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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

April 7, 2003 (11:17AM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of: )

Dominion Connecticut, Inc. )

Docket No. 50-336-OLA-2

(Millstone Power Station,  
Unit No. 2) )

ASLBP No. 03-808-02-OLA

ANSWER OF DOMINION NUCLEAR CONNECTICUT, INC. TO CONNECTICUT  
COALITION AGAINST MILLSTONE SUPPLEMENTED PETITION AND CONTENTION

I. INTRODUCTION

On March 10, 2003, the Connecticut Coalition Against Millstone ("CCAM") submitted one proposed contention in connection with its request for hearing and petition for leave to intervene in this matter.<sup>1</sup> In accordance with 10 C.F.R. § 2.714(c) and the schedule established by the Atomic Safety and Licensing Board ("Licensing Board") in this proceeding, Dominion Nuclear Connecticut, Inc. ("DNC") herein responds to CCAM's proposed contention on the issue of admissibility.<sup>2</sup> As discussed below, CCAM's proposed contention lacks a basis sufficient to demonstrate a genuine dispute and would not entitle CCAM to any relief in this proceeding. Accordingly, the proposed contention is not admissible and the request for hearing should be denied.

<sup>1</sup> See Petitioner, Connecticut Coalition Against Millstone, Supplemented Petition and Contention, dated March 10, 2003 ("CCAM Contention").

<sup>2</sup> By e-mail from the Licensing Board Chairman to the service list in this proceeding (Mar. 7, 2003, 4:54 p.m. EST), the time for the DNC and Nuclear Regulatory Commission ("NRC") Staff responses was extended from March 28, 2003, to March 31, 2003, based on an extension granted to CCAM of its date to file proposed contentions.

## II. BACKGROUND

### A. The Proceeding to Date

On September 26, 2002, DNC filed the Application at issue (discussed further below).<sup>3</sup> A notice of opportunity for hearing was published in the *Federal Register* on November 12, 2002.<sup>4</sup> In response to this notice, CCAM submitted a petition (followed shortly by an amended petition), on December 12, 2002.<sup>5</sup> DNC responded to the amended petition, on the issue of standing only, on December 27, 2002. The Licensing Board was established for this proceeding on January 6, 2003. Thereafter, on February 14, 2003, the Licensing Board issued a Memorandum and Order concluding that CCAM has standing to participate in this proceeding, setting the dates for CCAM to amend its petition to propose contentions, and explaining the applicable requirements for proposed contentions.<sup>6</sup> On March 10, 2003, CCAM filed a supplemental petition setting forth one proposed contention.

### B. The License Amendment Application

In the Application DNC proposes to amend certain Technical Specifications (“TS”) for Millstone Power Station, Unit 2 (“Millstone”) based upon a selective implementation of an alternative source term methodology in accordance with 10 C.F.R. § 50.67. As

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<sup>3</sup> See Letter from J.A. Price, DNC, to NRC Document Control Desk, “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) (“Application”).

<sup>4</sup> See Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 67 Fed. Reg. 68,728, 68,731 (Nov. 12, 2002).

<sup>5</sup> See “Petition to Intervene and Request for Hearing,” dated December 12, 2002; “Amended Petition to Intervene and Request for Hearing,” dated December 12, 2002.

<sup>6</sup> *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 2), LBP-03-03, 57 NRC \_\_\_, slip op. Feb. 14, 2003.

contemplated by the rule, DNC's use of an alternative source term takes advantage of the substantial advancements that have been made since original plant licensing in the assessment of the timing, magnitude, and chemical form of fission products assumed to be released from postulated severe accidents.<sup>7</sup> Although not specifically referenced in the rule, alternative source terms acceptable to the NRC for revised accident analyses were published in NUREG-1465, "Accident Source Terms for Light-Water Nuclear Power Plants" (February 1995) ("NUREG-1465"). Additional guidance useful for applications for reductions in regulatory or administrative burdens based on an alternative source term re-analysis is provided in NRC Regulatory ("Reg") Guide 1.183.<sup>8</sup>

