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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 JUL 28 P4:06

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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

Docket No. 50-423-LA-2

NRC STAFF'S RESPONSE TO CRC SUPPLEMENT
TO INTERVENTION PETITION REGARDING CONTENTIONS

INTRODUCTION

In accordance with the June 16, 1998 Order of the Atomic Safety and Licensing Board (Board), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the July 7, 1998 Supplement to the Petition to Intervene filed by the Citizens Regulatory Commission (CRC) (Supplement). For the reasons set forth below, CRC fails to offer an admissible contention, as required by 10 C.F.R. § 2.714; accordingly, its Petition for Leave to Intervene should be denied.

BACKGROUND

On April 1, 1998, Northeast Nuclear Energy Company (NNECO), the Licensee, submitted a request for a license amendment pursuant to 10 C.F.R. § 50.90 for Millstone Nuclear Power Station, Unit No. 3. "Letter to U.S. Nuclear Regulatory Commission from M.L. Bowling, Jr., Northeast Nuclear Energy Company, April 1, 1998, with attachments (Submittal). On April 22, 1998, the NRC published a *Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and*

Opportunity for a Hearing. 63 Fed. Reg. 19964-19966, 19974-19975. The Notice provided a description of the amendment request:

The proposed revision to the Millstone Unit 3 licensing basis would add a new sump pump subsystem to address groundwater inleakage through the containment basemat.

63 Fed. Reg. 19974.

In response to this notice CRC filed its "Citizens Regulatory Commission Petition for Leave to Intervene" (Petition) with the Commission on May 22, 1998. On June 1, 1998, an Atomic Safety and Licensing Board (Board) was established to preside over the proceeding. The Licensee responded to the Petition on June 5, 1998.¹ The Staff responded on June 10, 1998.² By Order dated June 16, 1998, the Board permitted CRC to file an amendment its Petition to address any shortcomings with respect to standing and other matters, and directed CRC to file a supplement to its Petition containing its proffered contentions. Both actions were to be completed by July 7, 1998. Order at 2-3. The Board further provided that the Licensee's and Staff's responses to CRC's amendment addressing its standing would be due on July 21, 1998. *Id.* Responses to CRC's supplement proffering contentions would be due on July 28, 1998. *Id.* On July 7, 1998, CRC filed its Supplement, consisting of five proposed contentions and the affidavit of Joseph H. Besade addressing standing. On July 21, 1998, the Licensee and Staff

¹ "Northeast Nuclear Energy Company's Answer to Request for a Hearing and Petition to Intervene: Sump Pump Subsystem Approval."

² "NRC Staff's Response to Citizens Regulatory Commission's Petition to Intervene."

responded to CRC's Supplement as it related to standing.³ The Staff, below, responds to the five contentions proposed by CRC in its Supplement.

DISCUSSION

A. Legal Standards

The Commission's Rules of Practice at 10 C.F.R. § 2.714 set forth the requirements for the admission of contentions. In addition to demonstrating the required interest, a petitioner must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.714 in order to be permitted to participate in a licensing proceeding as a party. 10 C.F.R. § 2.714(b)(1); *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 117 (1995).

For a contention to be admitted, it must meet the standards set forth in 10 C.F.R. § 2.714(b)(2), which provide that each contention must consist of "a specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

- (i) A brief explanation of the bases of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which supports the contention . . . together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact.

³ "Northeast Nuclear Energy Company's Supplemental Answer Regarding Standing Issues (Sump Pump Subsystem Approval)," "NRC Staff's Response to CRC Supplement to Intervention Petition Addressing Standing."

10 C.F.R. § 2.714(b)(2). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. 10 C.F.R. § 2.714(d)(2)(i); *Arizona Public Service Company* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). Further, a contention must also be dismissed where the "contention, if proven, would be of no consequence . . . because it would not entitle [the] petitioner to relief." 10 C.F.R. § 2.714(d)(2)(ii).

Pursuant to section 2.714, a petitioner must provide a "clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention." *Palo Verde*, CLI-91-12, 34 NRC at 155-56. As summarized by the Commission:

For a contention to be admissible, a petitioner must refer to the specific portion of the license application being challenged, state the issue of fact or law associated with that portion, and provide a "basis" of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or expert opinions. The basis must be sufficient to show that a genuine dispute exists on a material issue of fact or law.

Yankee Nuclear, CLI-96-7, 43 NRC at 248-49. The purpose of the basis requirement of section 2.714(b)(2) is (1) to assure that at the pleading stage the hearing process is not improperly invoked, (2) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend or oppose. *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

Moreover, licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given to [them]." *Public Service Co.*

(Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316. 3 NRC 167, 170 (1976). It is well established under Commission precedent that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's Notice of Opportunity for Hearing. *Id.* at 170-71; *see also Commonwealth Edison Company* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426-27 (1980); *Commonwealth Edison Company* (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980).

