

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))	
)	

NRC STAFF'S RESPONSE OPPOSING CONNECTICUT COALITION
AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE'S
MOTION TO EXTEND SCHEDULING ORDERS AND DATE OF ORAL ARGUMENT

INTRODUCTION

On February 19, 2002, Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone (collectively "Intervenors") filed a Motion to Extend Scheduling Orders and Date of Oral Argument ("Motion"), by which they sought to defer for sixty days the dates for submitting written presentations and conducting oral argument in the captioned proceeding. For the reasons discussed below, the NRC staff ("Staff") submits that the motion should be denied.

DISCUSSION

Intervenors offer four representations as support for their motion: 1) Intervenors' counsel is a solo practitioner acting *pro bono*; 2) Intervenors' counsel has been engaged in a civil jury trial since January 3, 2002, in which a verdict was reached on February 11, 2002; 3) the pressure of the trial proceedings interfered with Intervenors' counsel's ability to address the "copious filings" of the other parties, which consisted of some eight large crates of materials; and 4) the public interest favors granting the motion as there is substantial public interest in the issues involved in the reopened proceeding and those issues are not likely to be addressed other than in these proceedings.

Intervenors have not even established good cause for their motion, much less met the more stringent standard of “unavoidable and extreme circumstances” articulated by the Commission in *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998); 63 Fed. Reg. 441,872 (1998). Intervenors reference a Licensing Board order of February 4, 2002, “Notice of Filing Schedules and Oral Argument,” as establishing the scheduling dates that they would extend; however, those dates, March 18, 2002, for the submission of written presentations and April 2, 2002, for oral argument, were established by an order issued some three months before the order that Intervenors reference, namely, “Memorandum and Order (Telephone Conference Call, 10/31/01; Schedules for Proceedings),” dated November 5, 2001. Thus, the predicament in which Intervenors’ counsel finds herself would seem to be self inflicted and there is no indication that it was not avoidable.

As regards Intervenors’ representation that their counsel is a solo practitioner appearing *pro bono*, the Commission’s expectations for all participants in its adjudications, even for those who are not represented by counsel, is that they fulfill their obligations. See *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452 (1981); *Wisconsin Electric Power Co.* (Point Beach Nuclear Power Plant, Unit 1), ALAB-696, 16 NRC 1245, 1261 n.29 (1982).

The eight crates of documents that Intervenors reference are apparently documents produced in discovery. As Intervenors sought those documents, they should not be heard to complain that the production of them creates an insuperable burden on their timely discharge of their responsibilities in the reopened proceeding.

As regards Intervenors’ fourth point, that the public interest favors the granting of their motion in that the issues involved would not be addressed other than in these proceedings, the Staff submits that the Intervenors are mistaken. Staff inspections take place whether or not there is an ongoing proceeding addressed to the same issues.

In summary, the Staff sees no unavoidable and extreme circumstances in the representations that Intervenors make as a basis for their motion.

CONCLUSION

For the reasons discussed, the Licensing Board should deny Intervenors' motion.

Respectfully submitted,

/RA/

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 25th day of February, 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE OPPOSING CONNECTICUT COALITION AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE'S MOTION TO EXTEND SCHEDULING ORDERS AND DATE OF ORAL ARGUMENT" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system; or by deposit in the Nuclear Regulatory Commission's internal mail system with copies by electronic mail, as indicated by an asterisk; or by deposit in the U. S. Postal Service with copies by electronic mail, as indicated by a double asterisk, this 26th day of February, 2002.

Charles Bechhoefer, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
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
Mail Stop: T 3F-23
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
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-Mail copy to RFC1@nrc.gov)

Office of the Secretary*
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-Mail copy to HEARINGDOCKET@nrc.gov)

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

Atomic Safety and Licensing Board Panel
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lillian M. Cuoco, Esq.**
Northeast Utilities Service Co.
107 Selden Street
Berlin, CT 06037
(E-Mail copy to cuocolm@nu.com)

David A. Repka, Esq. **
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 - M a i l c o p y t o
nancyburtonsq@hotmail.com

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-mail copy to dcurran@harmoncurran.com)

/RA/

Ann P. Hodgdon
Counsel for NRC Staff