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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

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In the Matter of

NORTHEAST NUCLEAR ENERGY
COMPANY

(Millstone Nuclear Power
Station, Unit No. 3)

Docket No. 50-423-LA-2

ASLBP No. 98-743-03-LA

September 2, 1998

MEMORANDUM AND ORDER
(Resolving Standing Issue)

In response to the Commission's hearing notice, the Petitioner, Citizens Regulatory Commission ("CRC"), filed an intervention petition to oppose the application of Northeast Nuclear Energy Company ("Applicant"), for an operating license amendment for Millstone Unit 3 to "add a new sump pump subsystem to address groundwater inleakage through the containment basement," 63 Fed. Reg. 19,974 (1998). The Applicant and the NRC Staff challenge CRC's standing to intervene.

The same Petitioner previously filed another intervention petition in response to an earlier hearing notice regarding the Applicant's amendment request for a design change to the

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recirculation spray system ("RSS") at the same facility. In LBP-98-20, 48 NRC __, __ (slip op. at 8-14) (Aug. 25, 1998), we found CRC had standing to intervene in that license amendment proceeding. CRC's intervention petition in the instant proceeding is essentially identical to its earlier petition even though the current proceeding involves a completely different license amendment. For the reasons set forth below, we conclude that CRC has failed to establish its standing to intervene in this proceeding.

I. Background

As explained in the Applicant's no significant hazard analysis set out in the hearing notice and in the license amendment application, the Millstone containment substructure is encased within a waterproof rubber membrane that is connected to sumps located in the building housing the Engineered Safety Features ("ESF"). The original plant design relied upon the waterproof membrane to ensure that groundwater inleakage was minimal and would not impact safety-related structures and components. Millstone, therefore, had only nonsafety-related sump pumps to pump groundwater from the sumps in the ESF building. As nonsafety-related equipment, the sump pumps were not powered from the emergency busses and were not accessible to plant personnel during a design basis loss of coolant accident.

Thus, the pumps could not be assumed to be available for mitigating such a design basis accident.

According to the amendment application, a recent restart review revealed that the waterproof membrane has degraded allowing groundwater inleakage. The leakage has the potential to flood the ESF building sumps if the existing nonsafety-related sump pumps fail to operate. Further, if the sumps are not pumped out, the groundwater leakage eventually could affect both trains of the RSS. In a filing providing supplemental information to the amendment application, the Applicant indicates that RSS pump operability could be affected in 138 days from ESF building sump overflow. Because the existing nonsafety-related sump pumps cannot be credited to operate during accident and post-accident conditions, the Applicant has installed two independent, safety-related, air driven sump pumps in the ESF building to eliminate the potential for groundwater inleakage that could affect the RSS pumps. Each air driven motor pump is powered by a portable nonsafety-related air compressor using permanent connections located outside the ESF building so the connections are accessible during post accident conditions. The compressors are housed in designated locations, maintained and periodically tested to ensure their availability, and will be connected subsequent to an accident when sump pump operation is required. The current license amendment seeks to revise the Millstone Unit

3 licensing basis to add to the existing sump pump system this new sump pump subsystem in the Final Safety Analysis Report.

As in the case of the earlier intervention petition in LBP-98-20, 48 NRC at ___ (slip op. at 4), CRC's petition here reiterates that it is an organization of citizens residing in southeastern Connecticut whose members are concerned about the safety of Millstone. Along with a supplement to the intervention petition containing its contentions, CRC filed another affidavit of its member Joseph H. Besade, who has authorized CRC to represent him in this proceeding. According to the affidavit, the affiant lives with his family about two miles from the Applicant's facility within the area where the Applicant is required to provide protective actions in the event of an accident with offsite consequences. The affidavit states that the affiant could be impacted directly by such an accident.

