UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of NORTHEAST NUCLEAR ENERGY CO. (Millstone Nuclear Power Station, Unit No. 2)

Docket No 50-336

LICENSEE NORTHEAST NUCLEAR ENERGY COMPANY'S REPLY TO REQUESTS FOR HEARING AND PETITIONS TO INTERVENE BY M.E. MARUCCI AND EARTHVISION, INC.

In accordance with 10 C.F.R. § 2.714(c), Northeast Nuclear Energy Company ("NNECO"), hereby files its reply to two requests for a hearing and petitions to intervene submitted in response to an Opportunity for Hearing published in the Federal Register on April 28, 1992 (57 Fed. Reg. 17,934) regarding a proposed license amendment. Each of the two petitioners filed petitions requesting a hearing; however, neither of the petitioners meets the standards set forth in the notice or the requirements of 10 C.F.R. § 2.714. Therefore, NNECO requests that the requests for a hearing and petitions to intervene be denied.

II. BACKGROUND

On April 16, 1992, NNECO proposed a Technical Specification revision to govern its use of the spent fuel pool at Millstone Unit No. 2 ("Unit 2"). On April 28, 1992, the Staff proposed to determine that the amendment request involves no significant

hazards consideration, and (consistent with 10 C.F.R. §§ 2.105 and 50.91) published a notice of Opportunity for Hearing.[1/] The notice required that written requests for hearing and petitions for leave to intervene in accordance with 10 C.F.R. § 2.714 be filed by May 28, 1992.

In response to the notice, two persons filed individual requests for a hearing and petitions to intervene with the Commission: M.E. Marucci and Earthvision, Inc. (by P.R. Nowicki). On June 4, 1992, the Staff made a final no significant hazards consideration finding and issued the requested Technical Specification amendment in accordance with 10 C.F.R. § 50.91(a)(4).

NNECO is filing this Response to the above-noted requests for hearing and petitions to intervene pursuant to 10 C.F.R. § 2.714(c) which provides that a party to a proceeding may file an answer to a petition to intervene within ten days after service. Both petitioners served their documents on NNECO by U.S. Mail postmarked May 29, 1992. Service by mail automatically provides NNECO with an additional five days to respond under 10 C.F.R. § 2.710. Thus, a timely response would be due June 15, 1992 (which accounts for the due date falling on a Saturday).

1/ "Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing," 57 Fed. Reg. 17,934 (1992).

III. DISCUSSION

A. The Requirements of 10 C.F.R. § 2.714

The notice of opportunity for hearing requires that "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene . . . in accordance with 10 CFR Part 2." 57 Fed. Reg. 17,934. Pursuant to 10 C.F.R. § 2.714(a):

> (1) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene.
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> * * * *
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> (2) The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section, and the specific aspect or aspects of the subject of the proceeding as to which petitioner wishes to intervene.

Pursuant to 10 C.F.R. § 2.714(d)(1), a petition for leave to intervene must address the following factors:

> (1) The nature of the petitioner's right under the Act to be made a party to the proceeding.
>
> (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

These factors relate to a petitioner's standing to intervene. Judicial concepts of standing will be applied to determine whether a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right. "These concepts require a showing that (a) the action will cause 'injury in fact,' and (b) the injury is arguably within the 'zone of interests' protected by the statute governed by the proceeding." Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983). According to the Licensing Board in The Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Unit No. 1), LBP-92-[illegible], slip op. at 12 (March 18, 1992):

> [T]he asserted injury must be "distinct and palpable"[30] and "particular [and] concrete,"[31] as opposed to being "'conjectural . . . [,] hypothetical,'"[32] or "abstract."[33] . . . Additionally, there must be a causal nexus between the asserted injury and the challenged action.

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30 Warth v. Seldin, 422 U.S. 490, 501 (1975).

31 United States v. Richardson, 418 U.S. 166, 177 (1974).

32 Los Angeles v. Lyons, 461 U.S. 95, 102 (1983).

33 Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. [26] at 40.

B. Geographic Proximity of Residence as a Basis for Standing

This proceeding is a license amendment proceeding within the meaning of Atomic Energy Act § 189.a.(1) (42 U.S.C. § 2239). While residence within fifty miles of a power reactor may support a finding of standing in a full-blown operating license proceeding,[2/] there is precedent in license amendment proceedings, where the effects of a hypothetical accident arising from the subject matter of the amendment are relatively small, for application of a shorter geographical distance for purposes of determining standing.

