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July 21, 1998

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF GENERAL COUNSEL  
RULEMAKING, COMPLIANCE AND  
ADJUDICATION STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
Northeast Nuclear Energy Company )  
 )  
(Millstone Nuclear Power Station, )  
Unit No. 3) )

Docket No. 50-423-LA-2

NORTHEAST NUCLEAR ENERGY COMPANY'S  
SUPPLEMENTAL ANSWER REGARDING STANDING ISSUES  
(SUMP PUMP SUBSYSTEM APPROVAL)

I. INTRODUCTION

In accordance with the Order of the Atomic Safety and Licensing Board ("Licensing Board") issued on June 16, 1998, Northeast Nuclear Energy Company ("NNECO") hereby replies in part to the Supplement to Intervention Petition ("Supplemented Petition") filed on July 7, 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 16th Order.

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## II. DISCUSSION

The Supplemented Petition amends CRC's initial petition of May 21, 1998.<sup>1/</sup> CRC is seeking a formal hearing, and intervenor status, with respect to NNECO's license amendment application related to installation of safety-related sump pumps in the Millstone Unit 3 Engineered Safety Feature ("ESF") building sumps to address groundwater inleakage.<sup>2/</sup> NNECO responded to CRC's initial petition on June 5, 1998 ("NNECO's Response"), opposing CRC's petition for lack of a demonstration of CRC's standing.

### A. Organizational Standing

The Supplemented Petition addresses the defect with respect to CRC's organizational standing identified in NNECO's Response by providing an affidavit from one member who lives near Millstone Station and who has authorized CRC to represent his interests in this proceeding. CRC, however, would still need to show that the individual member has standing 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, in a license amendment proceeding such as this one, the Commission requires a particularized showing of concrete harm or injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision in the

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<sup>1/</sup> CRC's petition responds to a notice of proposed action, opportunity for hearing, and proposed "no significant hazards consideration" determination published in the *Federal Register* on April 22, 1998 (63 Fed. Reg. 19964, 19974).

<sup>2/</sup> NNECO (M.L. Bowling, Jr.) Letter to NRC (Document Control Desk), B17141, "Proposed License Amendment Request // ESF Building Sump Pumping Subsystem (PLAR 3-98-2)," Docket No. 50-423, April 1, 1998 ("Application").

proceeding. Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); see also Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992). Where standing is based on nearby residence, the Commission has held that petitioners must allege a clear potential for offsite consequences resulting from that amendment. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

In the Supplemented Petition and the attached affidavit, CRC has not attempted to directly address this standing issue. Rather, through its “proposed contentions,” CRC alleges problems with the “dewatering system”, the updated Final Safety Analysis Report (“UFSAR”), and the existence of the groundwater leakage that the sump pumps are intended to address. In its most favorable light, this aspect of the Supplemented Petition might be treated as CRC’s showing of a potential injury for purposes of establishing standing. However, even here, CRC does not show a chain of causation leading from these alleged problems, through the sump pumps, to potential offsite consequences that would give rise to standing.

NNECO has previously acknowledged that unabated groundwater leakage may affect operability of the Recirculation Spray System (“RSS”) (NNECO Response, at page 3). However, the sump pump subsystem at issue is designed precisely to address *and prevent* an inoperable RSS. Likewise, the licensing basis change included in the amendment application is intended to show the leakage issue, the volume of water involved, and how it is addressed. The mere fact of groundwater leakage -- the central concern articulated in the proposed contentions -- does not equate to an offsite injury traceable to this amendment or redressable in this proceeding.

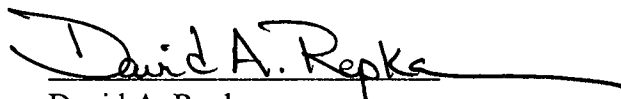
It is still incumbent upon CRC to demonstrate, with particularity, how offsite consequences could result from the amendment at issue. Cf. Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72-74 (1994) (focusing on whether alleged injury is

“concrete and particularized” and whether there is a “realistic threat” of a direct injury). At a minimum, CRC must plausibly articulate how the amendment does not adequately redress the problem that gave rise to the design change involved and how that will lead to offsite harm. Cf. Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 2), LBP-92-28, 36 NRC 202, 210 (1992). NNECO does not believe that the allegations to date meet that requirement.

### 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. Alternatively, to the extent the Licensing Board concludes that CRC does have representational standing, CRC’s request remains subject to the admission of one contention. NNECO will respond to this issue in a further reply to CRC’s proposed contentions on the schedule established by the Licensing Board.

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 21st 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 (SUMP PUMP SUBSYSTEM APPROVAL)," in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 21st 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  
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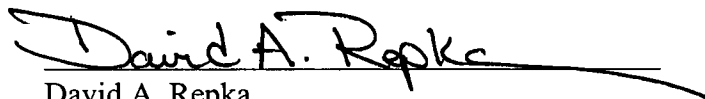
Dr. Charles N. Kelber\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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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 line extending to the right.

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