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September 15, 2003 (9:05AM)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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)	)	

DOMINION NUCLEAR CONNECTICUT, INC.'S BRIEF IN OPPOSITION TO APPEAL BY CONNECTICUT COALITION AGAINST MILLSTONE OF LBP-03-12

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September 8, 2003

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SECY-02

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I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714a(a), Dominion Nuclear Connecticut, Inc. ("DNC") herein responds in opposition to the appeal filed on August 28, 2003, by the Connecticut Coalition Against Millstone ("CCAM" or "Appellant").[1] CCAM is appealing the decision of the Nuclear Regulatory Commission ("NRC") Atomic Safety and Licensing Board ("Licensing Board"), issued on August 18, 2003, denying CCAM's petition for leave to intervene and request for hearing in this matter. *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 NRC __ (slip op. Aug. 18, 2003). For the reasons discussed herein, the Licensing Board's decision in LBP-03-12 should be upheld.

II. STATEMENT OF CASE HISTORY

A. *The Amendment at Issue*

In 1999 the Commission amended its rules to allow licensees to revise design basis accident analyses by replacing the traditional accident source term previously assumed in the analyses with an alternative source term. *See* Final Rule, Use of Alternative Source Terms at

[1] *See* "Notice of Appeal" and "Brief in Support of Notice of Appeal" ("Brief") of Connecticut Coalition Against Millstone, dated August 28, 2003.

Operating Reactors, 64 Fed. Reg. 71,990 (Dec. 23, 1999). An alternative source term would reflect the advances that have been made since original plant licensing with respect to the timing, magnitude, and chemical form of fission product releases assumed from postulated severe plant accidents. Revised accident analyses would offer the potential to reduce regulatory burden without compromising any margin of safety. *Id.* In particular, accident analyses with alternative source terms may demonstrate greater safety margin than previously calculated. This may be relevant in reassessing aspects of the design basis, such as credited safety features, radiation monitors, alarms, or associated set points and administrative controls. If equipment no longer needs to be credited in a safety analysis to maintain required margins, a re-analysis may support changes in Technical Specifications ("TS").[2]

The Commission specifically established, in 10 C.F.R. § 50.67, the information to be submitted as part of an alternative source term license amendment application, as well as the criteria for NRC approval. 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"). Further guidance is included in Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors" (July 2000) ("Reg. Guide 1.183"). The criteria of 10 C.F.R. § 50.67(b)(2) reflect a departure from prior acceptance criteria, in that the calculated exposure limits – at the exclusion area boundary, the low population zone boundary, and in the control room – are in terms of total effective dose equivalent ("TEDE"). In contrast, traditional accident analyses calculated exposures in three parts: thyroid, whole body, and beta skin. Nonetheless, the rule establishes clear criteria to be

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2 *See generally* 10 C.F.R. § 50.36.

met in any re-analysis — criteria that the NRC has determined to be adequate to protect public health and safety.

In its September 22, 2002, Application,[3] DNC proposed to amend certain 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. DNC specifically applied the alternative accident source term and calculational methodology in re-analyses of the Millstone design basis fuel handling accidents. The re-analyses therefore support reductions in administrative burdens related only to fuel movements, as described in the Application. The accident re-analyses include the design basis fuel handling accidents postulated to occur during fuel movements in both the containment and spent fuel handling buildings, but do not involve any physical modifications to the plant equipment used in the movement or storage of irradiated fuel. *See* Application, Attach. 2 at 16.

In addition to the alternative accident source term, DNC's re-analyses incorporate revised assumptions regarding available equipment, with the objective of eliminating unnecessary regulatory or administrative burdens. DNC's re-analyses demonstrate 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 and Reg. Guide 1.183 *without taking credit* for containment boundaries and certain equipment or automatic actions presently governed by TS. *See* Application, Attach. 2, 4, 5. Similarly, the re-analyses demonstrate that the radiological consequences of a fuel handling accident outside containment (in the spent fuel pool building)

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3 *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,

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-analyses specifically support changes to relevant operability and surveillance requirements of the Millstone TS, as specified in the Application. *Id.*

B. Procedural History

On December 12, 2002, CCAM and the STAR Foundation filed a petition for leave to intervene and request for hearing (followed shortly by an amended petition) in response to the NRC's notice of opportunity for hearing.[4] DNC responded to the amended petition, on the issue of standing only, on December 27, 2002. The NRC filed a response on the issue of standing on January 2, 2003. The Licensing Board was established for this proceeding on January 6, 2003.[5] Thereafter, on February 14, 2003, the Licensing Board issued a Memorandum and Order concluding that CCAM had standing to participate in the proceeding, setting the dates for CCAM to amend its petition to propose contentions, and explaining the applicable requirements for proposed contentions.[6]

