

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 09/13/00

COMMISSIONERS:

SERVED 09/13/00

Richard A. Meserve, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
NORTHEAST NUCLEAR ENERGY CO.)
)
and)
)
CONSOLIDATED EDISON COMPANY OF NEW YORK,)
INC.)
)
(Millstone Nuclear Power Station, Units No. 1, 2,)
and 3))
_____)

Docket Nos. 50-245-LT
50-336-LT
50-423-LT

CLI-00-18

MEMORANDUM AND ORDER

In this case, two citizen groups, the Connecticut Coalition Against Millstone and the Long Island Coalition Against Millstone, have filed a petition to intervene and request for a hearing under 10 C.F.R. Part 2, Subpart M, on an application for an "indirect transfer" of the operating licenses for the Millstone Nuclear Power Station, Units 1, 2 and 3. See 65 Fed. Reg. 18,381 (April 7, 2000). The NRC staff approved the transfer on August 22, 2000, subject to the outcome of this adjudicatory proceeding.⁽¹⁾ We now deny the petition.

The Millstone transfer application arises out of a proposed merger between Consolidated Edison, Inc. (CEI), and Northeast Utilities (NU) into one entity known as the "new" CEI. Id. NU is the parent of several subsidiary corporations that hold NRC licenses to own or operate the three Millstone power reactors. Id. One of those subsidiaries, Northeast Nuclear Energy Company (NNECO), is "exclusively authorized" to operate the reactors. Id. The merger will make the new CEI an "indirect parent" of all NU subsidiaries, including NNECO, but NNECO will "continue to have exclusive responsibility for the management, operation, and maintenance of Units 1, 2, and 3." Id.

Under Subpart M, petitioners challenging a license transfer must demonstrate their "standing" to intervene and must proffer "issues" suitable for a hearing. See 10 C.F.R. §§ 2.1306(b)(3), 2.1308(a) (standing); 10 C.F.R. § 2.1306(b)(2) (issues). The "standing" inquiry examines whether petitioners' "interest will be affected" by the license transfer. See 10 C.F.R. § 2.1308(a)(2). The "issues" inquiry considers whether petitioners' grievances are "within the scope" of the proceeding and "relevant to the findings the NRC must make." See 10 C.F.R. § 1306(b)(2). Our rules call on petitioners to "specify ... the facts" supporting their standing (10 C.F.R. § 1306(b)(3)) and to "provide a concise statement of the alleged facts or expert opinion" supporting their issues, "together with references to the sources and documents on which [they] intend[] to rely" (10 C.F.R. § 2.1306(b)(2)(iii)).

Specificity, in short, is the hallmark of Subpart M. Neither "notice pleading," nor "the filing of a vague, unparticularized issue," nor the submission of "general assertions or conclusions," suffices to trigger a license transfer hearing. See GPU Nuclear (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 202-03 (2000); accord Northern States Power Co. (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 and 2, Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC , , slip op. at 5-6 (Aug. 1, 2000). Here, petitioners have filed a cursory four-page pleading that fails to provide the degree of specificity required by our threshold standing and admissibility standards.

Petitioners claim standing on the ground that their organizations represent member-families residing within 5 to 10 miles of the Millstone reactors. To seek "representational standing" on behalf of members, however, an organizational petitioner must show "how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify [the] member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of [the] member." Oyster Creek, 51 NRC at 202 (citing cases). Petitioners have done none of this. Their petition to intervene does state an intent to supply affidavits supporting their standing "under separate cover." But we have received no such affidavits. Petitioners also did not take advantage of our rule, 10 C.F.R. § 2.1307(b), permitting

them to reply to the transfer applicants' opposition to standing. Petitioners' failure to substantiate their standing as required by our rules is fatal to their petition to intervene and request for a hearing.

Rather than trying to meet the standing requirements prescribed in our rules and in our cases, petitioners instead point out that an NRC Licensing Board has recognized their standing to challenge a proposed license amendment seeking an expansion of Millstone's spent fuel pool. But petitioners' standing to intervene in another case -- involving an addition to the physical facility -- tells us nothing about their standing in *this case*, which involves simply a change in corporate structure a couple of levels above the current plant operator. See *Texas Util. Elec. Co. (Comanche Peak Steam Elec. Station, Unit 2)*, CLI-93-4, 37 NRC 156, 163 (1993) ("a prospective petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate since a petitioner's status can change over time and the bases for its standing in an earlier proceeding may no longer obtain"). The transfer application at issue here proposes no change in the Millstone licensees, no change in the Millstone facility, no change in its operation, no change in its personnel, and no change in its financing. It is far from obvious how NU's corporate restructuring would affect petitioners' interests. Given petitioners' failure to advance a plausible claim of harm, we cannot recognize their standing to seek an agency hearing.