DNC has applied the alternative accident source term and calculational methodology in a re-analysis of only the Millstone design basis fuel handling accidents. The re-analysis therefore supports reductions in administrative burdens related only to fuel movements, as described in the Application. (The Application does not relate to either "normal" releases from the plant or releases from *reactor* accidents.) The relevant design basis fuel handling accidents are postulated during fuel movements in the containment building and in the spent fuel pool building. Fuel movements inside containment are made only while the reactor is in Mode 6 (refueling mode) or a defueled condition. The accident re-analysis does not involve any physical modifications to the plant equipment, alter the flowpath or the methods of processing and disposal of radioactive waste or byproducts, or increase the type and amounts of effluents that may be released off-site. See Application, cover letter, at 2. Likewise, the Application does not

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<sup>7</sup> See Final Rule, Use of Alternative Source Terms at Operating Reactors, 64 Fed. Reg. 71,990, 71,991 (Dec. 23, 1999).

<sup>8</sup> See NRC Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Plants" (July 2000).

involve any physical modifications to the equipment used in the movement or storage of irradiated fuel. *Id.*, Attach. 2 at 16.

With respect to a postulated fuel handling accident inside containment, the Application specifically explains (Attach. 1 at 9):

There are no actual design changes associated with implementation of the [revised Fuel Handling Accident] Analyses. DNC will maintain the same controls for monitoring radioactivity within Containment. Local area radiation monitors, effluent discharge monitors, and Containment gaseous and particulate radiation monitors, provide a defense-in-depth in monitoring Containment atmosphere and identifying the need for establishing the Containment atmosphere boundary.'

The Millstone Unit No. 2 stack gaseous and particulate monitoring systems continue to monitor any releases from normal or accident conditions. Health Physics practices and the Millstone Station Effluent Control Program monitor discharge paths and areas within the plant in which increases in radioactivity could occur when normal monitoring equipment is not available.

Similarly, with respect to the spent fuel pool building, there are no physical design changes proposed to the ventilation systems, exhaust paths, area radiation monitors, or fuel handling equipment.

The re-analysis of the postulated consequences of fuel handling accident sequences is based on revised assumptions. Consistent with the very purpose of 10 C.F.R. § 50.67, in addition to the revised accident source term, the re-analysis incorporates revised assumptions regarding available equipment — with the objective of eliminating unnecessary regulatory or administrative burdens. Specifically, DNC's re-analysis demonstrates that the radiological consequences of a fuel handling accident inside containment — including postulated control room doses and doses at the exclusion area and low population zone boundaries — will be within the limits of 10 C.F.R. § 50.67, Reg Guide 1.183, and 10 C.F.R. Part 100 *without taking credit* for containment boundaries and certain equipment or automatic actions presently

governed by the Millstone TS. *See* Application, Attach. 2, 4, 5. Similarly, the re-analysis demonstrates that the radiological consequences of a fuel handling accident outside containment (in the spent fuel pool building) will be within the applicable regulatory limits *without taking credit for any* containment or filtration of accident releases by the spent fuel building and ventilation system. Accordingly, the re-analysis specifically supports changes to the operability and surveillance requirements of the Millstone TS, with related changes to the TS bases. *Id.* Certain features are no longer required to be included in TS because they are not credited in the revised accident re-analysis. *Importantly, the Application describes certain administrative controls that nonetheless will be established to reduce radiological consequences further below regulatory limits. These controls are not assumed in the analysis, are not required to meet the regulatory limits, and are proposed only as a defense-in-depth measure to further reduce postulated accident doses.*

C. Requirements for an Admissible Contention

To be admissible in NRC licensing proceedings, proposed contentions must satisfy 10 C.F.R. § 2.714(b)(2), which provides that each contention “must consist of a specific statement of the issue of law or fact to be raised or controverted.” Additionally, each contention must be accompanied by:

- (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 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.