On March 10, 2003, CCAM filed a supplemental petition setting forth one proposed contention without any documentary or expert support. On March 31, 2003, DNC filed its response to the supplemental petition and opposed it for failure to set forth a contention with a

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Selective Implementation of the Alternative Source Term – Fuel Handling Accident Analyses" (Sept. 26, 2002) ("Application").

4 *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).

5 *See* Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit 2; Establishment of Atomic Safety and Licensing Board, 68 Fed. Reg. 1487 (Jan. 10, 2003).

6 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-3, 57 NRC 45 (2003).

basis sufficient to demonstrate a genuine dispute, or which would entitle CCAM to any relief in this proceeding. Also on March 31, the NRC Staff filed its response to the supplemental petition, and opposed it on similar grounds to DNC.

On June 5, 2003, the Licensing Board heard oral argument on the issue of the admissibility of CCAM's proposed contention. On June 20, 2003, DNC provided, at the request of the Licensing Board, certain additional dose comparisons to assist the Licensing Board in its understanding of the Application. The Licensing Board subsequently issued LBP-03-12 on August 18, 2003, in which it concluded that CCAM had not proffered an admissible contention. The issues raised before the Licensing Board have been fully addressed in DNC's papers. Rather than repeating those papers in their entirety, DNC respectfully refers the Commission to the filings,[7] and addresses herein particular points raised by the Appellant in its Brief.

III. ARGUMENT

A Licensing Board ruling will be affirmed where the "brief on appeal points to no error of law or abuse of discretion that might serve as grounds for reversal of a Board's decision." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 265 (2000), citing *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 201 (1998). As discussed below, there has been no error of law or abuse of discretion by the Licensing Board – the request for hearing was properly denied and the

7 *See* "Answer of Dominion Nuclear Connecticut, Inc. to Connecticut Coalition Against Millstone Supplemented Petition and Contention," dated March 31, 2003; Letter from D.A. Repka, Counsel for DNC, to Administrative Judges, transmitting Supplemental Dose Calculations and Affidavit of William J. Eakin, dated June 20, 2003 ("Supplemental Dose Calculations").

appeal should be rejected. As found by the Licensing Board, the Appellant did not proffer an admissible contention.

A. *There is No Basis for CCAM's Contention that the Proposed Amendment Involves the Potential for a Significant Increase in Offsite Releases*

In its Brief, as in its papers before the Licensing Board, CCAM's fundamental assertion in its lone contention is that the Application involves the potential for a "significant increase in the amounts of radiological effluents that may be released offsite" and, thus, would adversely impact the public health and safety. (Brief at 3.) In the proposed contention, however, CCAM did not proffer any basis whatsoever for this assertion. The Licensing Board correctly held that CCAM did not "specifically or directly challenge[]" whether DNC met the requirements of 10 C.F.R. §§ 50.67(b)(2) or 50.36, "or even state[] with any specificity *how* any increases would occur." LBP-03-12, slip op. at 21-22.

As documented in the Application, DNC performed the re-analyses of the consequences of design basis fuel handling accidents utilizing the alternative source term. These calculations 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. The postulated releases from the limiting design basis fuel handling accidents are specifically shown to be in accordance with 10 C.F.R. § 50.67. CCAM did not provide any meaningful technical basis on which to conclude that there is a genuine dispute with respect to DNC's calculations. CCAM, in its Brief, simply continues to maintain – without any supporting facts, analysis, or expert opinion – that the amendment will somehow lead to greater offsite doses.

