*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Richard G. Bachmann, Esq.*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David A. Repka
Winston & Strawn
Counsel for Northeast Nuclear Energy Company