

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE IN OPPOSITION TO
PETITIONER'S MOTION FOR RECONSIDERATION

Laura C. Zaccari
Counsel for NRC Staff

November 17, 2003

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INTRODUCTION

On November 3, 2003, Connecticut Coalition Against Millstone (CCAM or Petitioner) filed a Motion for Reconsideration ("Motion") of the Commission's Memorandum and Order, CLI-03-14, issued on October 23, 2003 (affirming LBP-03-12). For the reasons set forth below, the NRC staff ("Staff") opposes the motion and urges the Commission to deny it.

BACKGROUND

On August 18, 2003, the Atomic Safety and Licensing Board ("Board") issued a Memorandum and Order (LBP-03-12, ___NRC___), which denied CCAM's request for hearing. The Board determined the sole CCAM contention to be insufficient to warrant a hearing, and terminated the proceeding. CCAM filed its "Notice of Appeal" and "Brief in Support of Notice of Appeal" on August 28, 2003.

The Commission issued its Memorandum and Order affirming the Board's decision on October 23, 2003 (CLI-03-14, ___NRC___). CCAM filed a "Motion for Reconsideration" on November 3, 2003.

CCAM has failed to state any basis upon which the Commission could conclude that reconsideration is warranted; therefore, the Staff submits that the Commission should deny CCAM's motion.

ARGUMENT

I. Legal Standards Governing Petitions for Reconsideration

A petition for reconsideration “must establish an error in a Commission decision, based upon an elaboration or refinement of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification.” *Dominion Nuclear Connecticut* (Millstone Nuclear Power Station, Units 2 and 3), CLI-02-1, 55 NRC 1, 2 (2002) (quoting *Central Electric Power Cooperative Inc.* (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787 (1981)). A petition for reconsideration should not be used merely to “re-argue matters that the Commission already [has] considered” but rejected. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-24, 38 NRC 187, 188 (1993). Furthermore, a motion for reconsideration will be denied where the arguments presented are not in reality an elaboration upon, or refinement of, arguments previously advanced, but instead an entirely new thesis. *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977); *Central Electric Power Cooperative Inc.* (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981).

II. Petitioner Has Failed to Establish an Error in the Commission Decision

Petitioner has failed to point out any error of law or fact that would warrant reconsideration by the Commission. CCAM merely reiterates the same argument it made when appealing the decision of the Licensing Board: that “common sense” dictates that if the containment doors are open during a fuel handling accident, more radiation could escape to the environment.¹

¹ The license amendment sought by Dominion Nuclear Connecticut, Inc. allows
(continued...)

Motion at 2, 3. Moreover, in doing so, CCAM repeatedly re-characterizes its contention. In previous pleadings, as well as in the present motion, CCAM challenges the licensee's application to maintain the doors to containment under administrative control.² See Supplemented Petition and Contention at 4-5; Brief in Support of Notice of Appeal at 2; Motion at 2. In addition, in its present motion, CCAM for the first time raises the issue of the "operability of containment doors" and calls it the "gravamen" of its contention. Motion at 2-3. Thus, CCAM appears to be altering its contention. The motion thus fails to rise to the standard required for reconsideration by the Commission.

CCAM is no stranger to the NRC hearing process, in particular, standards for seeking reconsideration. Previously, CCAM filed a motion for reconsideration of the Commission's decision in CLI-01-24 (See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-02-1, 55 NRC 1 (2002)). In that case, CCAM also proffered a lone contention in opposition to a license amendment. The Licensing Board's rejection of the contention was affirmed by the Commission. In rejecting CCAM's motion for reconsideration in that case (as it should have), the Commission noted, "Their petition for reconsideration simply reiterates various earlier claims, ignoring the Commission's analysis and disposition of them. Indeed, the Petitioners even repeat misconceptions about these license amendments which the Commission highlighted and corrected in its decision." *Id.* at 3.

¹(...continued)

changes to the technical specifications which would allow containment penetrations to remain open (under administrative control) during fuel handling. This change is based on use of an alternative source term.

² CCAM's proposed contention was 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."

In the case at hand, CCAM has repeated its errors of the previous case, while failing to indicate how the Commission may have erred in this instance. Its argument supporting reconsideration merely repeats the “common sense” mantra that has previously been rejected by both the Board and the Commission.³ Indeed, CCAM continues to re-characterize and misunderstand the very nature of the license amendment that the Commission explained in great detail in its decision. See CLI-03-14 slip op. at 1-7. CCAM claims that the “operability of the doors to containment . . . forms the *gravamen* of the contention submitted by CCAM, namely, that eliminating the requirement that the licensee maintain the operability of doors to containment during fuel handling accidents unnecessarily exposes the public to peril and should be disallowed.” Motion at 3 (emphasis in original). The “*operability* of the doors to containment” has nothing to do with the amendment sought by the licensee. The license amendment does not alter the requirement that the containment doors remain *operable*. Rather the amendment allows for administrative control of the doors during fuel handling and this requirement will continue in effect whether or not the amendment request is granted. Moreover, Petitioner’s contention as proposed did not challenge the operability of containment doors. If CCAM is now contending that operability of containment penetrations is at issue, the request for reconsideration must be rejected as a “new thesis.” See *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977). If the motion simply continues to re-iterate the same arguments, albeit incorrectly, that the Commission has previously rejected, the motion must also be denied. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-24, 38 NRC 187, 188 (1993).

³ If CCAM is putting forward a new contention, the Commission must still reject the petition for reconsideration. See *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977).

Finally, at no point in its motion does CCAM indicate that the Commission overlooked controlling legal authority, or failed to consider the facts presented. CCAM continues to rely on the Board's statements regarding *standing* that if containment penetrations are left open, "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." Motion at 2. CCAM dismisses the notion that any sort of expert opinion is required because the Board acknowledged its position as a matter of "common sense." This position fails to account for the fact that both the Board and Commission made clear that the standards for admissible contentions are considerably more stringent than those for standing. See CLI-03-14, slip op. at 11-12; LBP-03-12, slip op. at 21.

CCAM's Motion for Reconsideration does not raise a single error of law or fact and in no way indicates that the Commission should reconsider its holding in CLI-03-14. Furthermore, CCAM's characterization of its own contention is either careless or an overt attempt to introduce a new theory after the Commission has gone to great lengths to explain the proposed licensee action. In either case, CCAM has failed to provide any basis whatsoever for a determination that reconsideration is appropriate, and the Commission should deny the motion.

CONCLUSION

For the reasons set forth above, the Commission should deny CCAM's motion for reconsideration of the Commission's Memorandum and Order of October 23, 2003.

Respectfully submitted,

/RA/
Laura C. Zaccari
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of November, 2003

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Laura C. Zaccari
Address: Office of the General Counsel, 0-15D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Telephone Number: (301) 415-3897
Fax Number: (301) 415-3725
E-mail Address: lcz@nrc.gov
Admissions: Virginia
Name of Party: NRC Staff

Respectfully submitted,

/RA/
Laura C. Zaccari
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of November 2003

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION" and "NOTICE OF APPEARANCE" for Laura C. Zaccari 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 17th day of November, 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
5207 Creedmoor Road #101
Raleigh, NC 27612
(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 nancyburtonsq@aol.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 LLP
1400 L. Street N.W.
Washington, D.C. 20005-3502
(E-mail copy to drepka@winston.com. and
BPOole@winston.com.)

/RA/

Laura C. Zaccari
Counsel for NRC Staff