In its petition, CRC once again asserts that the instant license amendment involves issues that are critical to the safe operation of Millstone Unit 3 and, therefore, directly impact the health and safety of its members. It repeats that the RSS at Millstone is a critical safety system and that the failure of the RSS could be catastrophic. CRC also restates its claim that for the past two years the Applicant regularly has permitted the use of faulty calculations with respect to systems at Millstone and that the Applicant has used inadequate procedures, methods, and

analyses of safety systems. The petition again claims that the Applicant has long been aware of problems associated with the Millstone RSS and that the NRC has acknowledged that the facility has been permitted to operate with an inoperable RSS. CRC's petition recounts as well that the failure of the Applicant and the NRC to ensure complete operability of the Millstone RSS in the past has jeopardized the health, safety, and welfare of the organization's members. The instant CRC petition repeats the account from its earlier petition of the March 1998 test by the Applicant of a modification to the RSS that resulted in serious damage to the system's pumps because of the poor design and review of the planned modification. Finally, the petition reprints the same claims from its previous petition that over the past two years the Applicant has compromised safety at the facility in the interest of schedule driven efforts to obtain restart approval and that the Applicant continues to harass and intimidate as well as retaliate and discriminate against employees raising safety concerns.

CRC draws the same conclusion from the recited circumstances in the instant petition as it did from those in its earlier petition in LBP-98-20, 47 NRC at ___ (slip op. at 5), except here CRC substitutes the words "Engineered Safety Features" in place of "RSS." Thus, CRC asserts that it has no confidence that the Applicant has properly and adequately analyzed the ESF at

Millstone and, therefore, approval of the license amendment will adversely impact the health and safety of its members. In support of this claim, the affidavit of the CRC member accompanying the CRC intervention filings states that the proposed license amendment involves modifications crucial to the operation of the safety critical RSS as well as modifications that concern the integrity of the containment basemat. The affiant asserts that the appropriateness and sufficiency of these modifications has not been fully determined so that approval of the amendment, without adequate and appropriate analysis, will have the effect of reducing safety margins. He claims, therefore, that the amendment will impact him in the event an accident results from the reduced safety margins.

II. Analysis

Pursuant to section 189a of the Atomic Energy Act and section 2.714(a)(1) of the NRC's regulations, the Commission must grant a hearing in a proceeding to amend a reactor operating license upon the request of any person "whose interest may be affected." 42 U.S.C § 2239(a)(1)(A); 10 C.F.R. § 2.714(a)(1). The Commission's regulations further provide that an intervention petition "shall set forth with particularity the interest of the petitioner in the proceeding [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene." 10 C.F.R. §

2.714(a)(2). In determining whether a petitioner has set forth a sufficient "interest" within the meaning of the Atomic Energy Act and the agency's regulation to intervene as of right in an NRC licensing proceeding, the Commission long ago held that contemporaneous judicial concepts of standing are to be used.

Portland General Electric Co. (Pebble Spring Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976).

To establish standing, the petitioner must assert an actual or threatened, concrete and particularized injury, i.e., an injury in fact, that is fairly traceable to the challenged action and likely to be addressed by a favorable decision. Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC __, __ (slip op. at 5) (July 17, 1998); Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993). The injury also must be to an interest arguably within the zone of interests protected by the statutes governing NRC proceedings, the Atomic Energy Act and the National Environmental Policy Act of 1969. Quivira, CLI-98-11, 48 NRC at __ (slip op. at 5); Perry, CLI-93-21, 38 NRC at 92. This same showing is required to demonstrate standing regardless of whether the petitioner is an individual or a

membership organization seeking to intervene in its own right. Georgia Tech, CLI-95-12, 42 NRC at 115. But when a membership organization requests intervention as the representative of its members, the organization must show that an individual member has standing to participate and has authorized the organization to represent him. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC __, __ (slip op. at 4) (July 29, 1998); Georgia Tech, CLI-95-12, 42 NRC at 115.

Further, the organization must demonstrate that the interests it seeks to protect are germane to the purpose of the organization and neither the claim alleged nor the relief sought necessitate the participation of an individual member in the proceeding. Private Fuel Storage, CLI-98-13, 48 NRC at __ (slip op. at 4).

As in its intervention filing in LBP-98-20, 48 NRC at __ (slip op. at 8), CRC does not seek to intervene in the instant proceeding in its own right but only as the representative of its members. CRC, therefore, has proffered the affidavit of one of its members authorizing it to represent him in this proceeding. In challenging CRC's standing to intervene, the Applicant and the Staff argue that the organization has failed to demonstrate any harm or injury to any CRC member resulting from the license amendment at issue. Further, they argue that CRC may not rely upon the presumption that the residence of one of its members in close proximity to the Millstone facility confers standing upon the organization because the challenged license amendment in this

proceeding presents no obvious potential for offsite consequences to the environment and CRC has made no showing to the contrary.

