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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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RULEMAKINGS AND
ADJUDICATIONS STAFF

Annette Vietti-Cook, Secretary
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-001

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 a request for a hearing concerning Dominion Nuclear Connecticut's (DNC) applications to renew the operating licenses for Millstone Units 2 and 3. DNC responded to CCAM's petition on February 13, and argued that CCAM's petition to intervene is premature because the NRC staff has not concluded the reviews needed to determine whether the applications should be accepted and has not docketed the petitions. On March 1, CCAM responded by citing several instances in which it claims the NRC provided notice of the acceptance of the application on the NRC's web site. In the same letter, CCAM also claims that because the application was "noticed" prior to February 13, 2004, the hearing on the applications for license renewals must be conducted under the "old" 10 C.F.R. Part 2 rules. DNC responded to CCAM on March 4, reasserting its position that CCAM's petition is premature and arguing that the new Part 2 rules of procedure will apply to any proceedings on the license renewal.

It is the position of the NRC staff that CCAM's petition is premature. Therefore, the staff respectfully submits that CCAM's petition should be rejected without prejudice; it should be permitted to refile after acceptance of the applications has been noticed. The staff advises that it expects to publish notice of a proposed action and notice of opportunity to request a hearing in the *Federal Register* on Friday, March 12, 2004.

After the submission of an application for the renewal of an operating license for a power plant, notice of receipt of the application and availability of the application for public inspection is published, either in the *Federal Register* or on the NRC's web site. 10 C.F.R. § 2.101(a)(2). The application also is made available to the public through the web site and/or through a library located near the power plant. Notice of the receipt of an application, however, does not signal the start of the period during which an interested person may submit a request for a hearing or a petition to intervene in the agency's licensing process. Before a request for a hearing or a petition to intervene may be submitted, the application, at this point a "tendered application," will be reviewed to determine if it is complete and acceptable for docketing. 10 C.F.R. § 2.101(a)(2). At the conclusion of the acceptance review, the application may be docketed. 10 C.F.R. § 2.101(a)(3)-(4). After an application is docketed, the agency publishes

notice of proposed action in the *Federal Register*. 10 C.F.R. § 2.105(a). The notice will provide that an interested party may request a hearing. 10 C.F.R. § 2.105(d)(2). There is no provision in the regulations for requesting a hearing until after the notice of proposed action is published.


DNC's license renewal application was received on January 20, 2004. On February 3, a notice of receipt and availability of the application was published in the *Federal Register*. This notice stated that "the acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent *Federal Register* notices." 69 Fed. Reg. 5197 (Feb. 3, 2004). This week, the staff determined that the application is acceptable. As indicated earlier, the agency expects to publish notice of a proposed action and notice of opportunity to request a hearing in the *Federal Register* on Friday, March 12, 2004. The notices on the agency's web site cited by CCAM in their March 1 letter are notices of receipt of the applications and notices of meetings planned as part of the agency's acceptance review, not notices of the agency's acceptance of the applications or notices of an opportunity to request a hearing. Since notice of a proposed action and notice of an opportunity to request a hearing will not be published in the *Federal Register* until March 12, CCAM's filing of a petition to intervene and a request for a hearing on DNC's license renewal application is premature.

The staff notes that CCAM has claimed in their petition to intervene and request for a hearing that the provisions of old Part 2 would apply to a hearing resulting from their request. CCAM is mistaken. While the application was received before the effective date of new Part 2 (February 13, 2004) the application has only recently been found acceptable by the staff. Notice of a proposed action and opportunity to request a hearing will not be published until March 12, well after the effective date of the new rules. The *Federal Register* notice of final rulemaking for the new Part 2 states that "the rules of procedure in the final rule apply to proceedings noticed on or after the effective date." 69 Fed. Reg. 2182 (Jan. 14, 2004). "A proceeding commences when notice of hearing or notice of proposed action under § 2.105 is issued." 10 C.F.R. § 2.318(a). Neither notice of a proposed action nor notice of an opportunity to request a hearing were published prior to February 13, 2004; both are scheduled to be published on March 12. Therefore, should CCAM choose to resubmit its petition to intervene and its request for a hearing after publication of notice of a proposed action and opportunity to request a hearing on the application to renew the operating licenses for Millstone Units 2 and 3, the request will be governed by the revised provisions of Part 2.

For the reasons discussed above, the NRC staff respectfully submits that CCAM's petition should be rejected, and that CCAM should be permitted to refile at the appropriate time.

Sincerely,


Margaret J. Bupp, Esq.


Catherine L. Marco, Esq.

cc: Nancy Burton, Esq.
David R. Lewis, Esq.