Petitioners' "issues" similarly fall short. Petitioners claim initially that the Commission lacks legal authority, and lacks sufficient information, to pass on the indirect license transfer arising out of the NU-CEI merger. But there can be no serious question about the Commission's legal power to approve the "indirect transfer" of control over NRC operating licenses. Both the Atomic Energy Act and NRC rules explicitly confer such power. See 42 U.S.C. § 2234; 10 C.F.R. § 50.80(a). Nor have petitioners made out a persuasive claim of lack of information. The question in indirect transfer cases, as the Commission said when announcing the opportunity for a hearing in this case, is whether the proposed shift in ultimate corporate control will "affect" a licensee's existing financial and technical qualifications. See 65 Fed. Reg. at 18,381. The transfer applicants need provide only information bearing on the inquiry at hand, and not more extensive information that may be necessary in other contexts. Cf. *Monticello*, 52 NRC at , slip op. at 10-11. Petitioners do not specify what relevant information is lacking here -- other than a missing address that has now been supplied -- that would be necessary to enable the Commission to assess the NU-CEI transfer application.

Petitioners do say that they are "devoted to the permanent closure" of the Millstone reactors and argue in general terms that ongoing environmental wrongs and mismanagement should preclude Commission approval of the NU-CEI license transfer. But general allegations of mismanagement and environmental degradation do not trigger a license transfer hearing under Subpart M, which as we noted above requires petitioners to plead specific grievances supported by facts, experts, or documents. Moreover, the license transfer application at issue here has little or nothing to do with how Millstone is now run. Millstone's operational safety, while vitally important and subject to ongoing agency oversight, does not turn on whether the Commission grants or denies the NU-CEI license transfer application. Either way, the current licensed operator, NNECO, will remain in charge of the facility. Petitioners' operational and environmental claims are therefore not relevant to the license transfer application. "A license transfer proceeding is not a forum for a full review of all aspects of current plant operation." *Oyster Creek*, 51 NRC at 213, 214.⁽²⁾

The bottom-line here is that petitioners oppose continued operation of the Millstone reactors and distrust the current Millstone management. That overriding concern of petitioners, however, simply does not bear on whether the NU-CEI merger, and consequent indirect license transfer, contravene NRC rules. Petitioners have provided no reason justifying an adjudicatory hearing in this case.

There is one final matter. On August 28, 2000, petitioners filed a request for a stay of the NRC staff's August 22 order approving the indirect transfer (see note 1, *supra*) and also demanded an "independent investigation of the circumstances surrounding the [staff] decision at issue." We deny the stay application as moot, in view of our decision today that petitioners are not entitled to a hearing, and we see no basis for an independent investigation of the staff order approving the indirect transfer. See *Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, CLI-00-17, 51 NRC (Aug. 30, 2000).

The petition for leave to intervene and the request for a hearing are denied, the application for a stay and the request for an independent investigation are denied, and the proceeding is terminated.

IT IS SO ORDERED.

For the Commission⁽³⁾

[Original signed by Annette L. Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of September, 2000.

1. See *Connecticut Light and Power Co., et al.*, Order Approving Application Regarding Corporate Merger of Consolidated Edison, Inc. and Northeast Utilities (Aug. 22, 2000). Recently, in *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee

Nuclear Power Station), CLI-00-17, 52 NRC (Aug. 30, 2000), we explained the interplay between NRC staff approval of license transfer applications and the Commission's adjudicatory process under Part 2, Subpart M.

2. In addition to the issues discussed in the text, petitioners argue that the Commission's review is "premature" because the NU-CEI merger is not yet consummated and that the Commission ought not consider the indirect transfer of the Indian Point and Seabrook licenses that also are implicated by the merger. These arguments are frivolous. To be meaningful, NRC review of license transfers must precede the actual transfer. Contrary to petitioners' apparent view, the Commission does not believe it sensible or efficient to delay its license transfer reviews pending the action of other reviewing agencies. See Niagara Mohawk Power Corp. (Nine Mile Point, Units 1 and 2), CLI-99-30, 50 NRC 333, 343-44 (1999). As for the Indian Point and Seabrook indirect license transfers, they are not part of this proceeding. They were the subject of separate *Federal Register* notices and were approved by the NRC staff by separate orders. No one sought an adjudicatory hearing on those transfers.

3. Commissioner Dicus was not present for the affirmation of this Order. If she had been present, she would have approved it.