March 31, 2003

RAS 6260 **DOCKETED 04/02/03**

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DOMINION NUCLEAR CONNECTICUT, INC.	)	Docket No. 50-336
	)	
	)	
(Millstone Power Station, Unit No. 2)	)	

NRC STAFF'S ANSWER OPPOSING CONTENTION FILED BY CONNECTICUT COALITION AGAINST MILLSTONE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c) and the Atomic Safety and Licensing Board's (Board) Memorandum and Order of February 14, 2003, the staff of the Nuclear Regulatory Commission (Staff) hereby submits its answer to the contention filed by Connecticut Coalition Against Millstone (CCAM).[1] For the reasons set forth below, the Staff submits that CCAM has failed to file any contention that is admissible under the standards for admission of contentions in 10 C.F.R. § 2.714 of the Commission's regulations and, thus, petitioner's request for hearing should be denied.

BACKGROUND

Dominion Nuclear Connecticut (Dominion) is the licensee for the Millstone Power Station, Unit 2 (Millstone). By application dated September 26, 2002, Dominion requested a license amendment based on the NRC's 1999 revision of its regulations, which allows licensees to revise their design-basis accident analyses using an alternative source term. *See* Final Rule, Use of Alternative Source Terms at Operating Reactors, 64 Fed. Reg. 71,990 (Dec. 23, 1999). This revision is codified at 10 C.F.R. § 50.67. Section 50.67 permits licensees with nuclear power plant

[1] Petitioner, Connecticut Coalition Against Millstone, Supplemented Petition and Contention (March 10, 2003).

operating licenses to replace the source term[2] that has been used since 1962 with a revised source term based on advances in scientific knowledge. The regulation retains maximum dose limits for individuals located on the boundary of the exclusion area, on the outer boundary of the low population zone, and in the control room. However, these dose limits are now expressed in terms of total effective dose equivalent, instead of separate whole body and thyroid doses. This means that doses calculated using the old source term are not directly comparable to doses calculated using an alternative source term under § 50.67.[3]

Dominion's application requests that the NRC approve a license amendment that would allow it to re-analyze design-basis Fuel Handling Accidents using an alternative source term. This would be a selective implementation, as allowed by § 50.67, and would not involve re-analysis of all design-basis accidents. Dominion also requested modifications to its Technical Specifications (TSs) consistent with the results of the re-analysis. These modifications would include removing from the TSs certain requirements that, given the revised analysis, Dominion states are no longer necessary to meet the dose requirements of § 50.67. *See* Letter, J. Alan Price to U.S. Nuclear Regulatory Comm'n Document Control Desk, B18763, "Millstone Power Station, Unit No. 2, License Basis Document Change Request (LBDCR) 2-18-02, Selective Implementation of the Alternative Source Term - Fuel Handling Accident Analyses (Sept. 26, 2002).

On November 12, 2002, the Commission published a "Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations" (Notice) including the Dominion application. 67 Fed. Reg. 68,728, 68,731 (2002). Pursuant to

---

[2] Source term refers to the fission product release from the reactor core into containment and is characterized by the composition and magnitude of the radioactive material, the chemical and physical properties of the material, and the timing of the release from the reactor core. It is used to evaluate the potential radiological consequences of design-basis accidents. Use of Alternative Source Terms at Operating Reactors, 64 Fed. Reg. 71,990, 71,991. (Dec. 23, 1999).

[3] For a full discussion of the two different dose measurements see *id.* at 71,992-993.

the Notice, on December 12, 2002, CCAM filed its Petition to Intervene and Request for a Hearing and CCAM and STAR filed their Amended Petition. On February 14, 2003, the Board found that CCAM has standing to participate, found that STAR lacks standing and dismissed it from the proceeding, and set deadlines for the submission of a supplemented petition and contentions and responses thereto.[4] Memorandum and Order (Ruling on Standing of Petitioners to Proceed and Setting Deadlines for Supplemented Petition and Contentions), LBP-03-03, 57 NRC ___ (2003) (Ruling on Standing). On March 10, 2003, CCAM filed its Supplemented Petition and Contention.

DISCUSSION

I. Legal Standards for the Admission of Contentions

To intervene in an NRC proceeding, a petitioner must, in addition to meeting requirements relating to standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.714(b) and (d). *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). Sections 2.714(b) and (d) were amended in 1989 to raise the threshold for the admission of contentions. *See* Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (August 11, 1989). Section 2.714(d)(2) provides that a contention must not be admitted if it fails to satisfy the requirements of § 2.714(b)(2) or if the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

Section 2.714(b)(2) sets out the requirements for a valid contention. It provides that each contention must consist of "a specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

---

[4] The Board ordered that the Supplemented Petition and Contentions be filed by March 7, 2003, with responses to be filed by March 28, 2003. In response to CCAM's March 7, 2003, Motion for Extension to File, the Board, in an as yet unpublished order, extended the deadlines until March 10, 2003, and March 31, 2003, respectively.