10 C.F.R. § 2.714(b)(2) (emphasis added). *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248-49 (1996).

The rules on the admission of contentions establish an evidentiary threshold more demanding than a mere pleading requirement. The rules require precision in the contention pleading process and require that a proposed contention have plausible and relevant factual support. The rule provides that if the contention and supporting material fail to demonstrate a genuine issue as required by Section 2.714(b)(2), the presiding officer (or, in this case, the Licensing Board) must refuse to admit the contention. 10 C.F.R. § 2.714(d)(2)(i); *see also Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991)(*citing* Final Rule, Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989)).

The threshold "basis" rule requires that an intervenor provide a reason for its proposed contention and demonstrate that there is a "genuine dispute." "The intervenor must do more than submit 'bald or conclusory allegation[s]' of a dispute. . . He or she must 'read the pertinent portions of the application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view.'" *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (*citing* 54 Fed. Reg. at 33,170-171). The intervenor must either allege with particularity (1) that an applicant is not complying with a specified regulation, or (2) the existence and detail of a

substantial safety issue on which the regulations are silent. In the absence of an allegation of a “regulatory gap,” the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by NRC regulations will result in a rejection of the contention. *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1656 (1982). Similarly, a contention must also be rejected when, even if proven, it “would be of no consequence in the proceeding because it would not entitle petitioner to relief.” 10 C.F.R. § 2.714(d)(2)(ii). *Yankee*, CLI-96-7, 43 NRC at 249 (citing *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 142 (1993)); *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 57 NRC 413, 437-38 (2002).

With respect to documentary or factual information alleged to provide the basis for a contention, the Licensing Board “is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention.” Rather, the Licensing Board should review the information to ensure that it does indeed provide such a basis. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998). See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev’d in part on other grounds*, CLI-96-7, 43 NRC 235 (1996) (“[a] document put forth by an intervenor as the basis for a contention is subject to scrutiny both for what it does and does not show”). Moreover, an imprecise reading of a document cannot serve to generate an issue suitable for litigation. *Ga. Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300 (1995).

As discussed below, CCAM has not satisfied the Commission’s requirements for an admissible contention. The proposed contention does not set forth a basis demonstrating a

genuine dispute with respect to a material issue of fact or law. CCAM has not provided any basis, whatsoever, to support a contention that the Application does not meet applicable regulations or that would otherwise entitle CCAM to any relief in this proceeding. Lacking an admissible contention, the hearing request should be denied.

### III. ARGUMENT

CCAM's proposed contention states as follows:

The amendment involves the potential of [sic] 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.

(CCAM Contention at 3.) For the reasons discussed below, CCAM has not made a showing to demonstrate the existence of either a genuine dispute or an issue for which relief could be granted.

#### A. The Proposed Contention Lacks a Basis Sufficient to Demonstrate a Genuine Dispute

The fundamental assertion of the proposed contention is that the Application involves the potential for a "significant increase in the amounts of radiological effluents that may be released offsite." However, CCAM offers absolutely no basis for this proposition and therefore has utterly failed to meet its burden under 10 C.F.R. § 2.714(b)(2).

The proposed contention reiterates conclusory assertions made in CCAM's initial filing. In fact, directly contrary to these bald assertions, and as explained on the face of the Application, DNC has performed the re-analysis of the consequences of design basis fuel handling accidents and demonstrated that there will be no offsite releases or dose consequences in excess of the applicable regulatory limits if the proposed TS changes are implemented. Specifically, postulated releases from the limiting design basis fuel handling accidents are calculated based on the alternative source term in accordance with 10 C.F.R. § 50.67 and meet

the requirements of 10 C.F.R. Part 100. *See* Application, Attach. 1. CCAM has not provided any meaningful technical basis on which to conclude that there is a genuine dispute with respect to that conclusion. The proposed contention therefore is not admissible.

