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**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001
Attention: Rulemakings and Adjudications Staff

Re: Millstone Nuclear Power Station, Units 2 and 3
License Renewal Application
Dominion Nuclear Connecticut, Inc.
Docket Nos. 50-336 and 50-423

Dear Sirs:

I respond to the letter of Attorney David R. Lewis of February 13, 2004 concerning the Connecticut Coalition Against Millstone "Petition to Intervene and Request for Hearing" ("Petition") with regard to the application of Dominion Nuclear Connecticut, Inc. ("Dominion") to obtain renewal of the operating licenses for Millstone Units 2 and 3.

On behalf of Dominion, Mr. Lewis asserts that the Coalition's Petition was filed prematurely in advance of a Federal Register notice and that the Coalition should not be permitted to participate in proceedings concerning the Millstone relicensing application except pursuant to the "new" 10 CFR Part 2 rules.

We disagree.

By way of factual background, Dominion formally submitted its application to the U.S. Nuclear Regulatory Commission ("NRC") on January 22, 2004. By letters dated February 5, 2004, the NRC notified the Waterford (CT) Public Library and the Three Rivers Community College in Norwich (CT) that it was thereupon submitting to each respective facility a copy of the application as it had been filed with the NRC in Docket Nos. 50-336 and 50-423.

On February 6, 2004, the NRC posted on its official website a notice that the NRC would hold a public meeting in Waterford on February 17, 2004 regarding the license renewal application.

On February 8, 2004 or earlier, the NRC posted notice on its official website of the pendency of the Millstone license renewal application.

On February 12, 2004, the Coalition submitted its "Petition to Intervene and Request for Hearing" to the NRC's Office of the Secretary with a copy to the licensee. The Office of the Secretary emailed notice of its acknowledgment of the filing on February 12, 2004.

On February 17, 2004, representatives of the NRC, including two representatives from the Office of the General Counsel, conducted a public meeting regarding the Millstone license renewal application in Waterford, as scheduled. During such meeting, NRC representatives stated that the NRC was not legally required to conduct a hearing on the application in the absence of a formal request for a hearing.

It is clear from an examination of the "old" and "new" rules, and a review of pertinent materials made available by the NRC on its website and in the Federal Register, that the Petition must be docketed and considered by the NRC under the "old" rules.

The NRC's website postings provide pertinent guidance. On or before February 16, 2004, the NRC posted on its official website a chart entitled "Applicability of Old and New 10 CFR Part 2 to NRC Proceedings." Such chart posits various scenarios of potential events occurring with regard to license applications and interventions and it assigns applicability of "old" versus "new" rules. The ninth scenario is particularly apt. It posits the following potential events:

Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing published on NRC web site before February 13, 2004, but not in Federal Register; hearing request/intervention petition received **after** February 13, 2004. [Emphasis added.]

Pursuant to these parameters, it is clear from NRC's own interpretation of the rules that the Coalition's Petition proceedings must be conducted pursuant to the "old" 10 CFR Part 2 rules.

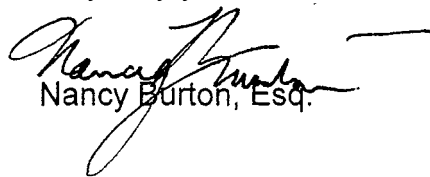
There is no question but that the application was submitted on January 22, 2004, well before February 13, 2004. The NRC received the application for Dockets 50-336 and 50-423 and on February 5, 2004 it officially forwarded copies to the Waterford Public Library and Three Rivers Community College. The NRC publicly announced receipt of the application at least as early as February 6, 2004. Within six days of its receipt of actual notice of the pendency of the application, on February 12, 2004, the Coalition filed its Petition to Intervene and Request for Hearing. The Coalition filed its petition *prior* to the rule change.

Under the NRC's own guidance, notice of opportunity for hearing as posted on the NRC website or in the Federal Register provides a triggering event which may be a factor in determining the applicability of the "old" versus the "new" rule. Yet, it is noteworthy that the new rule, 10 CFR §2.309(b)(4)(ii), provides that a petition to intervene and request for hearing are timely filed if filed within ([S]ixty (60) days after the requestor [Petitioner] receives actual notice of a pending application . . ." *regardless* of whether or not a notice appears on the NRC website or in the Federal Register.

The key parameters here are (a) the date of Dominion's application (January 22, 2004) and (b) the date of the Coalition's intervention (February 12, 2004). Both critical events occurred prior to the effective date of the new rule, February 13, 2004. Since no hearing is required, and thus no notice of hearing is required, and the intervention was filed within 60 days of the Coalition's actual notice of the pendency of the application, the Coalition's petition must be processed under the "old" rule.

I thank you for your assistance.

Very truly yours,



Nancy Burton, Esq.

cc: David R. Lewis, Esq.
Lillian Cuoco, Esq.
U.S. Nuclear Regulatory Commission
Office of General Counsel