> (i) A brief explanation of the bases of the contention;
>
> (ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion;
>
> (iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

10 C.F.R. § 2.714(b)(2). A failure to comply with any of these requirements is grounds for dismissing the contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999) *citing Arizona Pub. Serv. Co*. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-156 (1991).

The purposes of the basis requirement are: (1) to help assure that the hearing process is not improperly invoked, for example, to attack statutory requirements or regulations; (2) to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose; (3) to assure that the proposed issues are proper for adjudication in the particular proceeding; (4) to assure that the contentions apply to the facility at bar; and (5) to assure that there has been sufficient foundation for the contentions to warrant further exploration. *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit

1), LBP-86-10, 23 NRC 283, 285 (1986), *citing Philadelphia Electric Co*. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

II. Analysis of the Proffered Contention

The proffered contention reads as follows:

> The amendment involves the potential of significant increase in the amounts of radiological effluents that may be released offsite and thus the amendment involves an adverse impact on the public health and safety and does involve a Significant Hazards Consideration.

As a basis for its contention, CCAM argues that the proposed amendment would allow "doors and other penetrations to remain open under administrative control and eliminate requirements for automatic closure of openings," and that this results in "a greater likelihood of a release of radioactivity that might have an impact on those who live nearby the site." Supplemented Petition at 4. CCAM also argues that a fuel handling accident involving spent fuel entails an increased potential for offsite consequences and that the proposed changes do not meet the criteria for categorical exclusion set forth in 10 C.F.R. § 51.22(c)(9) because they do involve a Significant Hazards Consideration. *Id*.

Staff's Response

CCAM's contention impermissibly challenges the Staff's proposed finding of "no significant hazards consideration." The Commission, in 10 C.F.R. § 50.58(b)(6), has provided that:

> No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

This regulation expressly prohibits review of a no significant hazards consideration determination except on the Commission's own initiative. A contention calling for such a review is inadmissible. Thus, CCAM's contention should be dismissed.

Even if the Board finds that CCAM's contention is broader than a challenge to the no significant hazards consideration determination, CCAM fails to meet the requirements for

admissibility of a contention set out in 10 C.F.R. § 2.714. As discussed above, a petitioner must meet all three requirements of 10 C.F.R. § 2.714(b)(2) with regard to at least one contention in order to intervene in an NRC proceeding. CCAM does not meet any of these three requirements.

First, the petitioner must provide a brief explanation of the bases of the contention. 10 C.F.R. § 2.714(b)(2)(i). The basis must be set forth with reasonable specificity. *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC 184, 187 (1985). A Licensing Board has held that this requires that a safety contention include a statement of the reason for the contention and that the statement must:

> . . . either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. In the absence of a "regulatory gap," the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982), *citing* 10 C.F.R. § 2.758. CCAM does not allege that the requested license amendment, if granted, would result in violation of an NRC regulation or that CCAM's concern is not covered by an NRC regulation. In fact, CCAM's concern, that there will be "the potential for a significant increase" in effluents that will involve an adverse impact on the public health and safety, is covered by NRC regulations. The Commission's regulations allow the NRC to issue a license amendment authorizing use of an alternative source term only if the applicant's analysis demonstrates with reasonable assurance that, even in a postulated accident, certain dose criteria would be met both offsite and for control room personnel. 10 C.F.R. § 50.67. Dominion specifically states that the proposed license amendment will comply with § 50.67. CCAM does not dispute this claim, nor does it allege that the license amendment would result in a violation of any other NRC regulation or that there is a regulatory gap. Thus, CCAM's contention is essentially an

attack on the criteria in § 50.67. Such an attack cannot provide the basis for a valid contention. *See* 10 C.F.R. § 2.758.

Second, the petitioner must provide a concise statement of alleged facts or expert opinion that support the contention together with references to specific sources and documents that petitioner intends to rely on to establish those facts or expert opinion. 10 C.F.R. § 2.714(b)(2)(ii). To satisfy the standards for admissibility of a contention, the petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why its proffered bases support its contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998) *citing Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). An intervenor must clearly identify and summarize the incidents being relied upon, and identify and append specific portions of the documents. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240 (1989) *citing Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986) and *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 200, 216 (1976). Attaching a document in support of a contention without any explanation of its significance is not enough; a petitioner must clearly identify the matters on which it intends to rely with reference to a specific point. *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-03, 29 NRC 234, 241 (1989); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 298 (1988).

