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LBP-98-28

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '98 NOV 12 P2:37

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges: OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

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

ASLBP No. 98-740-02-LA

November 12, 1998

MEMORANDUM AND ORDER  
(Ruling on Contentions)

The Licensing Board held in LBP-98-20, 48 NRC 87 (1998), that the Petitioner, Citizens Regulatory Commission ("CRC"), had standing to intervene in this license amendment proceeding. The Commission's Rules of Practice also require, however, that in order to be admitted as a party to the proceeding CRC must file at least one admissible contention. See 10 C.F.R. § 2.714(b)(1). In a timely filed supplement to its intervention petition, CRC has proffered two contentions seeking to satisfy the Commission's contention requirement.

The Applicant, Northeast Nuclear Energy Company, and the NRC Staff oppose the admission of CRC's contentions. Because we find

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that CRC's proffered contentions do not satisfy the regulatory requirements for admission, we must deny CRC's intervention petition.

#### I. Background

The background of this license amendment proceeding, in which the NRC Staff has made a final no significant hazards consideration determination, is detailed in LBP-98-20 and need not be repeated fully here. It suffices to note that the Applicant seeks an amendment to the licensing design basis of its Millstone Unit 3 to eliminate the requirement that the recirculation spray system ("RSS") inject directly into the reactor coolant system following a design basis accident. The elimination of the design basis direct injection flow path involves no physical modifications of the RSS. Also, the operability of the affected valves for the direct injection alignments remains unchanged and these paths are still available for contingencies beyond the design basis.

The change in function of the RSS that is the subject of the instant license amendment application was actually made by the Applicant in 1986 pursuant to 10 C.F.R. § 50.59. That provision permits a licensee to make such a change without an amendment if it does not involve a revision of the facility's technical specifications or an unreviewed safety question. A recent restart review revealed, however, that the change should not have been made under section 50.59 because it in fact involved an

unreviewed safety question. The Applicant seeks the license amendment to rectify its earlier error.

As stated in LBP-98-20, 48 NRC at 39:

The original 1986 change was made because during pre-operational testing in 1985 excessive tube vibration in the RSS heat exchangers occurred during certain modes of operation. The Applicant determined that excessive tube vibration could occur when heat exchanger flows exceeded 4600 gallons per minute. Because its system analysis demonstrated that direct injection was not required for the recirculation phase to ensure minimum flow for core cooling, the Applicant eliminated RSS direct injection thereby reducing heat exchanger flow and tube vibration. The Applicant also revised its emergency operating procedures to reflect the functional change in the RSS, although direct injection procedures were retained as a contingency action.

## II. CRC's Contentions

CRC's first contention states:

The license amendment assumes a certain proportion of the recirculation spray system (RSS) coolant will supply the containment spray ring during the LOCA [loss of coolant accident] design basis accident; however, since the systems have not been tested, it has not been determined that they will be functional, that is, that the flow will be divided as postulated.

As part of the basis for the first contention, CRC initially asserts that the Applicant submitted only a computer analysis to support its postulation that a certain proportion of the RSS coolant will be supplied to the containment spray ring and the emergency core cooling system ("ECCS") so that the RSS will function as intended during the LOCA design basis accident. The

second paragraph of CRC's basis then states that "[t]he amendment entails a physical reduction of the flow within the system by half, modifications of piping, a reduction in the number of spray ring holes; the remaining system flow is to supply the ECCS, including direct injection to the coolant loops." Next, referencing the Applicant's February 16, 1998 integrated safety analysis for the Millstone Unit 3 RSS, CRC claims the analysis shows that the Applicant has made 18 modifications to the RSS since the Applicant's system flow testing in 1985.<sup>1</sup> CRC's basis then lists the 8 modifications made prior to the 1996 Unit 3 shutdown and the 10 modifications that were to be completed prior to restart.

