

**RAS 11137**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 02/02/06**

COMMISSIONERS

**SERVED 02/02/06**

Nils J. Diaz, Chairman  
Edward McGaffigan, Jr.  
Jeffrey S. Merrifield  
Gregory B. Jackzo  
Peter B. Lyons

In the Matter of  
  
Nuclear Management Company, LLC  
  
(Monticello Nuclear Generating Plant)

Docket No. 50-263-LR

**CLI-06-06**

**MEMORANDUM AND ORDER**

Before the Commission is an “appeal” by petitioner North American Water Office (“NAWO”), of the Atomic Safety and Licensing Board’s (“Board”) ruling on standing and contention admissibility.<sup>1</sup> That ruling denied NAWO’s petition to intervene in the application of the Nuclear Management Company, LLC (“NMC”) to renew the operating license for its Monticello Nuclear Generating Plant (“MNGP”) in Monticello, Minnesota. NAWO describes itself as an organization formed to educate people about environmental concerns, notably electric utility waste.<sup>2</sup>

On November 11, 2005, NAWO submitted a document to the Board entitled “Appeal of the North American Water Office to the November 1, 2005 Order of the Atomic Safety and Licensing Board Denying Standing and Rejecting Contentions of the North American Water Office in the Above Captioned Matter” (“Appeal”). In the document, less than two pages long,

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<sup>1</sup> LBP-05-31, 62 NRC \_\_\_, slip op. Nov. 1, 2005.

<sup>2</sup> See Request for a Hearing and Petition for Leave to Intervene by the North American Water Office (July 9, 2005), at 1.

NAWO stated that it “appealed” the Board’s November 1, 2005 order, but addressed the Board and asked it to “reconsider.” Thus, it was not clear whether the document was intended as a motion for reconsideration by the Board or an appeal to the Commission.

On December 14, 2005, the Board issued a “Status Report” noting that NRC rules require that a petitioner must first obtain leave from the presiding officer to file a motion for reconsideration.<sup>3</sup> The Board stated that in its view the document must be considered, “if anything,” an appeal of the Board’s decision.<sup>4</sup> The Board referred the matter to the Commission for whatever action we deemed appropriate.<sup>5</sup>

The Board’s underlying ruling found that NAWO had no standing and that it had not offered an admissible contention. Thus, an appeal would have to convince us that NAWO both has standing and has presented at least one litigable contention. We conclude that the appeal states no grounds for the Commission to overrule the Board, for the following reasons:

1. NAWO’s document does not conform to our procedural regulations governing appeals, which provide that a notice of appeal be accompanied by a brief.<sup>6</sup> NAWO’s “appeal” is devoid of legal argument and includes no citation to the record.<sup>7</sup> The lack of a brief is sufficient

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<sup>3</sup> Status Report (Dec. 14, 2005), at 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> See 10 C.F.R. § 2.311(a). We conclude that no further pleading is forthcoming from NAWO. The time for filing an appeal of LBP-05-31 expired on November 14, 2005. Even if NAWO’s “appeal” were intended as a motion for reconsideration, NAWO would have had 10 days from the Board’s ruling on its motion (*e.g.*, the “status report”) to file an appeal. That deadline has also passed.

<sup>7</sup> Both the NRC Staff and NMC declined to submit any substantive response to the arguments in NAWO’s “appeal.” See Letter of David R. Lewis to Administrative Judges informing them that NMC does not intend to respond further (Nov. 22, 2005); Letter of Michael A. Woods to Administrative Judges informing them that the NRC staff does not intend to respond further (Nov. 22, 2005).

reason, without more, to reject NAWO's "appeal."<sup>8</sup>

2. NAWO's "appeal" does not contend that the Board misapplied NRC rules relating to standing. Instead, it argues that the standards the Board used were "rules designed to deny standing and disenfranchise those with legitimate interests."<sup>9</sup>

The NRC generally follows judicial concepts of standing in its own proceedings.<sup>10</sup> The Board found that NAWO had not shown that it, or any of its members, would suffer any concrete or particularized harm from the proposed license renewal. A review of the Board's decision shows that its standing analysis was based on U.S. Supreme Court precedent and was consistent with this agency's practice with respect to standing.<sup>11</sup> Nothing in NAWO's "appeal" suggests that the Board misapplied applicable law relating to standing.

3. Similarly, the "appeal" does not provide the Commission any reason to question the Board's ruling on NAWO's proposed contentions. NAWO does not specify which of its proposed contentions it is pursuing on appeal, but it appears that only proposed Contention 4 (Reactor Aging Problems Will Escape Detection Until Too Late) relates to its argument.<sup>12</sup> The "appeal" states in conclusory fashion that "NAWO brought forward a whole new category of

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<sup>8</sup> See *Texas Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 198 (1993), citing *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 & 2), CLI-92-3, 35 NRC 63, 66 (1992).

<sup>9</sup> Appeal at 2.

<sup>10</sup> See, e.g., *U.S. Dep't. of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 363 (2004); *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992).

<sup>11</sup> See LBP-05-31, 62 NRC \_\_\_, slip op. at 6-8.

<sup>12</sup> NAWO has evidently abandoned the remainder of its proposed contentions, which related to: the no-action alternative, radiation monitoring, security, drinking water safety, the effects of global warming on reactor operations, and severe accident mitigation analysis.

reactor components that had escaped scrutiny in [the] aging management program.”<sup>13</sup> It further argues that the fact that the NRC staff issued a Request for Additional Information (“RAI”) to the applicant concerning some of these components is “irrefutable evidence” of a genuine contention.<sup>14</sup>

The Board reasonably held that the proposed contention was “vague and speculative, and lack[ed] expert opinion, documents, or sources to support it;” that it “present[ed] nothing more than an unsupported conclusion;”<sup>15</sup> and that insofar as the contention related to routine inspections, it fell outside the scope of a license renewal proceeding.<sup>16</sup> Furthermore, we have held repeatedly that the mere issuance of a staff RAI does not establish grounds for a litigable contention.<sup>17</sup> NAWO offers no other argument in defense of its contention, while the Board’s reasoning appears correct on its face.<sup>18</sup>

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<sup>13</sup> Appeal at 2.

<sup>14</sup> *Id.*

<sup>15</sup> LBP-05-31, 62 NRC at \_\_\_, slip op. at 23. See also 10 C.F.R. § 2.309(f)(1)(v).

<sup>16</sup> LBP-05-31, 62 NRC at \_\_\_, slip op. at 23.

<sup>17</sup> See, e.g., *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336-37 (1999).

<sup>18</sup> It should be noted that the use of intemperate and disrespectful rhetoric such as that in NAWO’s “appeal” has no place in filings before the Commission or its Boards. See, e.g., *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 2), ALAB-474, 7 NRC 746, 748-49 (1978); *La. Power & Light Co.* (Waterford Steam Electric Station, Unit 3) ALAB-121, 6 AEC 319, 320 (1973). *Ad hominem* attacks do nothing to advance the petitioner’s interests or the orderly administration of the Commission’s adjudicatory processes, and will not be tolerated.

For the foregoing reasons, NAWO's "appeal" is rejected, and the Board's decision is affirmed.

IT IS SO ORDERED.

For the Commission

***/RA/***

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland  
This 2<sup>nd</sup> day of February, 2006