As demonstrated below, none of the five contentions proffered by CRC meet the above standards. CRC's Petition should, therefore, be denied.

B. None of CRC's Five Contentions Meet the Requirements of 10 C.F.R. § 2.714(b)(2)

In its Supplement, CRC proposes five contentions. None of these contentions meet the requirements of 10 C.F.R. § 2.714(b)(2). Each contention is discussed below.

CRC's first contention provides:

The proposed dewatering system does not meet criteria for a permanent dewatering system because one of the components, the diesel-powered air compressor, is not safety-related.

Supplement at 1. As a basis for this contention CRC claims that the Licensee's proposed dewatering system does not meet Standard Review Plan (SRP) section 3.4.1, despite the Licensee's statement that it does. *Id.* According to CRC section 3.4.1 provides that such systems should be designed as a safety-related system. *Id.* Since, according to CRC, the diesel-powered air compressor is not safety-related, the license amendment should not be granted. *Id.*

Even if the Licensee's proposed dewatering system, however, did not meet the criterion of section 3.4.1 of the SRP, this fact, alone does not provide adequate support for CRC's

contention. The Standard Review Plan provides guidance to the Staff reviewers in performing safety reviews of licensee applications. *See* Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, NUREG-0800. It is not a requirement in of itself. Thus, CRC, cannot rely on the mere fact that the Licensee's dewatering system does not meet the criterion of an SRP section as support for its contention. CRC should explain, with reference to expert opinion and documentation it intends to rely upon at hearing, why the fact that the diesel compressor is not safety-related indicates that the license amendment application should be denied. CRC has not done so in its Supplement. Contention 1, therefore, lacks an adequate basis and fails to demonstrate that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.714(b)(2). Accordingly, it should be dismissed.

CRC's second contention provides:

The proposed amendment contradicts the current FSAR Supplement at 2. As a basis for its proposed contention, CRC states that, based on certain changes to section 3.4.1.2 of the Licensee's FSAR, it appears that the licensee is seeking approval to design and install a permanent dewatering system while retaining a contradictory assertion in the FSAR. *Id.* This contradiction apparently comes from the fact the proposed change would provide that there is no dewatering system for adverse hydrological events, as opposed to its current statement that there is no dewatering system for Millstone. *See id.* Although confusing, it appears that CRC is asserting that the Licensee's proposed change to section 3.4.1.2 of the FSAR to reflect the addition of sump pumps to address the issue of groundwater inleakage through the containment basemat does not accurately reflect this addition.

CRC's second contention is outside the scope of the proceeding. In Attachment 2 of the Licensee's Submittal, the Licensee states that section 3.4.1.2 Permanent Dewatering System is being modified to clarify that no safety-related dewatering systems are needed for adverse hydrological events. Submittal, Attachment 2 at 1. The section currently states that there is no safety-related dewatering system for Millstone 3. *See id.* Since the Licensee has proposed in the current amendment request to install a safety-related dewatering system (*i.e.*, sump pumps), a clarification of this statement in the FSAR was necessary. The Licensee's amendment application does not address the use of a safety-related dewatering system for adverse hydrological events, but rather a change to the FSAR to reflect the addition of safety-related sump pumps to address the issue of groundwater inleakage in the RSS sumps. *See generally* Submittal. Contention 2 is, therefore, outside the scope of this proceeding. Accordingly, it should be dismissed.

CRC's next contention (contention III) states:

The proposed amendment fails to correct the false assertion in MNPS-s FSAR that "[t]he containment and all other Category I structures are protected from ground water inflow by a waterproof membrane below the groundwater level."

Supplement at 2. As a basis for this contention, CRC asserts that section 2.4.14 of the FSAR provides "in pertinent part" that "[t]he containment and all other Category I structures are protected from groundwater inflow by a waterproof membrane below the ground water level." *Id.* Section 2.4.14 of the FSAR, however, does not contain the statement CRC cites in its Petition. Accordingly, Contention 3 should be dismissed for failure to provide a sufficient basis and for failure to show that a genuine dispute exists on a material issue of law or fact.

10 C.F.R. § 2.714(b)(2).

Section 2.5.4.6.1 of the FSAR does contain the statement CRC attributes to section 2.4.14. *See* Submittal, Attachment 2 (mark-up of FSAR section 2.5.4.6.1.). In its mark-up of section 2.5.4.6.1, the Licensee provides a reference to section 9.3.3.2.4.1 which discusses the augmentation of the membrane for post DBA [Design Basis Accident]. *Id.* The proposed revision of section 9.3.3.2.4 includes a new section, 9.3.3.2.4.1 that discusses the safety-related sump pumps. *Id.* (mark-up of section 9.3.3.2.4 and “insert C.”). CRC does not even acknowledge the Licensee’s proposed change to section 2.5.4.6.1 or explain why, in light of the Licensee’s proposed changes, the statement in section 2.5.4.6.1 contradicts the Licensee’s acknowledgment that degradation of the waterproof membrane has been detected. Accordingly, Contention 3 should be dismissed for failure to provide a sufficient basis and for failure to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact.