Further, CRC's basis alleges that the Applicant has a history and propensity for supplying incorrect calculations and information for computer modeling. It claims that, in the past, faulty calculations and incorrect information supplied to Westinghouse and Stone and Webster contributed to problems with the RSS and that such deficiencies contributed significantly to the well-known March 1998 incident in which severe vibrations damaged expansion joints and cooling pumps. According to CRC,

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<sup>1</sup>CRC did not include the RSS integrated safety analysis as an exhibit to its contentions. Because the Applicant similarly referenced the integrated safety analysis but did not include it as an exhibit in answering CRC's contentions, we directed the Applicant during the telephone prehearing conference to file a copy with the Licensing Board. That analysis evaluates, both individually and on an integrated basis, the various modifications to the current RSS that have been implemented since the Staff's Safety Evaluation Report for Millstone Unit 3.

the Independent Corrective Action Verification Program for Millstone identified programmatic problems in these same areas. The basis then declares that if the calculations and information for computer simulation are incorrect, the simulation is inadequate and fails to take into account the potential harm to the containment, including structure fracture because of an insufficient reduction in pressure. In conclusion, the basis states that the Applicant has submitted no documentation establishing it has conducted actual testing of the system, other than pump flow tests, or that any of its contractors have conducted actual testing or modeling of the system in place. In contrast to the lack of testing of the RSS system, CRC asserts that the Applicant hired contractors to conduct simulations on two models when air-binding issues were discovered in the charging system.

CRC's second contention states:

Reduction by half in the RSS flow results in a major change in capacity which requires actual testing.

As the basis for this contention, CRC alleges that the Applicant concluded it was necessary to reduce the number of spray holes in the containment spray ring to create the estimated flow requirements. According to CRC, the flow requirements must assure adequate reduction in containment pressure within the prescribed time and remove airborne contaminants from the containment atmosphere. CRC's basis then concludes by once again

asserting the Applicant has submitted no documentation establishing that either it or its contractors conducted actual testing or modeling of the system.

### III. Analysis

In order to be admissible, the Commission's Rules of Practice provide that a proffered contention "must consist of a specific statement of the issue of law or fact to be raised or controverted." 10 C.F.R. § 2.714(b)(2). The rules further require that the petitioner provide "[a] brief explanation of the bases of the contention" and "[a] concise statement of the alleged facts or expert opinion which support the contention . . . together with references to those specific sources and documents . . . on which the petitioner intends to rely to establish those facts or expert opinion." 10 C.F.R. § 2.714(b)(2)(i) & (ii). The regulations also obligate the petitioner to set forth "[s]ufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact." 10 C.F.R. § 2.714(b)(2)(iii). In this regard, the petitioner's "showing must include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief." Id. A contention that fails to meet any

one of these requirements must be rejected. 10 C.F.R. § 2.714(d)(2)(i); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). Similarly, a proffered contention that, even if proven, would be of no consequence because it would not entitle the petitioner to any relief must also be dismissed. 10 C.F.R. § 2.714(d)(2)(ii).

In addition to the specific regulatory requirements that a proffered contention must meet, a corollary to an overarching principle of Commission adjudication adds another stricture on contention admissibility. In all agency licensing proceedings, the scope of the matters the Licensing Board is empowered to hear is set forth in the hearing notice initiating the proceeding. Consequently, a petitioner's proffered contentions must be confined to the subjects delineated by the hearing notice and contentions concerning matters outside that defined scope cannot be admitted. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

In opposing the admission of the CRC's proffered contentions, the Applicant and the Staff argue that both contentions are beyond the scope of the proceeding and are therefore inadmissible. Further, they assert that CRC's contentions fail to meet the Commission's regulatory requirements for contentions. In assessing these arguments, because both

contentions purport to address the adequacy of the spray ring function of the RSS due to the Applicant's failure to test the system, we treat them together and need not differentiate between the two. Indeed, there is no real difference between the proffered contentions; CRC's second contention essentially is subsumed by the first.

The Applicant and the Staff are correct that CRC's contentions are outside the scope of this license amendment proceeding. Although exceedingly brief, the Commission's hearing notice initiating this proceeding leaves no doubt that the design basis function change in the RSS system is the sole subject of this license amendment proceeding. Contrary to the unsupported assertions in the bases of CRC's contentions, that change involved no physical modifications to the RSS. Thus, only contentions addressing the narrow subject of the design basis functional change can be admitted. Here, the CRC contentions address a number of physical changes and components of the RSS system but not the change in the design basis function of the RSS. Accordingly, CRC's contentions are inadmissible.

To be sure the line for permitted challenges to the requested amendment in this proceeding is blurred by the fact that (1) the Applicant erroneously made the change in the design basis function of the RSS in 1986 without obtaining a license amendment; and (2) the Applicant has made a large number of other changes, including physical modifications, to the RSS system since that time. Notwithstanding the Applicant's absolutist



position that all subsequent changes to the RSS are out of bounds, those changes to the RSS could play a part in contentions challenging the instant amendment if the functional change in the design basis was shown to be degraded or otherwise negatively affected by one or more of those changes. Here, however, CRC's contentions and supporting bases do not make the essential connection between the instant license amendment and any of the Applicant's other changes to the RSS system. Thus, even though the subsequent changes to the RSS system are not entirely out of bounds (as the Applicant would have it), none of those changes are properly invoked by CRC's contentions.