CCAM's proposed contention looks at only part of the Application — the fact that containment penetrations or fuel handling building openings may be left open under administrative controls during fuel movement. The contention ignores the rest of the Application — specifically, the re-analyses of fuel handling accident consequences using the alternative source term. These analyses support the proposed TS changes because they specifically demonstrate that, for the bounding design basis fuel handling accidents, using the alternative source term — and taking *no* credit whatsoever for closed containment penetrations, or even the administrative controls to close those penetrations as proposed by DNC in the Application — there will be no releases or dose consequences in excess of the relevant regulatory limits. (Although CCAM's proposed contention for the most part focuses on fuel handling accidents in containment, and the related controls on containment penetrations, the same is true with respect to the proposed changes related to a fuel handling accident in the spent fuel storage area. No credit is taken in the re-analysis for any containment or filtering of releases by the fuel handling building.) Without in any way engaging the alternative source term accident analyses and the assessments of dose consequences in the Application, there is no basis for a contention asserting that undue dose consequences will result from the proposed amendments. CCAM has not met its burden of demonstrating a genuine dispute.

✓ The petitioners principally seem to rely on an argument suggested in the Licensing Board's decision on standing:

Dominion in its [Application] proposes to make certain changes relating to fuel movement operations. If in such fuel movement operations,

containment penetrations are left open . . . , rather than having automatic and other closing functions operable or in effect, it would seem self-evident that in the event of an accident there is a greater likelihood of a release of radioactivity that might have an impact on a person who lives near the plant, as alleged by Petitioners. For example, if a fuel handling accident occurs during refueling, and the containment door is left open, common sense indicates that more radioactivity is going to escape the containment than if the doors were closed.

LBP-03-03, slip op. at 20. While this “common sense” supposition might be sufficient for a standing showing, it is clearly insufficient for an admissible contention.<sup>9</sup> There is no basis offered by CCAM in its petition for such a conclusion. In fact, when the Application *in its entirety* is considered, the accident analyses demonstrate that the Licensing Board’s standing supposition is not correct. As discussed above, with the alternative source term, and with no credit taken for either automatic closing functions or manual closing controls, the offsite accident consequences are demonstrated to be within regulatory limits. *See* Application, Attach. 1, Tables 6, 8. CCAM has not in any way asserted, much less provided a basis for an assertion that the DNC alternative source term accident re-analyses are in error.<sup>10</sup>

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<sup>9</sup> *Compare Millstone*, CLI-01-24, 54 NRC at 359 (“While it is debateable whether the Petitioners’ allegations. . . suffice for standing to intervene, an issue we do not decide, the allegations surely fall short of an admissible contention. . .”).

<sup>10</sup> The Licensing Board similarly suggested in its earlier decision (LBP-03-03, slip op. at 20) that it would appear that even in *normal fuel movement operations* there would be some increase in release of airborne radioactivity if penetrations were left open. This is simply not true, and CCAM has not provided any basis for such an assertion in its proposed contention. The Application does not involve any change to releases during normal fuel movement operations, and normal releases during such movements are not affected by whether penetrations are open or closed. Fuel movements take place under water, and no meaningful airborne radioactive effluents result. Normal releases from containment during refueling occur through containment ventilation regardless of whether purge valve isolation is operable or containment penetrations are open. The containment ventilation pathway is monitored and will remain monitored. Normal airborne releases are subject to operating limits, and those limits are not being changed.

Indeed, the logic of the standing supposition is flawed. The object of the alternative source term is to reflect advances made since original plant licensing with respect to the timing, magnitude, and chemical form of fission product releases assumed from postulated severe plant accidents. In this case, the re-analysis performed of the fuel handling accident sequences uses those advances and demonstrates that the engineered safety features at issue are not required for compliance with NRC limits in 10 C.F.R. § 50.67 and associated guidance. The Licensing Board's supposition would only hold if DNC were proposing the same TS changes, but at the same time was continuing to apply the traditional accident source term. This is not the case in the Application. Therefore, there is no basis either in the proposed contention or "common sense" to demonstrate a genuine dispute with the Application.