For example, CCAM repeats (Brief at 3) its assertion that if, during fuel movement operations, containment penetrations are left open (under the revised TS), there is a greater likelihood of an offsite radioactive release both in the event of an accident and during routine

operations. However, as before, this argument considers only one part of the Application – the fact that under the proposed TS containment penetrations or fuel handling building operations or fuel handling building openings may be open under administrative controls during fuel movement. The argument ignores the rest of the Application, in particular the re-analyses of fuel handling accident consequences using the alternative source term. These analyses specifically demonstrate that, for the bounding design basis fuel handling accidents, using the alternative source term – and taking *no credit* for closed containment penetrations or the proposed administrative controls – there will be no releases or dose consequences in excess of the relevant regulatory limits. Without any basis to challenge these calculations, there was never any basis for an admissible contention. *Compare* 10 C.F.R. § 2.714(b)(2); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996) ("For a contention to be admissible, a petitioner must refer to the specific portion of the license application being challenged, state the issue of fact or law associated with that portion, and provide a 'basis' of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or expert opinions"). Accordingly, there was no error in the Licensing Board's decision to reject the issue.[8]

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[8] The Supplemental Dose Calculations, submitted at the request of the Licensing Board, further illustrate that the effect of adopting the proposed TS and administrative controls will result in doses that are only a fraction of the regulatory limit. These calculations show the effect of the TS changes, by utilizing the alternative source term in calculating dose consequences for fuel handling accidents under both the current TS and the proposed TS. They also utilize a common basis for comparison by expressing consequences for all cases in terms of TEDE. CCAM did not offer any challenge to these calculations.

B. The Licensing Board's Determinations Regarding Standing Do Not Provide a Basis for CCAM's Proposed Contention

In its Brief CCAM principally relies on the Licensing Board's conclusion in LBP-03-3 (not LBP-03-12), made in connection with CCAM's *standing*, to suggest that there was a basis for the contention. The Licensing Board had concluded that if, after the proposed changes are implemented, during 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." LBP-03-3, 57 NRC at 61.[9] However, these statements were made in the context of *standing only*, and were not made either "on the merits" or in the context of a contention admissibility determination. Indeed, the Licensing Board observed in its standing decision that Commission case law directs it in the standing context to "construe the petition in favor of the petitioner." *Id.* at 53. In contrast, the Licensing Board in LBP-03-12 specifically noted that, while these circumstances might have been sufficient to show standing, "the requirements for an admissible contention are . . . considerably more stringent." LBP-03-12, slip op. at 22. The Licensing Board in this regard was patently correct.

It is well established that the petitioner has the burden to come forward with contentions meeting the pleading rules. *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 30 (2002), citing *Baltimore Gas &*

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9 *See also id.* at 61-62 ("[I]f 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"). However, DNC's analyses summarized in the Application show that, when considering *both* the alternative source term and the proposed TS changes, radiological consequences are not significantly increased.

Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998), *aff'd sub nom. Nat'l Whistleblower Center v. Nuclear Regulatory Comm'n*, 208 F.3d 256 (D.C. Cir. 2000). A licensing board is not free to supply missing information or draw factual inferences on the petitioner's behalf. *See Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, &3), CLI-91-12, 34 NRC 149, 155-56 (1991). As emphasized in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998), "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions in 10 C.F.R. § 2.714(b)(2)."[10] CCAM failed to meet this burden.

The Licensing Board also did not, as claimed by CCAM (Brief at 4), "accept[] the assertions" of DNC "that the proposed changes are 'safe.'" The Licensing Board did not reach the merits of the Application, but instead correctly held that CCAM failed to proffer an admissible contention challenging the Application. Specifically, CCAM did not provide a specific basis for its allegation that DNC proposed to "lower" safety "as a result of increases" in doses and, accordingly, CCAM failed to demonstrate a genuine dispute on a material issue. *See* LBP-03-12, slip op. at 23. CCAM has not now demonstrated any legal error or abuse of discretion by the Licensing Board in making this admissibility determination. The Licensing Board applied the correct standard for evaluating the proposed contention, and its determination is entirely consistent with the record.

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10 In this vein, CCAM's assertion (Brief at 5) that its contention "was acknowledged to be plausible as a matter of common sense by the Panel" also demonstrates a misunderstanding of the Commission's strict pleading requirements applicable to proposed contentions.

C. *The Proposed Contention Would Not Entitle CCAM to Any Relief*

In addition to failing to provide a basis for its core assertion that there would be greater releases resulting from a design basis fuel handling accident if the proposed TS are implemented, CCAM's proposed contention failed to demonstrate how it would be entitled to any relief in this proceeding. CCAM asserted in its contention that the proposed administrative controls on containment penetrations should be disallowed. However, lacking any basis to challenge DNC's analyses and DNC's conclusion that the results are within regulatory limits, any such relief would be entirely inconsistent with 10 C.F.R. § 50.67 and the very logic of the Commission's decision to allow use of alternative source terms. The contention, therefore, was properly rejected in accordance with 10 C.F.R. § 2.714(d)(2)(ii).