> The Commission does not allow the [fifty mile] presumption to be applied to all license amendments. It only does so in those instances involving an obvious potential for offsite consequences.

Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 186 (1991).

Thus, in one case involving a license amendment to change the permissible maximum K_{eff} of the fuel pool from 0.90 to 0.95, the Licensing Board held that:

> This case concerns a request for a license amendment and is not controlled by the same standing considerations that govern standing when an operating license is sought. Whatever the risk to the surrounding community from a reactor *and* its associated fuel pool, the risk from the fuel pool alone is less and the distance of residence from the pool for which standing would be appropriate would, accordingly, be less. Consequently, we do not consider residence 43 miles from this plant to be adequate for standing.

2/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1433-35 (1982).

Boston Edison Company (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 99 (1985), aff'd on other grounds, ALAB-816, 22 NRC 461 (1985). Thus, the geographic distance to support a finding of standing is a function of the potential consequences associated with the matter in issue.

The Board in Pilgrim did not find it necessary to comment on how close a residence would need to be to the licensee's facility to confer standing in that matter. However, the Board did note that it was aware of no scenario that would result in exposure of a resident forty-three miles distant to radiation or radioactive releases from the fuel pool. Moreover, the Board noted that, if such an accident scenario did exist, the proposed license amendment would not increase the risk to the petitioner from that accident. Thus, the Board applied a two-tiered approach to establishing a reasonable distance for determining standing regarding a fuel pool amendment: Is there an accident scenario involving the fuel pool that could affect the petitioner? If so, would the proposed amendment arguably increase the risk to the petitioner? Under this approach, if either answer were in the negative, the petitioner does not have sufficient interest in the proceeding to confer standing.

In another case, involving a request for hearing for a purely administrative licensing amendment, the Licensing Board denied a petition to intervene because "the instant licensing action has no effect on any of the petitioner's asserted

interests in preserving her life, health, livelihood, property or the environment. . . . [I]njury to individuals living in reasonable proximity to a plant must be based on a showing of 'a clear potential for offsite consequences' resulting from the challenged action." Supra, LBP-92-4, slip op. at 15-16 (March 18, 1992) (citing Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).) The petitioner in this case lived within 15 miles of the nuclear power plant. The Commission in St. Lucie further required that "[a]bsent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific "injury in fact" that will result from the action taken . . . ." 30 NRC at 329-30.

C. Standing for Organizations

An organization "could establish standing to participate either as an organization or as a representative of one or more members." Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987). In general, to establish organizational standing, the petitioner must demonstrate that the organization itself will be injured, and that the injury is not a generalized grievance shared by all or a large class of citizens. Ibid.

To establish standing as the representative of members who themselves have an interest in the proceeding, "[r]esidence of at

least one member in close proximity to a facility, standing alone, would establish such an interest." Ibid. However, the petitioner must identify the member(s) having the interest and must provide concrete evidence (such as an affidavit) that the member(s) wishes to be represented by the organization. Ibid. Also, the organization must demonstrate that it has authorized a particular representative to represent the organization in the proceeding. Georgia Power Company (Vogtle Electric Generating Plants, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990).

D. M.E. Marucci Does Not Meet the Requirements for Standing to Intervene

An application of the above-stated principles to M.E. Marucci's letter serving as a request for a hearing and petition to intervene demonstrates that the request and petition should be denied. M.E. Marucci has not demonstrated an interest in the proceeding sufficient to be granted intervenor status.

M.E. Marucci's petition does not set forth with particularity her interest in the proceeding, how that interest may be affected by the results of the proceeding, and the reasons why she should be permitted to intervene. Therefore, M.E. Marucci's interest and the nature of her right to be made a party to the proceeding must be based on the distance of her residence from Unit 2 (approximately forty miles).[3/]

3/ Based on the address on M.E. Marucci's petition, NNECO estimates that she resides slightly more than forty, but less than forty-one, miles from Unit 2.