In sum, CCAM has failed to provide a basis for the assertion that there will be significant increases in radiological effluents. The alternative source term analyses in the Application specifically demonstrate that, even with the associated changes in operational controls, there will be no increased offsite accident consequences. CCAM in the proposed contention has failed to engage that fundamental conclusion, and therefore has failed to provide the basis required by 10 C.F.R. § 2.714(b)(2) necessary to demonstrate a genuine dispute with respect to that conclusion. *See Millstone*, CLI-01-24, 54 NRC at 358-60 (rejecting a contention where the petitioners had failed to offer "any specific explanation, factual or legal, for why the consequences they fear will occur"). A failure to even allege where and how the Application fails to meet regulatory standards must result in rejection of the contention. *Seabrook*, LBP-82-106, 16 NRC at 1656. Lacking a genuine dispute, the Licensing Board must reject the proposed contention. *Palo Verde*, CLI-91-12, 34 NRC at 155-56.

B. The Proposed Contention Would Not Entitle CCAM to Any Relief

The proposed contention, in addition to lacking any basis for its core assertion that there would be greater releases resulting from a design basis fuel handling accident, fails to demonstrate that CCAM would be entitled to any relief in this proceeding with respect to the proposed “administrative controls.” CCAM asserts that the Licensing Board could disallow leaving the penetrations open during fuel movements. (CCAM Contention at 9.) However, lacking any basis to challenge the accident analyses, or to demonstrate a significant safety issue, there is no regulatory basis for such relief. CCAM’s requested relief would be inconsistent with 10 C.F.R. § 50.67. The contention must be rejected in accordance with 10 C.F.R. § 2.714(d)(2)(ii).

It appears that CCAM is again drawing from a conclusion of the Licensing Board in LBP-03-03 with respect to a *standing* consideration:

Considering the event of a fuel handling accident involving spent fuel, we find that this would “quite obviously entail an increased potential for offsite consequences,” *see Zion*, CLI-99-4, 49 NRC at 191, at a distance of two miles. Thus, in the case of CCAM, we would find injury-in-fact and causality based on the 2-mile proximity of one of its members to the plant and the clear potential for increased offsite consequences arising from the open penetrations in the event of an FHA. *With regard to redressability, a favorable Board ruling that, for example, disallowed leaving penetrations open, would obviously redress the harm alleged to arise from allowing the penetrations to remain open during movement of fuel.*

LBP-03-03, slip op. at 22 (emphasis added). However, this *assumption* of redressability for a standing determination is decidedly not appropriate in assessing the admissibility of a contention. The proposed contention provides neither a factual nor a legal basis for the remedy suggested by the Licensing Board and, therefore, is inadequate.

The alternative source term rule is specifically premised on allowing operational relief to licensees. *See* 64 Fed. Reg. at 71,992. (“The NRC concluded that some licensees may

wish to use an alternative source term in analyses to support operational flexibility and cost-beneficial licensing actions and that some of these applications could provide concomitant improvements in overall safety and in reduced occupational exposure”).<sup>11</sup> If 10 C.F.R. Part 100 is satisfied for design basis accident conditions, without credit for any automatic closure or administrative controls, there is no regulatory basis to require such measures, much less to require more stringent operational restrictions. CCAM's assertions of the inadequacy of administrative controls again focus on only one half of the Application. CCAM's assertions, *absent a basis such as an analytical analysis*, are insufficient for a contention that further operational restrictions are required to comply with Part 100 or to prevent a substantial safety hazard. *See Private Fuel Storage*, LBP-98-7, 47 NRC at 180 (safety contention “must either allege with particularity that an applicant is not complying with a specified [safety] regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent”). In addition, under 10 C.F.R. § 50.36, TS are only required if certain criteria are met. The Application addresses those criteria for the TS proposed to be deleted. *See* Application, Attach. 2, at 12-15. The proposed contention does not meaningfully challenge these conclusions, much less provide any basis to support such a challenge.

