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November 30, 2001

Charles Bechhoefer, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dr. Charles N. Kelber
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**Re: Dominion Nuclear Connecticut, Inc.
Millstone Nuclear Power Station, Unit 3
Docket No. 50-423-LA-3**

Dear Administrative Judges:

On November 29, 2001, the Atomic Safety and Licensing Board ("Licensing Board) issued a "Memorandum and Order (Clarifying Memorandum and Order dated November 15, 2001)." The Licensing Board denied the NRC Staff's "Motion for Reconsideration of Licensing Board Memorandum and Order Dated November 15, 2001."¹ In denying the Staff's Motion, the Licensing Board "reaffirmed" its earlier order that, *sua sponte*, directed the Staff to forward copies of the appendices and exhibits to the referenced Office of Investigations ("OI") report, redacted if necessary, to the Licensing Board and the parties in this proceeding.

Dominion Nuclear Connecticut, Inc. ("DNC") did not have the opportunity to respond to the NRC Staff's Motion before the Licensing Board issued its November 29 Memorandum and Order. For the sake of the record, we feel compelled to present our views here and to clarify DNC's position with respect to the OI exhibits.

¹ The NRC Staff's Motion for Reconsideration was dated November 20, 2001.

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First, the Intervenors have filed a request for discovery from DNC that covers some of the material that is included in the OI Report exhibits. Without conceding the relevance of this material, and as is discussed in DNC's initial response to the discovery requests, DNC *will be* providing some of the OI exhibits and referenced documents, *i.e.*, those in its possession. See "Dominion Nuclear Connecticut, Inc.'s Response to Intervenors' First Set of Interrogatories and Request for Production in the Reopened Proceedings" (November 21, 2001), particularly the response to Requests for Production Nos. 10 - 20. The Licensing Board's Memorandum and Order, at page 3, states broadly that DNC has declined to produce the OI documents, and therefore reflects an apparent misunderstanding of DNC's position.

There are other OI report exhibits that are not DNC documents and that are not in DNC's possession (that is, largely OI interview transcripts and summaries). DNC did object to producing these documents as more appropriately obtained from the NRC Staff, subject to the Staff's then-pending Motion for Reconsideration.

More fundamentally, and notwithstanding the above, DNC observes that there still has been no demonstrated relevance of or need for any of the OI materials to be produced. This failing is perhaps most particularly acute for the interview materials. It is DNC's position that the OI report and associated exhibits address matters which are not at issue in this proceeding.

On May 10, 2001, the Licensing Board issued its Memorandum and Order granting the Intervenors' motion to reopen the record on Contention 4. The Licensing Board decided to:

[t]o reopen the record on Contention 4, to the extent [the issue of the two Unit 1 spent fuel rods] bears upon both the adequacy of administrative controls at the Millstone-3 [spent fuel pool] and DNC's ability or willingness to implement such controls successfully. The scope of this reconsideration is limited to the procedures or controls for management of the [spent fuel pools] and their modes of execution that may be common to Millstone-1 and Millstone-3.

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-01-17, 53 NRC 398, 408 (2001). The focus, therefore, in this reopened proceeding is on any commonality between the procedures implicated in the Unit 1 event and those in place at Unit 3. More precisely, the issue is whether the causes and contributing factors leading to loss of accountability of special nuclear material in the form of individual fuel rods in the 1970s and 1980s at Millstone Unit 1 bear on the procedures at issue in this proceeding related to a license amendment authorizing regional storage of spent fuel assemblies (based on reactivity limits) at Unit 3.

In contrast to the reopened Contention 4, the OI report, by its very terms, addresses whether the former Millstone licensee delayed reporting information to the NRC regarding the missing fuel rods in the latter half of 2001. OI Report, at 7. The focus of OI was on the issue of when information was developed regarding the two Unit 1 pins, and on the events leading to the licensee's decision to initiate a condition report and to notify the NRC inspector in November 2001. Significantly, after an extensive investigation, OI "did not substantiate that either the licensee or licensee personnel/contractors deliberately delayed properly reporting to the NRC that two fuel rods/pins were unaccounted for/missing/lost from the [Millstone] Unit 1 [spent fuel pool]." OI Report, at 30.

Suffice it to say, there has been no showing by the Intervenors regarding the relevance of the OI materials to the issue in this reopened proceeding, or even regarding how those materials could lead to relevant evidence. Likewise, there has been no finding of relevance in either Licensing Board order on the subject. The issue investigated by OI has nothing whatsoever to do with the issue of whether DNC has adequate controls at Millstone Unit 3 to implement regional spent fuel storage to prevent a criticality accident, as placed in issue by reopened Contention 4. The narrow scope of the contention in this proceeding, as specifically limited in the Licensing Board's Memorandum and Order reopening this proceeding, does not justify a complete review and rehash of the OI investigation of an unsubstantiated allegation regarding timeliness of reporting.² Under these circumstances, the Licensing Board's *sua sponte* directive to the NRC Staff to release these materials remains overbroad.

Very truly yours,



David A. Repka

cc: Service List

² It should also be noted that the investigation focused on only the issue of the timeliness of the licensee's report. There was never any question of a failure to report to the NRC, because that report was indeed made.