10 C.F.R. § 2.714(b)(2).

CRC’s fourth contention provides:

Materials submitted in support of the proposed license amendment fail to demonstrate that the air-driven pumps are adequate to maintain operability for all four RSS pumps under all climatic conditions.

Supplement at 3. The only basis CRC provides for this contention is the statement that the Licensee failed to demonstrate that the air-driven pumps are adequate to maintain operability of all four RSS pumps under all climatic conditions. *Id.* According to CRC, the FSAR states that the controlling event for flooding at the site is a storm surge resulting from the occurrence of the “probable maximum hurricane.” *Id.*

Contention 4 lacks an adequate basis. Although CRC does not provide a specific reference to the section in the FSAR that discusses the probable maximum hurricane, it appears

CRC is referring to section 2.5.4.6.1 which contains a reference to another section in the FSAR, section 2.4.5.2, Flood Design Considerations. *See* Submittal, Attachment 2, mark-up of section 2.5.4.6.1. The change to section 2.5.4.6.1 that is the subject of the Licensee's amendment request, however, is unrelated to and does not address flood design considerations. In fact, that portion of section 2.5.4.6.1 that referenced the probable maximum hurricane is unchanged by the Licensee's proposed modifications to the FSAR. *See id.* CRC's contention, therefore, is outside the scope of this proceeding.

In addition, CRC fails to support its assertion that the sump pumps that are the subject of the amendment request are required to maintain operability of the RSS pumps under all climatic conditions. CRC does not explain what it means by "all climatic conditions" other than referencing flooding. As discussed above, however, the Licensee requested an amendment to change the FSAR to reflect the addition of safety-related sump pumps to address the issue of groundwater inleakage in the RSS sumps. The Licensee's request does not discuss a change to the FSAR to maintain operability of the RSS pumps under flooding conditions. Thus, CRC's fourth contention is outside the scope of this proceeding and fails to show that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.714(b)(2). It should, therefore, be dismissed.

CRC's fifth, and final, contention provides:

The proposed amendment fails to demonstrate adequate review of the conditions which may have developed sub-containment basemat prior to detection of groundwater inleakage in the estimated amount of 750 to 1000 gallons per day.

Supplement at 3. As a basis for this contention, CRC asserts that the Licensee failed to consider the effects of the inleakage of groundwater on the sub-containment basemat. *Id.* CRC also

asserts that the FSAR assumes certain subsurface soil and groundwater conditions at the site which may no longer be present due to the groundwater leakage. *Id.* at 4. Finally, CRC asserts that the Licensee has a history of supplying incorrect calculations and information in its assessments of safety systems. *Id.*

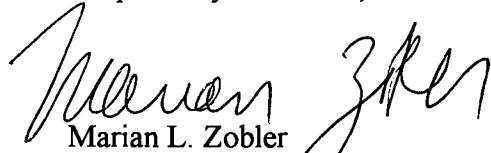
None of the bases CRC provides for its fifth contention are adequate. As previously discussed, the Licensee requested an amendment to change the FSAR to reflect the addition of safety-related sump pumps to address the issue of groundwater leakage in the RSS sumps. Thus, a contention relating to the condition of the subcontainment basemat is outside the scope of this proceeding and should be dismissed. In addition, CRC's unsupported allegations that the Licensee has a history and a propensity to supply incorrect information, without explaining how this history relates to the license amendment at issue, is insufficient to support its contention. *See Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 120 (1995)*. Thus, CRC's fifth contention is outside the scope of this proceeding and fails to show that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.714(b)(2). It should, therefore, be dismissed.

Based on the above, none of the contentions CRC proffers in this proceeding are admissible. Thus, pursuant to 10 C.F.R. § 2.714(b), CRC's Petition for Leave to Intervene should be denied.

CONCLUSION

As demonstrated above, CRC has failed to provide at least one admissible contention in this proceeding. Its Petition for Leave to Intervene should, therefore, be denied.

Respectfully submitted,


Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of July 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO CRC SUPPLEMENT TO INTERVENTION PETITION REGARDING CONTENTIONS" 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 28th day of July, 1998:

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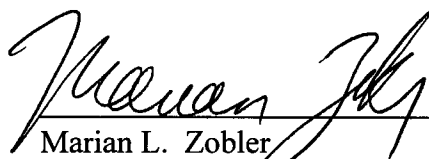
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