The proposed contention is fundamentally flawed with regard to its characterization of the administrative controls proposed by DNC. First, much of CCAM's argument is directed to proposed changes to TS 3.3.3.1, 3.3.4, 3.9.4, and others, with respect to

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<sup>11</sup> *See also* SECY-99-240, “Final Amendments to 10 CFR Parts 21, 50, and 54 and Availability for Public Comment of Draft Regulatory Guide DG-1081 and Draft Standard Review Plan Section 15.0.1 Regarding Use of Alternative Source Terms at Operating Reactors,” dated Oct. 5, 1999, Attach. 4, “Regulatory Analysis” (“It is believed that the final rule will result in an improvement in the allocation of resources both for the NRC and for industry. The industry will be allowed to propose applications of [alternative

the issue of the automatic containment isolation function. In fact, as described in the Application, the Millstone TS would be modified so that an operable containment purge valve isolation signal is not required prior to fuel movement inside containment. *See, e.g.*, Application, Att. 2, at 2-3, 13-14. Based on the revised fuel handling accident analyses, an operable purge valve isolation signal is not needed to meet either Part 100 or 10 C.F.R. § 50.67. The revised fuel handling accident analysis in containment does not take credit for purge valve operation for the duration of a release (2 hours). Regardless, the calculated low population zone, exclusion area boundary, and control room doses remain within the regulatory limits of Section 50.67 and Reg Guide 1.183. *Id.* The TS nonetheless are proposed to be revised to require that administrative controls be established to ensure that the containment purge valve can be closed in 30 minutes, to mitigate accident releases. *Id.* at 13.<sup>12</sup> While CCAM suggests the change is somehow inappropriate, the contention does not state why this might be so in light of the analysis presented in the Application.

Second, based on the DNC re-analyses, administrative controls with respect to containment openings (the equipment hatch, the personnel airlock, and other penetrations) are also not required to meet Part 100 doses and are not required by 10 C.F.R. § 50.36. TS 3.9.4 would be revised accordingly. *See* Application, Attach. 2, at 6-9. Nonetheless, DNC has included in the proposed revised TS, a requirement that administrative controls be in place with respect to these openings during fuel movements, with the objective of closing the openings

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source terms] that could reduce unnecessary or ineffective requirements in the facility design basis”).

<sup>12</sup> The Application at issue does not involve any change to the isolation capability. The proposed TS would require administrative controls with the objective of closing the purge valve within 30 minutes. At Millstone Unit 2, closure can be accomplished after a radiation signal by operator action in the control room.

within 30 minutes. *Id.* Such action would, as with the containment isolation, mitigate the consequences of a fuel handling accident below those calculated in the analysis. Therefore, the administrative controls proposed by DNC can be characterized as a defense-in-depth measure beyond regulatory requirements. The administrative controls are being proposed consistent with Reg. Guide 1.183. *See* Reg Guide 1.183, App. B, § 5.3 n.3. CCAM's assertions regarding the inadequacy of administrative controls therefore misunderstand what is being proposed and fail to provide any regulatory or factual basis for relief.

