

19334

DOCKETED
USNRC July 21, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

98 JUL 21 P3:26

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

NRC STAFF'S RESPONSE TO CRC SUPPLEMENT
TO INTERVENTION PETITION ADDRESSING STANDING

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 its petition to intervene filed by the Citizens Regulatory Commission (CRC).¹ For the reasons set forth below, the Staff submits that CRC has not demonstrated its standing to intervene in this matter, as required by 10 C.F.R. § 2.714; accordingly, its petition for leave to intervene should be denied.

BACKGROUND

On May 22, 1998, CRC filed its "Citizens Regulatory Commission Petition for Leave to Intervene" with the Commission. The Petition was in response to a proposed license amendment concerning the addition of a sump pump subsystem. On June 1, 1998, an Atomic Safety and Licensing Board (Board) was established to preside over the proceeding. Northeast Nuclear

¹ CRC Supplement to Intervention Petition (Supplement).

2507

Energy Company (NNECO) responded to the Petition on June 5, 1998;² the Staff filed its response on June 10, 1998.³ By Order dated June 16, 1998, the Board permitted CRC to file an amendment to 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 NNECO's and the 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 four proposed contentions and the affidavit of Joseph H. Besade, which addressed standing. See "Affidavit" attached to Supplement (Besade Affidavit).

DISCUSSION

CRC Has Failed to Establish Standing to Intervene

CRC has failed to establish its standing to intervene in this proceeding in that it has not shown an "injury in fact" to its interests or an interest of its members that is fairly traceable to the license amendment request.

In supplementing its Petition, CRC has provided the affidavit of Joseph H. Besade, who states that he is a member of CRC and has authorized CRC to represent him in this proceeding. Where the organization relies upon the interests of its members to confer standing upon it, the

² Northeast Nuclear Energy Company's Answer to Request for a Hearing and Petition to Intervene: Sump Pump Subsystem Approval.

³ NRC Staff's Response to Citizens Regulatory Commission's Petition to Intervene (Staff's Response).

organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Georgia Institute of Technology*, (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

There is nothing in Mr. Besade's affidavit that demonstrates he possesses standing in his individual capacity. In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. The alleged interest must be concrete and particularized, fairly traceable to the challenged action, and likely to be redressed by a favorable decision. *Georgia Power Company* (Vogle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Moreover, the Commission has ruled that absent situations involving an obvious potential for offsite consequences (construction or operation of the reactor itself, or major alterations to the facility), a petitioner *must* allege some specific "injury in fact" that will result from the action taken. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

CRC, in its Supplement, attempts to cure the defects of its original Petition by supplying an affidavit from one of its members, Mr. Joseph M Besade, who has authorized CRC to represent him. Although CRC has addressed one defect of its original petition (See Staff Response at 5), it still has not shown that an injury in fact would be caused by the issuance of the amendment. See Staff Response at 6-7.

CRC does not address standing in its Supplement, but merely relies on Mr. Besade's affidavit. Mr. Besade's affidavit, however, does not demonstrate that some specific "injury in

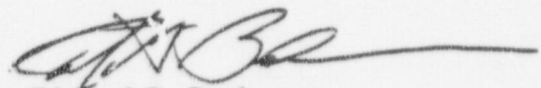
fact" will result from the action taken. With regard to the amendment at issue, Mr. Besade merely refers to, "modifications which concern the integrity of containment basemat," and asserts, that approval of the amendment "will have the effect of reducing safety margins." Besade Affidavit at ¶¶ 9-10.

As stated in the Staff's Response, however, the proposed amendment would permit NNECO to revise its safety analysis report to include a new sump pump subsystem to address groundwater inleakage through the containment basemat. Staff's Response at 6-7. Mr. Besade's affidavit contains nothing to even indicate that the amendment has the potential for causing offsite consequences, and thus an "injury in fact." CRC, through Mr. Besade's Affidavit, therefore, has failed to demonstrate standing in this proceeding.

CONCLUSION

CRC has failed to establish its standing to intervene in this proceeding by not showing an "injury in fact" to the interests of any of its members. Therefore, CRC's Petition should be denied.

Respectfully submitted,



Richard G. Bachmann
Counsel for NRC Staff

Dated at Rockville, Maryland
this 21st day of July 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '98 JUL 21 P3:26

In the Matter of)

NORTHEAST NUCLEAR ENERGY COMPANY)

(Millstone Nuclear Power Station,
Unit No. 3))

Docket No. 50-423-LA-2

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO CRC SUPPLEMENT TO INTERVENTION PETITION ADDRESSING STANDING" 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 21st day of July, 1998:

Thomas S. Moore, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Charles N. Kelber
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Adjudicatory File (2)
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

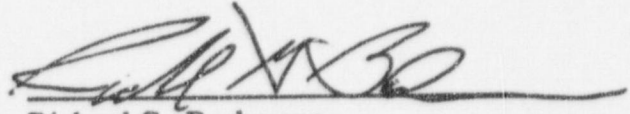
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lillian M. Cuoco, Esq.*
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141

Nancy Burton, Esq.*
147 Cross Highway
Redding Ridge, CT 06876

Office of Commission Appellate
Adjudication
Mail Stop O-16G15
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David A. Repka, Esq.*
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005

A handwritten signature in dark ink, appearing to read 'Richard G. Bachmann', written over a horizontal line.

Richard G. Bachmann
Counsel for NRC Staff