

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 09/05/01

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DOMINION NUCLEAR CONNECTICUT, INC)	Docket No. 50-423-LA-3
)	
(Millstone Nuclear Power Station,)	
Unit No. 3))	

NRC STAFF'S MOTION TO
CONTINUE TO HOLD PROCEEDING IN ABEYANCE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730 of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) moves the Atomic Safety and Licensing Board (Board) in this proceeding for an order delaying all proceedings in this matter until such time as 1) the report of the Office of Investigations' (OI) investigation of an allegation concerning Northeast Nuclear Energy Company's (NNECO) conduct with regard to the reporting of two missing fuel rods at the Millstone Unit 1 spent fuel pool and 2) the Staff's inspection of NNECO's Fuel Rod Accountability Project (FRAP) become available. As discussed below, the Staff believes that the OI report will be available before October 31, 2001, and that the report of the Staff's inspection of the FRAP report will be available before November, 2001.

BACKGROUND

In its "Motion to Hold Proceeding in Abeyance," filed on May 22, 2001, the Staff recited the history of this proceeding leading up to the Board's granting of Intervenor Connecticut Coalition Against Millstone/Long Island Coalition Against Millstone's motion for reconsideration and reopening the record regarding Intervenor's Contention 4.

In a Memorandum and Order of June 21, 2001, the Atomic Safety and Licensing Board (Board) granted, in part, the Staff's motion requesting that this reopened Subpart K proceeding be held in abeyance until completion of the Office of Investigations (OI) ongoing investigation of an allegation of licensee misconduct relating to the reporting of two missing fuel rods at the Millstone 1 spent fuel pool.

In response to the Staff's motion, the Board deferred further activities in the proceeding until September 4, 2001, "or such earlier date as OI completes its investigation," and directed the Staff to provide copies of the completed OI investigation report to the Board and parties. Memorandum and Order (Telephone Conference, 5/24/01), June 21, 2001, at 5. In the same Memorandum and Order, the Board granted the licensee's motion to defer discovery until after submission of its Fuel Rod Accountability Report (FRAP), *Id.* at 6, which is now scheduled for completion in late September with the root cause evaluation to be completed at that time or shortly thereafter. Letter of David A. Repka, Counsel for Dominion Nuclear Connecticut, Inc., July 26, 2001.

DISCUSSION

As set forth above, the staff requested in its previous motion that the proceeding be held in abeyance until the completion of the OI investigation. In its "Views Concerning Procedures on Reopening the Record," filed with the Staff's motion to hold the proceeding in abeyance, the Staff expressed its view regarding discovery as follows:

In the Staff's view, all adjudicatory related activities, including discovery, should await the conclusion of the licensee's investigation and, further, as urged by the Staff in its motion to defer proceedings, filed today, all activities in this adjudicatory proceeding should be deferred to await the conclusion of OI's investigation and issuance of its report. Inasmuch as the need for discovery (and its possible scope) could be affected by the OI investigation, and the conduct of discovery could possibly interfere with or jeopardize the OI investigation, the Staff submits that the Board should not order any discovery until after the issuance of these reports. In addition, the Staff believes that there is no need to establish the parameters of any discovery that might be necessary until the parties have had an opportunity to review the licensee's report.

NRC Staff's Views Concerning Procedures on Reopening the Record, May 22, 2001, at 4.

The Staff's views regarding this matter are unchanged. In an affidavit filed today in support of this motion, Barry R. Letts, Region 1 Field Office Director, Office of Investigations, states that OI will be able to provide the Board and parties with copies of the completed OI investigation report by October 31, 2001.

In addition, the Staff would like to clarify that it believes further proceedings should await the Staff's report of its inspection of the FRAP. As stated in the affidavit of Dr. Ronald R. Bellamy, Chief, Decommissioning and Laboratory Branch, Division of Materials Safety in Region 1, whose branch is leading the Staff's inspection of the FRAP, the Staff's inspection of the FRAP report will begin on October 9, 2001. Dr. Bellamy states that he anticipates that the report of the inspection will be completed by the end of November. However, because the FRAP report itself has not yet been submitted, the Staff cannot at this time assign a specific date to the completion of its report of its inspection of the FRAP.

CONCLUSION

For the reasons discussed above, the Staff moves the Board to grant the Staff's motion to issue an order deferring further proceedings in this matter until the OI report and the Staff's report of its inspection of the FRAP report have been provided to the Board and parties.

Respectfully submitted,

/RA/

Ann P. Hodgdon,
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of September, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
DOMINION NUCLEAR CONNECTICUT, INC.) Docket No. 50-423-LA-3
)
)
(Millstone Nuclear Power Station,)
Unit No. 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC Staff's Motion to Continue to Hold Proceeding in Abeyance," "Affidavit of Barry R. Letts in Support of the NRC Staff's Motion to Continue to Hold Proceeding in Abeyance," and "Affidavit of Dr. Ronald R. Bellamy in Support of the NRC Staff's Motion to Continue to Hold Proceeding in Abeyance" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service as indicated by a double asterisk, with copies by electronic mail as indicated, this 4th day of September, 2001:

Charles Bechhoefer, Chairman*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail copy to cxb2@nrc.gov)

Dr. Charles N. Kelber*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail copy to cnk@nrc.gov)

Dr. Richard F. Cole*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail copy to rfc1@nrc.gov)

Office of the Secretary*
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Docketing and Service
(E-mail copy to HEARINGDOCKET@nrc.gov)

Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of Commission Appellate
Adjudication
Mail Stop: O 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lillian M. Cuoco, Esq.**
Dominion Nuclear Connecticut, Inc.
Millstone Power Station
Building 475/5
Rope Ferry Road (Route 156)
Waterford, Connecticut 06385
(E-mail copy to Lillian_Cuoco@dom.com)

David A. Repka**
Donald P. Ferraro
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005-3502
(E-mail copy to drepka@winston.com)

Nancy Burton, Esq.**
147 Cross Highway
Redding Ridge, CT 06876
(E-mail copy to
nancyburtonesq@hotmail.com)

/RA/

Ann P. Hodgdon
Counsel for NRC Staff