Third, CCAM incorrectly asserts (at 5) that the proposed administrative controls related to the containment penetrations are "unsubmitted and unreviewed." In fact, with respect to containment penetrations, DNC has voluntarily chosen to implement a TS to impose the administrative controls. The proposed TS (*i.e.*, the administrative control) is therefore included in the Application and the measures to be required are described in the Application. *See* Application, Attach. 2, at 6-9, 13-14. CCAM has simply failed to understand what is being proposed, and failed to provide a meaningful challenge to DNC's proposal and supporting explanation.<sup>13</sup>

Finally, CCAM asserts (at 5): "[TS] 3.9.4 is proposed to be changed such that *inter alia* containment penetrations need not be closed if closure would represent a significant radiological hazard to the personnel involved." Similarly, CCAM asserts (at 8) that the administrative controls "obviate existing requirements to prevent leakage of radioactive effluent from containment to the environment should radiation levels be deemed too hazardous for

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<sup>13</sup> For the spent fuel area, no TS is proposed. The Application explains that "procedural guidance will be available for closing Spent Fuel Pool area atmosphere boundary penetrations if a [fuel handling accident] occurs inside the Spent Fuel Pool area." *Id.* at 11.

personnel.”<sup>14</sup> However, the qualifier on the proposed controls is actually a prudent measure by DNC. CCAM has not provided any basis for the assertion that personnel will receive doses and be unable to fulfill their duties, or for a contention that either the proposed controls or some other controls should be required. CCAM has also not provided any basis for a contention (again, contrary to DNC’s analysis) that there will be significant releases if the defense-in-depth administrative controls are not successfully implemented in a specific scenario. Therefore, there is no basis for the argument and no basis for relief in this proceeding.

C. Other Aspects of the Proposed Contention Are Flawed and Inadmissible

In addition to the deficiencies described above, other aspects of the proposed contention are fatally flawed for other reasons, and therefore also inadmissible.

In its recitation of sources on which it intends to rely (CCAM Contention at 6), the only technical document (other than the Application) to which CCAM cites is “[t]he October 2000 report prepared by Sandia Laboratories for the [NRC] on the potential consequences of a spent fuel pool accident.” It appears that CCAM is referencing NRC’s “Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,” dated October 2000 (“Decommissioning Risk Study”). However, the Decommissioning Risk Study does not provide a basis for CCAM’s proposed contention. It pertains to beyond-design-basis spent fuel pool

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<sup>14</sup> CCAM is referencing the following discussion:

Designated personnel will be continuously available to perform closure of their assigned Containment openings whenever irradiated fuel is being moved within the Containment. As necessary, equipment will be pre-staged to support timely closure of a Containment penetration. However, if it is determined that closure of all Containment penetrations would represent a significant radiological hazard to the personnel involved, the decision may be made to forgo the closure of the affected penetration(s).

Application, Attach. 2, at 7-8.

events,<sup>15</sup> and does not address design basis fuel handling events, such as are concerned by the Application at issue. The Licensing Board must do more than “uncritically accept a party’s mere assertion that a particular document supplies the basis for its contention, without even reviewing the document itself to determine if it in fact says what the party claims it says and if it appears to support a litigable contention.” *Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989). Here, CCAM has failed to meet its burden to show that a connection exists between the Application and the document on which it apparently relies for support. *Id.* at 50.

In addition, CCAM (at 7-8) challenges the NRC Staff’s proposed no significant hazards consideration determination, arguing (in conclusory fashion) that the proposed changes “do involve a significant increase in the probability of consequences of an accident previously evaluated” and “involve a significant reduction in a margin of safety.” It is well established that a proposed no significant hazards consideration determination is not litigable in a licensing proceeding. 10 C.F.R. § 50.58(b)(6);<sup>16</sup> *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001); *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), LBP-98-23, 48 NRC 157, 165 (1998).<sup>17</sup> Accordingly, the Commission’s regulations

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<sup>15</sup> “The focus of the risk assessment was to identify potential severe accident scenarios at decommissioning plants and to estimate the likelihood and consequences of these scenarios.” Decommissioning Risk Study, § 1.0.

<sup>16</sup> That provision states:

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.