As DNC explained in the Application and its filings below, it included in the proposed revised TS a requirement that certain administrative controls be in place with respect to allowed containment openings during fuel movements, with the objective of closing the openings within 30 minutes. Actions pursuant to these controls were not assumed in the accident analyses. However, if implemented, these actions would mitigate the consequences of a fuel handling accident below those calculated in the Application analysis. The proposed administrative controls are not required to meet the criteria of 10 C.F.R. § 50.67, nor are they required by 10 C.F.R. § 50.36. Rather, they serve as a defense-in-depth measure beyond regulatory requirements. They are proposed consistent with Reg. Guide 1.183. *See* Reg. Guide 1.183, App. B. § 5.3 n.3. CCAM never explained how disallowing these controls could be granted under the Commission's regulations or how such "relief" would improve safety.

On appeal, CCAM has not improved its prior argument on administrative controls, or pointed to any error by the Licensing Board. Indeed, if anything, CCAM's argument has become even more amorphous. CCAM argues (Brief at 4-5) that the proposed changes

"involve a significant reduction in a margin of safety" because, should radiation levels "be too severe," the "administrative controls now proposed will be automatically rendered nugatory" and DNC "will not be faulted for not closing the penetration." This argument first appears to be a challenge to the NRC's proposed no significant hazards consideration determination. It is well established that a proposed no significant hazards consideration determination is not litigable in a licensing proceeding.[11] 10 C.F.R. § 50.58(b)(6); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001). Also, CCAM may be alluding to the fact that, by the terms of the proposed controls, manual actions to close containment would not be taken if such actions would be contrary to personnel safety (*i.e.*, in a beyond-design-basis scenario). *See* Application, Attach. 2 at 8. CCAM still ignores that the proposed administrative controls are not needed to meet NRC requirements related to dose consequences. Accordingly, no relief could be granted with respect to this prudent qualification included in the proposed administrative controls.

Also with respect to the issue of relief, CCAM repeats an assertion taken directly from the Licensing Board's decision on CCAM's standing. The Licensing Board stated:

> 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.

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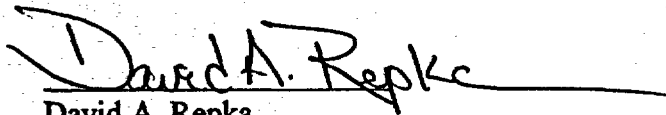
11 Counsel for CCAM also indicated during oral argument on June 5, 2003, that CCAM conceded, or withdrew, the aspect of its proposed contention challenging the Staff's proposed no significant hazards consideration determination. *See* Transcript 30 ("I believe I was probably in error and had overlooked a rule regarding the safety hazards analysis. I would concede the argument that has been presented by Dominion and the staff on that point"), 97-98. CCAM may not now raise the issue on appeal. *See Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980) (an appeal may only be based on matters and arguments raised below).

Brief at 5, quoting LBP-03-3, 57 NRC at 62. This assumption of redressability was again made in the context of a standing determination, and is decidedly not appropriate in assessing the admissibility of a contention. *See* LBP-03-12, slip op. at 22-23. The proposed contention provided neither a factual nor a legal basis for the suggested remedy, and is therefore inadequate. Therefore the contention seeking only to deny the proposed TS changes (and to eliminate the proposed administrative controls) would be of no consequence because the relief could not be granted. The proposed contention was correctly rejected.

V. CONCLUSION

For the reasons articulated by the Licensing Board and for the reasons set forth above, the Licensing Board's decision in LBP-03-12 should be upheld.

Respectfully submitted,



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Dated in Washington, D.C.
this 8th day of September 2003

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CERTIFICATE OF SERVICE

I hereby certify that copies of "DOMINION NUCLEAR CONNECTICUT, INC.'S BRIEF IN OPPOSITION TO APPEAL BY CONNECTICUT COALITION AGAINST MILLSTONE OF LBP-03-12" in the captioned proceeding have been served on the following by electronic mail, this 8th day of September 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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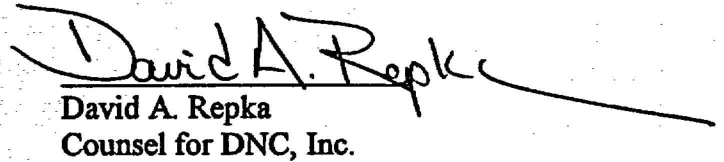

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