CCAM, in its contention, offers only allegations, then cites several documents without any explanation of how these documents support its allegations. CCAM first purports to rely on the licensee's amended application and attachments. Supplemented Petition at 6. CCAM points to no

particular part of this document that supports its position. Next, CCAM cites the Board's Ruling on Standing. *Id*. Again CCAM fails to specify how this supports its allegations. CCAM does quote, from page 19 of this document, a passage stating that ". . . common sense indicates that more radioactivity is going to escape the containment than if the doors were closed." *Id*. at 7. CCAM does not explain how this supports its claim that there will be an adverse impact on public health and safety. CCAM also cites the Ruling on Standing in support of its claim that, if proven, its contention would entitle it to specific relief. *Id*. at 9. However, this only goes to the question of whether the contention would be of consequence to the proceeding (i.e. whether § 2.714(d)(2)(ii) requires that it be dismissed). The availability of relief is not relevant to the question of whether or not § 2.714(d)(2)(i) requires dismissal because CCAM fails to meet the requirements of § 2.714(b)(2) for the submission of a valid contention. Next, CCAM offers a vague reference to an October 2000 report prepared by Sandia National Laboratories.[5] *Id*. at 6. CCAM does not offer any explanation of how this document is relevant, nor does it attach this document or cite to any particular part of this document as supporting its argument. Finally, CCAM says that it intends to rely on "such additional sources and documents as are a matter of public record and as may be disclosed in discovery in these proceedings." *Id*. The Commission has stated that § 2.714(b) "will specifically preclude a contention from being admitted where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." *Duke Energy Corp*. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999); *See also Duke Energy*

[5] The Staff was unable to locate such a document. The Staff did locate a study, NUREG-1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants" (February 2001) that was prepared by the NRC, with support from, among other laboratories, Sandia National Laboratories, and issued in draft form in October 2000. If this is the document that CCAM refers to, it has no relevance in this proceeding. NUREG-1738 examined severe spent fuel pool accidents, which are not design-basis accidents. Dominion's proposed license amendment addresses design-basis accidents, specifically fuel handling accidents, which are not covered in NUREG-1738.

Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station Units 1 and 2), CLI-02-28, 56 NRC 373, 387 (2002) and Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (August 11, 1989). This is exactly what CCAM is trying to do with this last reference. While CCAM might use discovery to provide additional support for a contention once it has been admitted, it cannot rely on discovery to support the admission of its contention.

Finally, 10 C.F.R. § 2.714(b)(iii) requires that the petitioner demonstrate the existence of a genuine dispute on a material issue of fact or law. This requirement is not met where the petitioner fails to provide any factual information or supporting documents that produce some doubt about the adequacy of a specified portion of the applicant's documents. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 (1990) *citing* 10 C.F.R. § 2.714(b)(2)(ii) and (iii). There is no genuine dispute of a material issue of fact or law where the contention is based on the petitioner's personal opinion or mere speculation. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 267 (1996); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 304, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). CCAM does not raise a genuine dispute on a material issue of fact or law because it offers nothing except its opinion that "the proposed changes are not safe," that they "adversely affect the public health and safety," and that they "do not meet the criteria for a categorical exclusion set out in 10 C.F.R. § 51.22(c)(9)." Supplemented Petition at 7-8. CCAM offers no information, such as expert opinion or scientific studies, that might support its opinion. In addition, since CCAM merely states that there would be a significant increase in releases, without even referring to the applicable regulatory requirements, its opinion seems to be essentially that the requirements in 10 C.F.R. § 50.67 are not adequate to protect the public health and safety. Such an attack on an NRC regulation can only be brought according to the requirements of 10

C.F.R. § 2.758, which CCAM has not done. CCAM also claims that there is a dispute as to the correctness of the no significant hazards determination. *Id*. at 7. However, as discussed above, this determination is not subject to challenge except on the Commission's own initiative. Thus, CCAM has not raised a genuine dispute as to a material issue of fact or law.

The provisions of 10 C.F.R. 2.714(b)(2)(i), (ii), and (iii) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, 3), CLI-99-11, 49 NRC 328, 334, 338 (1999). CCAM has not met the high threshold for admissibility of a contention. Therefore, the contention should not be admitted.

CONCLUSION

In consideration of the foregoing, CCAM has failed to proffer any admissible contention. Therefore, CCAM should not be admitted as a party to this proceeding.

Respectfully submitted,

/RA/

Ann P. Hodgdon
Counsel for NRC staff

Dated at Rockville, Maryland
this 31st day of March, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of	)	
	)	
DOMINION NUCLEAR CONNECTICUT, INC.	)	Docket No. 50-336
	)	
	)	
(Millstone Power Station, Unit No. 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER OPPOSING CONTENTION FILED BY CONNECTICUT COALITION AGAINST MILLSTONE" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by an asterisk, by first class mail this 31ST day of March 2003. Additional e-mail service has been made this same day as shown below.

Ann Marshall Young, Chair
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to: AMY@nrc.gov)

Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O 16C-1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail copy to HEARINGDOCKET@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
(E-mail copy to: RFC1@nrc.gov)

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

Dr. Thomas S. Elleman
Administrative Judge
704 Davidson Street
Raleigh, NC 27609-5543
(E-mail copy to: elleman@eos.ncsu.edu)

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.)

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

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

David A. Repka, Esq.*
Brooke D. Poole, Esq.
Winston & Strawn
1400 L. Street N.W.
Washington, D.C. 20005-3502
(E-mail copy to drepka@winston.com. and BPoole@winston.com.)

/RA/

Ann P. Hodgdon
Counsel for NRC Staff