

September 14, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ^{September 17, 2001 (4:37PM)}

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
Dominion Nuclear Connecticut, Inc.)
)
(Millstone Nuclear Power Station,)
Unit No. 3))

Docket No. 50-423-LA-3

ASLBP No. 00-771-01-LA-R

DOMINION NUCLEAR CONNECTICUT, INC.'S RESPONSE TO
NRC STAFF'S MOTION TO CONTINUE TO HOLD PROCEEDING IN ABEYANCE

I. Introduction

Dominion Nuclear Connecticut, Inc. ("DNC") herein responds to the "NRC Staff's Motion to Continue to Hold Proceeding in Abeyance" ("Motion"), dated September 4, 2001. In its Motion, the Nuclear Regulatory Commission Staff ("Staff") requests that the Atomic Safety and Licensing Board ("Licensing Board") continue to hold in abeyance all proceedings in this matter until: (1) issuance of the report by the NRC Office of Investigations ("OI") of an allegation concerning Northeast Nuclear Energy Company's ("NNECO's") conduct with regard to the reporting of two unaccounted for fuel rods at the Millstone Unit 1 spent fuel pool; and (2) completion of the Staff's inspection, and issuance of the subsequent inspection report, concerning NNECO's Fuel Rod Accountability Project ("FRAP"). DNC supports the Staff's Motion, subject to the qualifications discussed below.

II. Discussion

The Staff's Motion first requests that the proceeding continue to be held in abeyance pending completion of the OI "ongoing investigation of an allegation of licensee misconduct relating to the reporting of two missing fuel rods at the Millstone Unit 1 spent fuel pool." Motion at 1.

In slight contrast to the Staff, DNC believes that the critical pacing item in this proceeding continues to be the completion of the investigation and report of the FRAP, including the root cause assessment. Consistent with the letter of DNC counsel dated July 26, 2001, the FRAP currently expects to issue the report to DNC at the end of September, with the root cause to be issued shortly thereafter. These documents will be provided to the Licensing Board and parties in this proceeding within a few days of their availability to DNC,¹ and should provide ample information on the investigation, findings, and conclusions of the FRAP. While DNC does not concede that further discovery is required in this Subpart K proceeding, these reports would certainly provide a substantial basis for evaluating the issues in this proceeding and for resolving the matter of any further discovery needs. Resumption of this proceeding prior to the issuance of these documents would be premature.

The Staff's request to continue the deferral of the proceeding until October 31, 2001, to allow completion of the OI report, is generally consistent with the schedule for

¹ DNC reserves the opportunity to review the report briefly (*i.e.*, a few days) upon receipt from the NNECO FRAP prior to release to the Licensing Board and parties.

completion and issuance of the FRAP report and root cause.² Accordingly, DNC does not oppose the Staff's request for deferral through October. However, DNC continues to believe (as reflected in the Licensing Board's Memorandum and Order of June 21, 2001 ("June 21 Order")),³ that the OI report is not necessarily at issue in this proceeding and not necessarily relevant to reopened Contention 4. Upon issuance of the FRAP documents, and with an allowance for some appropriate time for review and reflection, the Licensing Board would be in a position to take up and resolve the issues of discovery and next steps in this proceeding. It would seem that this prehearing discussion could occur in mid to late October.⁴

The Staff's Motion also requests that the proceeding be held in abeyance pending the Staff's scheduled inspection of the FRAP and issuance of the inspection report, scheduled to be completed by the end of November 2001. Motion at 1. DNC believes that this request is premature and accordingly takes no position at this time. The scope of the Staff inspection has not yet been announced and the relevance of the inspection of the FRAP is therefore not yet clear. Accordingly, the need to hold the next steps in this proceeding in abeyance pending completion of the inspection report is not yet established. The resolution of this aspect of the Motion may also turn on the schedule adopted with respect to the other documents as discussed above.

² If one assumes that the FRAP report is issued at the end of September (or, as a practical matter, during the first week of October), and the root cause follows approximately two weeks later, an additional deferral until the end of October would be *de minimis*.

³ Licensing Board Memorandum and Order (Telephone Conference, 5/24/01) (June 21, 2001) at 4 (unpublished).

⁴ DNC proposes only a prehearing discussion prior to October 31. A subsequent discussion of course may be necessary related to the OI matter. Any specific actions in this proceeding would occur after October 31.

