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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '87 FEB 20 A10:27

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
	)	
Vermont Yankee Nuclear Power	)	Docket No. 50-271-OLA
Power Corporation	)	
	)	
(Vermont Yankee Nuclear Power	)	
Station)	)	

NRC STAFF RESPONSE TO PETITION TO INTERVENE  
FILED BY NEW ENGLAND COALITION ON NUCLEAR POLLUTION

I. INTRODUCTION

On December 31, 1986, the Nuclear Regulatory Commission published in the Federal Register (51 Fed. Reg. 47,324) a notice entitled "Vermont Yankee Nuclear Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The notice concerned Vermont Yankee Nuclear Power Corporation's (the Licensee) April 26, 1986 application for an amendment to its operating license for the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont. The proposed amendment would revise the Vermont Yankee Technical Specifications to authorize the Licensee to increase the storage capacity of the spent fuel pool from 2000 fuel assemblies to 2870 assemblies.

The notice also stated that on June 18, 1986, the Commission had issued a Bi-weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations (51 Fed. Reg. 22,226), which included notice concerning the proposed amendment of the Vermont Yankee license. The notice of June 18, 1986 included the

Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination and offered an opportunity for the Licensee to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene. It failed, however, to provide the notice required by the Commission's regulation implementing Section 134 of the Nuclear Waste Policy Act of 1982, i.e. 10 C.F.R. § 2.1107. Section 2.1107 requires that the notice of proposed action published in the Federal Register concerning an application for an amendment to allow expansion of spent fuel pool storage capacity identify the availability of hybrid hearing procedures. The Commission's notice of December 31, 1986 supplied the information regarding hybrid hearing procedures required by 10 C.F.R. § 2.1107 and stated that any person whose interest might be affected and who wished to invoke the hybrid hearing procedures should file a written petition for leave to intervene.

On January 29, 1987, New England Coalition on Nuclear Pollution (NECNP) filed a "Request for Hearing and Petition to Intervene" (petition). The NRC staff's response to NECNP's petition is set forth below.

## II. DISCUSSION

NECNP petitions for a hybrid hearing. The requirements of 10 C.F.R. § 2.714 are applicable to hybrid hearings. 10 C.F.R. § 2.1107. Only parties may request the hybrid hearing procedures, 10 C.F.R. § 2.1107; however, NECNP's request is pursuant to the Commission's renote of December 31, 1986, limiting timely requests to those seeking to invoke the hybrid procedures.

A. The Standards for Intervention

1. The "Interest" Requirements of 10 C.F.R. § 2.714

Section 189a of the Atomic Energy Act of 1954, as amended, 42

U.S.C. § 2239(a), provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Section 2.714(a)(2) of the Commission's Rules of Practice, 10 C.F.R. § 2.714(a)(2), requires that a petition to intervene in a Commission proceeding set forth with particularity:

- (1) the interest of the petitioner in the proceeding;
- (2) how that interest may be affected by the results of the proceeding; and
- (3) the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

In order for intervention to be granted, the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing must find that the petition satisfies these standards. <sup>1/</sup>

In determining whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the Com-

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<sup>1/</sup> Intervention may also be granted as a matter of discretion to a petitioner who is not entitled to intervention as a matter of right if the petitioner can show that the Commission's specific criteria weigh in favor of discretionary intervention. See, Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Since NECNP has not addressed these criteria, which is its burden (Nuclear Engineering Company (Sheffield, Illinois, Low-Level Radiation Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978)), discretionary intervention will not be discussed further.

mission's Rules of Practice is present, the Commission has held that contemporaneous judicial concepts of standing are controlling. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NPC 610, 613-14 (1976). Thus, there must be a showing (1) that the action being challenged could cause "injury-in-fact" to the person seeking to intervene <sup>2/</sup> and (2) that such injury is arguably within the "zone of interests" protected by the Atomic Energy Act <sup>3/</sup> or the National Environmental Policy Act. <sup>4/</sup> Id. See also, Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970).

The Appeal Board has ruled that the close proximity of a petitioner's residence, standing alone, is sufficient to satisfy the interest requirements. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). Though no firm outer boundary for this zone of interest has been determined, distances of up to 50 miles have been accepted by the Appeal Board as conferring standing upon particular petitioners. See, e.g.,

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<sup>2/</sup> "Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on a petitioner will not confer standing. See, Exxon Nuclear Company (Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations) CLI-77-24, 6 NRC 525, 531 (1977); Pebble Springs, CLI-76-27, supra, 4 NRC at 613. Rather the asserted harm must have some particular effect on a petitioner, Ten Applications, CLI-77-24, supra, and a petitioner must have some direct stake in the outcome of the proceeding. See, Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

<sup>3/</sup> 42 U.S.C. § 2011 et seq.

<sup>4/</sup> 42 U.S.C. § 4321 et seq.

Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 at n.4 (1977); Cf. Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190, 193, reconsideration denied, ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973).

An organization may gain standing to intervene based on injury to itself. Edlow International Company, CLI-76-6, 3 NRC 563, 572-74 (1976). If the organization seeks standing on its own behalf, it must establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. Ten. Applications, CLI-77-24, supra, at 531. On the other hand, an organization may establish standing through members of the organization who have an interest that may be affected by the outcome of the proceeding. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). An organization claiming that its standing is based on the interests of its members must identify one or more individual members (by name and address) whose interests may be affected and give some concrete indication that such members have authorized the organization to represent their interests in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973); Dusquesne Light Company (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 at n.2 (1973). Specific

representational authorization of a member with personal standing is not required where the sole or primary purpose of the petitioning organization is to oppose nuclear power in general or the particular facility at bar. Allens Creek, ALAB-535, supra, at 396. <sup>5/</sup>

2. The "Aspect" Requirements of 10 C.F.R. § 2.714

In addition to demonstrating "interest", a petitioner must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2). <sup>6/</sup> While there is little guidance in NRC case law concerning the meaning of "aspect" as the term is used in 10 C.F.R.