The Applicant and the Staff are correct that CRC's assertion regarding the residence of one of its members in the immediate vicinity of Millstone is insufficient, by itself, to confer standing on the organization. In order for a petitioner to avail itself of the presumption found in agency precedents that nearby residence to a nuclear power plant confers standing, the license amendment at issue in the proceeding must present an "obvious potential for offsite consequences." Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 330 (1989). See Perry, CLI-93-21, 38 NRC at 95. Here, even assuming the instant amendment to add a safety-related sump pump subsystem to the existing sump pump system in the ESF building at Millstone somehow presents the potential for offsite environmental consequences, that potential is anything but obvious.

Because the residence presumption is unavailable to CRC to establish its standing, CRC must "allege some specific 'injury in fact' that will result from the action taken." St. Lucie, CLI-89-21, 30 NRC at 330. Even construing CRC's intervention petition in a light most favorable to the petitioner as Commission precedent directs, Georgia Tech, CLI-95-12, 42 NRC at 115, CRC has failed to demonstrate how the injury it asserts is caused by the license amendment at issue. As in its earlier petition in LBP-98-20, 48 NRC at __ (slip op. at 8-9), CRC

alleges harm in the event of an accident with offsite consequences to the health and safety of its members residing near the Applicant's facility. And, as in the case of its earlier petition, an injury to the health and safety of its members is an adequate allegation of harm to meet the injury in fact element of the test for standing. But the assertion of an injury without also establishing the causal link to the challenged license amendment is insufficient to establish CRC's standing to intervene.

As the Commission has stated, the determination whether a petitioner's asserted injury is fairly traceable to the proposed action "is not dependent on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible." Sequoyah Fuels, CLI-94-12, 40 NRC at 75. Here, CRC has asserted no plausible link between its member's health and safety and the challenged amendment. CRC has made no showing of an offsite injury that plausibly results from the installation of new safety-related sump pumps in the ESF building sumps. Rather, the instant CRC petition, because it merely repeats the contents of CRC's earlier petition, is aimed primarily at the Millstone recirculation spray system, the subject of the license amendment in LBP-90-20, 48 NRC at ___ (slip op. at 45) (Aug. 25, 1998). The CRC petition is not focused, as it should be, on the sump pump subsystem that is the subject of the license amendment in this proceeding.

The recitation in CRC's petition of the Applicant's general lack of management and engineering competence and unsatisfactory past history in dealing with the Millstone RSS is insufficient to demonstrate that an accident with offsite consequences is likely to be caused by the installation of a safety-related sump pump subsystem at Millstone. Similarly, the claims in the affidavit of Joseph H. Besade that the license amendment involves modifications critical to the operation of the RSS as well as modifications regarding the integrity of the containment basemat that have not been analyzed adequately does not demonstrate, without a great deal more, how an accident with offsite consequences results from the installation of a new sump pump subsystem designed to prevent any failure of the RSS. At a bare minimum, CRC must show how the installation of the new safety-related sump pump subsystem fails to address or improperly addresses the problem of groundwater inleakage and how that deficiency will lead to offsite consequences. CRC's intervention filings make no such showing.

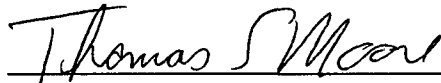
III. Conclusion

For the foregoing reasons, we find that Petitioner, CRC, lacks sufficient interest within the meaning of section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1)(A), and section 2.714(a) of the Commission's regulations, 10 C.F.R. § 2.714(a), to intervene in this license amendment proceeding. Accordingly, CRC's intervention petition is denied and the proceeding is terminated.

Pursuant to 10 C.F.R. § 2.714a, the Petitioner, within 10 days of service of this Memorandum and Order, may appeal the Order to the Commission by filing a notice of appeal and accompanying brief.

It is so ORDERED.

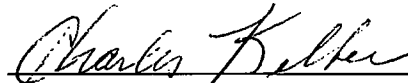
THE ATOMIC SAFETY AND
LICENSING BOARD



Thomas S. Moore, Chairman
Administrative Judge



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Dr. Charles N. Kelber
Administrative Judge

Rockville, Maryland
September 2, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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NORTHEAST NUCLEAR ENERGY COMPANY

(Millstone Nuclear Power Station,
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Docket No.(s) 50-423-LA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-98-22) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)50-423-LA-2
LB MEMO & ORDER (LBP-98-22)

Dated at Rockville, Md. this
2 day of September 1998

Adrian T. Byrdson
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