To amplify, Contention 4 in this proceeding relates to “new” administrative controls employed by DNC in connection with the additional Millstone Unit 3 spent fuel storage racks, such as the “new” regional storage restrictions based upon reactivity (enrichment, burnup, decay) considerations. More particularly, the issue is whether these “new” controls are so complex that they could lead to an accidental criticality event in the Unit 3 spent fuel pool. The hearing on Contention 4 was reopened only “to determine the extent to which the failure of administrative controls at the Millstone - 1 SFP could carry over to the successful implementation of [new] administrative controls at the Millstone - 3 SFP.” *Dominion Nuclear Connecticut Inc. (Millstone Nuclear Power Station, Unit 3)*, LBP-01-17, 53 NRC 398, 408 (2001).

The FRAP report and, more specifically, the root cause report, will address any relevant Unit 1 vulnerabilities or deviations and is expected to identify any potential for similar vulnerabilities or deviations at Unit 3. In contrast, the ongoing regulatory oversight of the FRAP, and the issue of the Unit 1 fuel rods more generally, are outside the scope of this proceeding. Accordingly, the relevance of the Staff FRAP inspection may turn on the scope of the inspection and the report — matters not yet established in this proceeding.

Consistent with these considerations, DNC believes that the Licensing Board should take up the issue of relevance of the FRAP inspections and the timing of the release of the Staff inspection report at the time it considers the next steps in this proceeding. As discussed above, that could occur in mid to late October. The Staff inspection report would be issued in November — a time frame seemingly consistent with the likely schedule in this proceeding — and, to the extent warranted, would be released to the parties for due consideration akin to discovery.

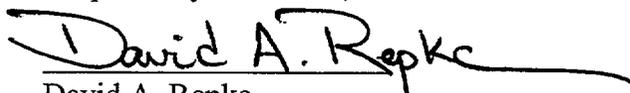
The license amendment at issue in this proceeding has been issued, is effective, and has been implemented at Unit 3. Nonetheless, the Licensing Board has indicated in its June 21, 2001, Memorandum and Order a desire to “complete the hearing activities relative to the missing fuel rods” prior to the next refueling outage. June 21 Order at 5.⁵ To meet this objective, a timely resumption of hearing activities consistent with the discussion above is warranted.

III. Conclusion

In sum, DNC supports the Staff’s Motion insofar as it requests that the Licensing Board’s stay of this proceeding be continued until issuance of the FRAP report and the associated root cause analysis, and until October 31, 2001, to allow completion of the OI report. DNC concludes, however, that following issuance of the FRAP documents, the Licensing Board in mid to late October can initiate discussions of the next steps in this proceeding. DNC takes no position at this time on the Motion insofar as it seeks a stay through November 2001 to allow for completion of the Staff’s inspection of the FRAP and the related inspection report. DNC concludes that the relevance and timing of release of this document could be addressed during an October prehearing discussion.

⁵ Note that the Unit 3 outage is currently scheduled for Fall 2002, not May 2002 as indicated in the June 21 Order.

Respectfully submitted,



David A. Repka
Donald P. Ferraro
WINSTON & STRAWN
1400 L Street, NW
Washington, D.C. 20005-3502

Lillian M. Cuoco
DOMINION NUCLEAR CONNECTICUT, INC.
Millstone Power Station
Building 475/5
Rope Ferry Road (Route 156)
Waterford, CT 06385

Counsel for DOMINION NUCLEAR
CONNECTICUT, INC.

Dated in Washington, D.C.
this 14th 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,) ASLBP No. 00-771-01-LA-R
Unit No. 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Dominion Nuclear Connecticut, Inc.'s Response to NRC Staff's Motion to Continue to Hold Proceeding in Abeyance" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 14th day of September 2001. Additional e-mail service has been made this same day as shown below.

Charles Bechhoefer, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: cxb2@nrc.gov)

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

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

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemakings and Adjudications Staff
(original + two copies)
(e-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Ann P. Hodgdon, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(e-mail: aph@nrc.gov)

Nancy Burton, Esq.
147 Cross Highway
Redding Ridge, CT 06876
(e-mail: nancyburtonsq@hotmail.com)


David A. Repka
Counsel for DNC, Inc.