

DOCKETED  
USNRC 27, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'98 JUL 28 A10:44

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

SEAL OF THE NRC  
RECEIVED  
ADJUTANT GENERAL

In the Matter of )  
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NORTHEAST NUCLEAR ENERGY COMPANY )  
 )  
(Millstone Nuclear Power Station, )  
Unit No. 3 )

Docket No. 50-423-LA

NRC STAFF'S RESPONSE TO CRC SUPPLEMENT  
TO INTERVENTION PETITION (RSS) ADDRESSING STANDING

INTRODUCTION

In accordance with the June 15, 1998 Order of the Atomic Safety and Licensing Board<sup>1</sup> (Board), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the July 6, 1998 Supplement to its petition to intervene filed by the Citizens Regulatory Commission (CRC). For the reasons set forth below, the Staff submits that CRC has not demonstrated its standing to intervene in this matter, as required by 10 C.F.R. § 2.714; accordingly, its petition for leave to intervene should be denied.

BACKGROUND

On April 23, 1998, CRC filed its "Citizens Regulatory Commission Petition for Leave to Intervene" with the Commission. The Petition was in response to a proposed license amendment concerning the recirculation spray system (RSS). On April 29, 1998, an Atomic Safety and Licensing Board (Board) was established to preside over the proceeding. By Memorandum and

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<sup>1</sup> By Motion dated July 15, 1998, the Staff requested an additional week, to July 27, 1998, to respond to the standing issue. The Board granted the Motion on July 16, 1998.

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Order dated May 7, 1998, the Board directed Applicant Northeast Nuclear Energy Company (NNECO) and the Staff to file answers to CRC's Petition. NNECO filed its answer on May 22, 1998;<sup>2</sup> the Staff filed its response on May 27, 1998.<sup>3</sup> By Order dated June 15, 1998, the Board permitted CRC to amend its Petition to address any shortcomings, and directed CRC to file a supplement to its Petition containing its proffered contentions. Both actions were to be completed by July 6, 1998. The Board further provided that NNECO's and the Staff's responses to CRC's amendment addressing its standing would be due on July 20, 1998<sup>4</sup>. *Id.* Responses to CRC's supplement proffering contentions would be due on July 27, 1998. *Id.* On July 6, 1998, CRC filed its Supplement, consisting of two proposed contentions and the affidavits of Clarence O. Reynolds and Joseph H. Besade (unsigned), which addressed standing. ("Affidavits")

#### DISCUSSION

##### CRC Has Failed to Establish Standing to Intervene

CRC has failed to establish its standing to intervene in this proceeding in that it has not shown an "injury in fact" to its interests or an interest of its members that is fairly traceable to the license amendment request.

In supplementing its Petition, CRC has provided the Affidavits of Clarence O. Reynolds and Joseph H. Besade, which state that they are members of CRC and have authorized CRC to

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<sup>2</sup> Northeast Nuclear Energy Company's Answer to Request for a Hearing and Petition to Intervene.

<sup>3</sup> NRC Staff's Response to Citizens Regulatory Commission's Petition to Intervene (Staff's Response).

represent them in this proceeding. Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Georgia Institute of Technology*, (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

There is nothing in either Messrs. Reynolds' or Besade's Affidavit<sup>5</sup> that demonstrates they possess standing in their individual capacities. In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. The alleged interest must be concrete and particularized, fairly traceable to the challenged action, and likely to be redressed by a favorable decision. *Georgia Power Company* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993) *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Moreover, the Commission has ruled that absent situations involving an obvious potential for offsite consequences (construction or operation of the reactor itself, or major alterations to the facility), 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).

As noted above, CRC has attempted to cure the defects of its original Petition by supplying the Affidavits of two of its members, Messrs. Reynolds and Besade. Although CRC has addressed one defect of its original petition, by having members authorize CRC to represent them,

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<sup>5</sup> With the sole exception of the names and addresses of the affiants, the two affidavits are identical.

it still has not shown that an injury in fact would be caused by the issuance of the amendment. See Staff's Response at 6-7. CRC does not address standing in its Supplement, but merely relies on the Affidavits. The Affidavits, however, do not demonstrate that some specific "injury in fact" will result from the action taken. With regard to the amendment at issue, the Affidavits merely refer to "critical modifications to the RSS, itself a critical safety system at Millstone Nuclear Power Generating Station, which modifications have not been tested to determine if they are fully functional." Affidavits at ¶ 9. Messrs. Reynolds and Besade also assert that approval of the amendment "will have the effect of reducing safety margins," and will impact them "*should an accident result from the reduced safety margins.*" Affidavits at ¶ 10 (emphasis added).

As stated in the Staff's Response, however, the proposed amendment would permit NNECO to revise its safety analysis report to include the analysis supporting the elimination of the RSS direct injection path of cooling water in the event of a loss of coolant accident. Staff's Response at 7. Whatever "safety margins" CRC believes could be impacted by the license amendment, it is clear that changes to a system that is used only during a *post*-accident scenario could not possibly have any effect on the chances of that accident occurring. Moreover the Affidavits contain nothing to even indicate that the amendment has the potential for causing offsite consequences, and thus an "injury in fact." CRC, through its Affidavits, therefore, has failed to demonstrate standing in this proceeding.

CONCLUSION

CRC has failed to establish its standing to intervene in this proceeding by not showing an "injury in fact" to the interests of any of its members. Therefore, CRC's Petition should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Bachmann", with a long horizontal line extending to the right.

Richard G. Bachmann  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 27th day of July 1998

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OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF  
Docket No. 50-423-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO CRC SUPPLEMENT TO INTERVENTION PETITION (RSS) ADDRESSING STANDING" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 27th day of July, 1998:

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Adjudicatory File (2)  
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U.S. Nuclear Regulatory Commission  
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A handwritten signature in black ink, appearing to read 'R. G. Bachmann', with a long horizontal flourish extending to the right.

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