NNECO maintains that M.E. Marucci resides too far away from Unit 2 to support a finding of standing. First, there is no causal nexus between any asserted injury and the license amendment at issue. No postulated design basis scenario would expose a person over forty miles from Unit 2 to radiation or radioactive releases from the fuel pool that would exceed the variability of background radiation.[4/] Moreover, in its no significant hazards consideration determination, the NRC Staff concluded that the Technical Specification amendment in question would not result in (1) a reduction in the margin of safety, (2) the possibility of a new or different kind of accident or (3) a significant increase in the probability or consequences of an accident previously evaluated.[5/] This reflects the fact that the

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4/ Based on NNECO's calculations, the postulated fuel handling and cask drop accidents would be the most severe fuel pool accidents. (See Unit 2 FSAR section 14.7.4.3.1 and Table 14.7.4-1.)

The total dose for these accidents is less than 1 millirem at 40 miles, which is less than the variability of background radiation and less than plausible normal operating release dose consequences allowed at the site boundary under 10 C.F.R. Part 20 and 10 C.F.R. Part 50 Appendix I. This dose was calculated by multiplying the Unit 2 FSAR accident doses by a ratio of X/Q for the FSAR accident dose (calculated by Regulatory Guide 1.145 methods at distances close to the plant) to a X/Q for the worst case meteorology with G stability (calculated using Regulatory Guide 1.111 methods at a distance of 40 miles). See the enclosed affidavit in support of these conclusions.

5/ "Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. 158 to Facility Operating License No. DPR-65, Northeast Nuclear Energy Company, Et Al. Millstone Nuclear Power Station, Unit No. 2 Docket No. 50-336," June 4, 1992, at 5-6.

amendment simply imposes additional restrictions on the use of the Unit 2 fuel pool. Thus, even if an accident scenario existed prior to the amendment which could affect a resident at a distance of 40 miles, the proposed license amendment would not increase the risk to the resident from such an accident.

For the reasons that no design basis fuel pool accident scenario could affect M.E. Marucci at a distance forty miles from Unit 2, and that the amendment in question would not have an effect on the risk to M.E. Marucci from any accident, M.E. Marucci does not have standing to intervene.

E. EARTHVISION, Inc., Does Not Meet the Requirements for Standing to Intervene

An application of the above-stated principles to EARTHVISION's letter request for a hearing and petition to intervene demonstrates that the request and petition should be denied. EARTHVISION, as represented by P.R. Nowicki, has not demonstrated an interest in the proceeding sufficient to be granted intervenor status.

EARTHVISION's petition does not set forth with particularity its interest in the proceeding, how that interest may be affected by the results of the proceeding, and the reasons why EARTHVISION should be permitted to intervene. The petition merely requests a hearing as being "in the best interest of both Northeast Utilities as well as the welfare of the citizens in this area. . . ." Therefore, EARTHVISION's interest and the nature of

its right to be made a party to the proceeding is based on the distance of P.R. Nowicki's residence from Unit 2 (approximately forty miles).[6/]

NNECO maintains that P.R. Nowicki resides too far away from Unit 2 to support a finding of standing. First, there is no causal nexus between any asserted injury and the license amendment at issue. As stated above, no postulated design basis scenario would expose a person over 40 miles distant from Unit 2 to radiation or radioactive releases from the spent fuel pool that would exceed the variability of background radiation. Also, as stated above, the NRC Staff's no significant hazards consideration analysis for the instant amendment concludes that the amendment would not result in a reduced margin of safety, the possibility of a new or different accident or a significant increase in the probability or consequences of a previously evaluated accident. Thus, the proposed license amendment would not increase the risk to P.R. Nowicki from a fuel pool accident. For these reasons, EARTHVISION does not have sufficient interest for standing to intervene.

6/ Based on the address on P.R. Nowicki's petition, NNECO estimates that she resides slightly more than forty, but less than forty-one, miles from Unit 2.

IV. CONCLUSION

This license amendment merely increases restrictions on the use of the spent fuel pool and does not result in new accidents or significant increased risk or consequences of accidents. The petitioners reside at too great a distance from Unit 2 to be affected by this amendment.

Neither letter, viewed as a request for hearing and petition to intervene, indicates that either petitioner has sufficient interest in this license amendment proceeding to confer standing to intervene as a party. Therefore, both requests for a hearing and petitions to intervene should be denied.

NORTHEAST NUCLEAR ENERGY CO.

Nicholas S. Reynolds

WINSTON & STRAWN,
ATTORNEYS FOR NORTHEAST NUCLEAR ENERGY COMPANY

June 11, 1992