Moreover, even assuming the Petitioner's contentions could be found to fall within the scope of this license amendment proceeding, the proffered contentions still would have to be rejected for failing to meet the contention pleading requirements of the Commission's Rules of Practice. For example, the CRC contentions fail to identify what portion or portions of the Applicant's license amendment application are deficient as required by 10 C.F.R. § 2.714(b)(2)(iii). Similarly, the contentions do not provide an adequate explanation of the Petitioner's reasons for disputing these deficiencies.

The same conclusion must be reached if the Petitioner's contentions are viewed as challenging the completeness of the Applicant's amendment application for failing to include the results of tests of the RSS. The CRC contentions fail to identify the specific tests that the Petitioner claims should be

performed and the reasons each test should be performed. In this regard, CRC's contentions nowhere mention much less challenge the sufficiency of that portion of the Applicant's license amendment application dealing with testing. Likewise, even though the Petitioner seemingly relies upon the Applicant's integrated safety analysis of the Millstone Unit 3 RSS, CRC fails to address the purported inadequacy of the test results contained in that analysis.<sup>2</sup>

Moreover, the Petitioner's broad challenge to the effect that the Millstone RSS is inadequate because it has not been tested is also plainly deficient. Nowhere does the Petitioner provide any expert opinion that the asserted testing is necessary. Without expert support, CRC's recitation of past instances of alleged Applicant mistakes in connection with calculations and computer modeling is an insufficient basis to support its contention. Thus, the CRC contentions also fail to meet the admissibility requirements of the Commission's regulations.

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<sup>2</sup>The integrated safety analysis contains a section setting forth the Applicant's conclusions on the effect the various modifications to the RSS have had on the continuing validity of the initial preoperational testing of the Millstone Unit 3 RSS. For the modifications that were still in the process of being completed at the time the integrated safety analysis was issued, the Applicant committed to a testing program for them prior to restart. As previously discussed, the Petitioner's proffered contentions fail to detail the specific tests it believes should be performed on the RSS in contravention of the pleading requirements of the Commission's regulations. Nevertheless, it appears that the testing the Petitioner seeks may already have been performed so CRC's proffered contentions, even if proven, would not entitle the Petitioner to any relief. See 10 C.F.R. § 2.714(d)(2)(ii).

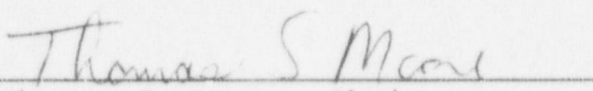
IV. Conclusion

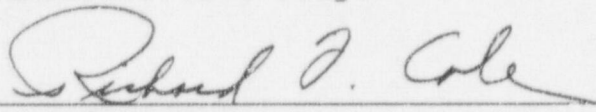
For the foregoing reasons, the proffered contentions of the Petitioner, Citizens Regulatory Commission, are outside the scope of the instant amendment proceeding and, in addition, fail to meet the regulatory requirements for admissibility. Accordingly, the Petitioner's contentions must be rejected. Because the Petitioner has no admissible contentions, pursuant to 10 C.F.R. § 2.714(b)(1) CRC is precluded from participating as a party in the license amendment proceeding. CRC's intervention petition is, therefore, dismissed and the proceeding is terminated.


Pursuant to 10 C.F.R. § 2.714a, the Petitioner, within ten (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

  
Dr. Richard F. Cole  
Administrative Judge

  
Dr. Charles N. Kelber  
Administrative Judge

Rockville, Maryland  
November 12, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTHEAST NUCLEAR ENERGY COMPANY

(Millstone Nuclear Power Station,  
Unit No. 3)

Docket No.(s) 50-423-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing M&O (LBP-98-28) ...TERMINATING 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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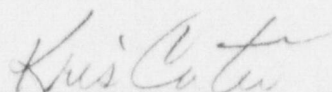
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Docket No. (s) 50-423-LA  
M&O (LBP-98-28) ...TERMINATING

Dated at Rockville, Md. this  
12 day of November 1998



Office of the Secretary of the Commission