<sup>17</sup> *See also Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 183 (1991)(“A determination of no significant hazards consideration is not

prohibit the Licensing Board from entertaining this portion of CCAM's contention. In any event, CCAM has not provided any basis for its assertion, and therefore has not demonstrated a genuine dispute of material fact with respect to the issues addressed in the proposed no significant hazards consideration. Its contention fails for this reason as well.<sup>18</sup>

CCAM also argues (at 8) that the proposed amendment does not meet the criteria for categorical exclusion from Part 51 environmental review as set forth in 10 C.F.R. § 51.22(c)(9),<sup>19</sup> principally because, according to CCAM, a significant hazards

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a substantive determination of public health and safety issues for the hearing on the proposed amendment. The only effect of such a determination on the hearing is to establish whether the amendment may be approved before a hearing is held, or, if there is a finding of significant hazards consideration, a final decision must await the conclusion of the hearing.”)

<sup>18</sup> At the time it implemented the current procedures for issuance of no significant hazards consideration determinations, the NRC provided several examples of license amendments that it considered *not likely* to involve significant hazards considerations, including:

A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, *e.g.*, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Final Rule, Final Procedures and Standards on No Significant Hazards Considerations, 51 Fed. Reg. 7744, 7751 (Mar. 6, 1986). This example encompasses the proposal here at issue.

<sup>19</sup> A “categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment, which the NRC has found to have no such effect in accordance with 10 C.F.R. § 50.22, and for which, therefore, neither an environmental assessment (“EA”) nor an environmental impact statement (“EIS”) is required. 10 C.F.R. § 51.22(c)(9) provides a categorical exclusion for issuance of a Part 50 license amendment that (among other things) “changes an inspection or a surveillance requirement, provided that (i) the amendment involves no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and (iii)

consideration “is mandated.” This argument is merely a restatement of CCAM’s challenge of the Staff’s no significant hazards consideration determination and is similarly barred. In any event, CCAM’s assertion again lacks any basis. CCAM has not made any specific, affirmative demonstration of environmental impacts from the proposal that would warrant preparation of an EA or EIS.

Finally, CCAM alleges that the proposed changes “adversely affect the public health and safety.” (CCAM Contention at 8-9.) This argument fails to raise an admissible issue for two reasons. First, as discussed above, the postulated releases from the design basis accident meet 10 C.F.R. Part 100 requirements. CCAM’s contention, therefore, amounts to an impermissible challenge to NRC regulations establishing radiological dose limits. *See* 10 C.F.R. § 2.758; *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-01-10, 53 NRC 273, 286-87 (holding that an expert assertion that increased effluent releases resulting from routine reactor operations that were within NRC regulatory limits would be an impermissible challenge to the Commission’s regulations), *aff’d*, CLI-01-24, 54 NRC 349 (2001); *see also Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (a petitioner “may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies”).

Moreover, CCAM may not litigate the health effects of postulated accident doses that are within NRC regulatory limits. The Commission has excluded a similar contention raising concerns about offsite radiological impacts. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2), LBP-02-4, 55 NRC 49, 85-87

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there is no significant increase in individual or cumulative occupational radiation exposure.”

(2002). Indeed, the proposed contention rejected in *McGuire/Catawba* concerned actual, routine effluent releases. The postulated accidental releases at issue in the Application are just that — hypothetical accident doses, not actual, present doses. CCAM’s broad assertion regarding the “public health and safety” is therefore beyond the scope of this proceeding and is barred by NRC regulations.

IV. CONCLUSION

For the reasons set forth above, CCAM’s proposed contention should not be admitted. The request for hearing and petition to intervene should be denied.

Respectfully submitted,



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Dated in Washington, D.C.  
this 31st day of March 2003

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-OLA-2  
)  
(Millstone Power Station, ) ASLBP No. 03-808-02-OLA  
Unit No. 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER OF DOMINION NUCLEAR CONNECTICUT, INC. TO CONNECTICUT COALITION AGAINST MILLSTONE SUPPLEMENTED PETITION AND CONTENTION" in the captioned proceeding have been served on the following by electronic mail, this 31st day of March 2003. Additional service has also been made this same day by deposit in the United States mail, first class, as shown below.

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