

March 4, 2004

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Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Att'n: Rulemakings and Adjudications Staff

March 4, 2004 (3:30PM)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of
Dominion Nuclear Connecticut, Inc.
(Millstone Power Station, Units 2 and 3)
Docket Nos. 50-336 and 50-423

Dear Ms. Vietti-Cook:

On February 12, 2004, the Connecticut Coalition Against Millstone (CCAM) filed a Petition to Intervene and Request for Hearing with regard to the renewal of the operating licenses held by Dominion Nuclear Connecticut, Inc. (DNC) for the Millstone Power Station, Units 2 and 3. By letter dated February 13, 2004, DNC observed that CCAM's petition was premature since the application for renewal of the Millstone operating licenses is still undergoing an acceptance review by the NRC staff and has not yet been docketed.

CCAM now asserts, in a letter dated March 1, 2004 to the Office of the Secretary (CCAM Letter), that because CCAM filed its petition prior to recent changes to 10 C.F.R. Part 2, the "Coalition Petition proceedings must be conducted pursuant to the 'old' 10 CFR Part 2 rules." CCAM Letter at 2. This assertion is without merit. The new Part 2 rules apply to proceedings noticed on or after the effective date of the new rules, unless otherwise directed by the Commission. See 69 Fed. Reg. 2,182 (2004). The date of CCAM's premature hearing request is therefore irrelevant. Moreover, the notice that initiates a proceeding is a notice of proposed action under 10 C.F.R. § 2.105 (or a notice of hearing under 10 C.F.R. § 2.104 when a hearing is mandatory). See 10 C.F.R. § 2.318(a) ("A proceeding commences when notice of hearing or notice of proposed action under § 2.105 is issued.").¹

¹ The same was true under the 10 C.F.R. Part 2 rules previously in effect. Those rules applied to adjudications initiated by orders, notices of proposed action, or notices of hearing. 10 C.F.R. § 2.700 (2003).

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A notice of proposed action is required for any reactor operating license, must provide an opportunity for hearing, and must be issued as soon as practicable after the application is docketed. 10 C.F.R. § 2.105(a)(10). Consistent with these regulations, the scenarios in the NRC's guidance on the "Applicability of Old and New 10 CFR Part 2 to NRC Proceedings" all depend on when the notice of docketing and opportunity for hearing is issued. See <http://www.nrc.gov/what-we-do/regulatory/adjudicatory/applicability-of-old-new-part2.html>.

CCAM's identifies the ninth scenario in the NRC's guidance as particularly apt. That scenario describes a proceeding where a notice of docketing and opportunity for hearing is published on the NRC web site before February 13, 2004. With respect to the Millstone license renewal applications, a notice of docketing and opportunity for hearing has not been published.

Finally, CCAM states that new 10 C.F.R. § 2.309(b)(4)(ii) provides that a hearing request is timely if filed within sixty days after the requestor receives actual notice of a pending application. CCAM Letter at 3. It is remarkable that CCAM suddenly relies on the new rules after arguing their inapplicability. In any event, 10 C.F.R. § 2.309(b)(4)(ii) does not allow CCAM to request a hearing on a license renewal application before the sufficiency review is completed. 10 C.F.R. § 2.309(b)(4) applies only in a proceeding for which a notice of agency action is not published. As previously discussed, a reactor license renewal proceeding commences with the issuance of a notice of proposed action, after the sufficiency review is completed and the application is docketed.

CCAM's intervention request remains premature and without effect. CCAM's views regarding the applicability of the new rules, which apparently prompted the premature intervention request, are simply wrong.

Respectfully submitted,



David R. Lewis
Counsel for Dominion Nuclear Connecticut, Inc.

cc: Nancy Burton