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<sup>5/</sup> Further, under Section 2.713 of the Commission's Rules of Practice, a "partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law". 10 C.F.R. § 2.713(b) (emphasis added). Thus, where an organization is represented by one of its members, the member must demonstrate authorization by that organization to represent it. It is clear that groups may not represent persons other than their own members, and individuals may not assert the interest of other persons. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483 (1977); Watts Bar, ALAB-413, supra at 1421; Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474, n.1 (1978). There is, under the Atomic Energy Act and the Commission's regulations, no provision for private attorneys general. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976); Long Island Lighting Company, LBP-77-11, supra, at 483.

<sup>6/</sup> 10 C.F.R. § 2.714 also requires the petitioner to file ". . . a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." This section further provides: "A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party." The NRC staff will respond to the contentions set forth in the supplements after their receipt. Accordingly, nothing said herein by the Staff regarding the petitioners "aspects" is intended to apply in any way to satisfaction of the 10 C.F.R. § 2.714 contention requirements.

§ 2.714, it appears that a petitioner may satisfy this requirement by identifying general potential effects of the licensing action or areas of concern which are within the scope of matters that may be considered in the proceeding. <sup>7/</sup> See, North Anna, ALAB-146, supra, at 633; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), Licensing Board "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference", dated September 21, 1979, slip op. at 6 (unpublished Order).

B. NECNP's Petition

1. Interest and Standing

NECNP sets forth its interest by asserting that approximately one hundred of its 450 members live in the Battleboro-Putney area and that over fifty of the members live within ten miles of the Vermont Yankee Nuclear Power Station. Petition at 4. Regarding injury to its members, NECNP states that the health and safety of these members in particular would be jeopardized by the requested amendment. Id. NECNP's assertions regarding the interest of its members and the alleged injury to those interests should the application be granted are not sufficient to satisfy the criteria, identified above, for establishing the interest and standing of organizations. NECNP fails to establish how the organization itself will be injured by the proposed action. Edlow International Company, CLI-76-6, supra, at 572-74; Ten Applications,

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<sup>7/</sup> The subject matter of the proceeding for purposes of identification of "aspects" relates to the question of public health and safety of the proposed action (issuance of the amendments) and not the procedural determination made by the Commission staff concerning whether or not the proposed action involves a "significant hazards consideration." See, 48 Fed. Reg. 7744 (March 6, 1986).

CLI-77-24, supra, at 531. Nor does it, in the alternative, demonstrate standing through its members, since it does not identify the name and address of a single member who resides within close proximity of the Vermont Yankee Nuclear Power Station (North Anna, ALAB-522, supra) and who has authorized NECNP to represent his or her interests in the proceeding. Allens Creek, ALAB-535, supra, at 393-97.

NECNP can remedy these deficiencies by amending its petition to demonstrate standing either based on injury to the organization itself or based on the standing of one of its member (i.e. the identification of the name and address of a single member indicating residence within close proximity to the Vermont Yankee facility; see, North Anna, ALAB-522, supra, as well as the requisite authorization by that individual that NECNP represents his or her interest). <sup>8/</sup> See, Allens Creek, ALAB-535, supra).

## 2. Specific Aspects of the Subject Matter of the Proceeding

NECNP's petition identifies an aspect of this proceeding on which it wishes to intervene. That aspect concerns "the increased risk to public health and safety associated with more tightly packing the fuel assemblies in the pool, the increased potential for a radioactive release

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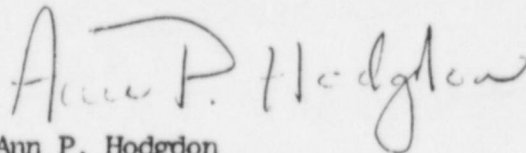
<sup>8/</sup> It appears that NECNP may be able to establish standing in the instant proceeding since it was admitted as an intervenor in the proceeding conducted on the licensee's previous application for an amendment to expand its spent fuel pool capacity by re-racking. The fact that NECNP has been admitted in another proceeding does not excuse its failure to demonstrate that the requirements for intervention are met for this proceeding. Its prior participation is not sufficient to establish its interest with regard to a separate proceeding for the same facility. See, Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 454-55 (1975); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), LBP-73-26, 6 AEC 612, 616 (1973).

from the pool associated with a reactor accident, and the great increase in potential accident consequences caused by a 40% increase of radioactive inventory, most significantly Cesium, in the pool." Petition at 5. Accordingly, the Staff believes that NECNP's petition properly sets forth a specific aspect of the proposed amendment on which it wishes to intervene.

### III. CONCLUSION

For the reasons stated above, the NRC staff believes that NECNP's petition for leave to intervene satisfies the "aspect" requirements of 10 C.F.R. § 2.714 but fails to satisfy standing requirements. The Staff urges that NECNP be given a reasonable period of time to cure this deficiency.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ann P. Hodgdon".

Ann P. Hodgdon  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 18th day of February, 1987