

RAS 7574

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DOCKETED
USNRC

April 2, 2004

April 7, 2004 (9:34AM)

Chief Administrative Judge
G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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-LR and 50-423-LR

Dear Judge Bollwerk:

On February 12, 2004, the Connecticut Coalition Against Millstone (CCAM) filed a Petition to Intervene and Request for Hearing (Petition) relating to the application by Dominion Nuclear Connecticut, Inc. (Dominion) for renewal of the operating licenses for the Millstone Power Station, Units 2 and 3. Because the application was still undergoing an acceptance review and had not been docketed, and no notice of opportunity for hearing had yet been issued, the NRC Office of the Secretary returned the Petition to CCAM on March 4. A notice of docketing and opportunity for hearing was later issued on March 12. 69 Fed. Reg. 11,897 (2004). Subsequently, on March 22, CCAM filed a "Motion to Vacate NRC Secretary Determination of Petition Prematurity and to Accept Petition to Intervene and Request for Hearing As of Date of Filing and to Apply "Old" CFR Rules to Said Petition" (CCAM's Motion to Vacate). At the same time, CCAM transmitted back to the Secretary by electronic mail a copy of its Petition, still dated February 12, unchanged, unsigned, and without a certificate of service.¹ On March 25, the Commission referred CCAM's Petition to the Atomic Safety and Licensing Board, while retaining jurisdiction over CCAM's Motion to Vacate.

Dominion has submitted to the Commission its answer opposing CCAM's Motion to Vacate. A copy of Dominion's answer is attached. As discussed in that answer, CCAM's failure to recognize and adhere to the Commission's new rules of practice is disorderly and confusing.

¹ Electronic message from Nancy Burton to the Commissioners, NRC Staff and Parties (March 22, 2004).

Template = SECY-043

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Chief Administrative Judge
G. Paul Bollwerk, III
April 2, 2004
Page 2

In particular, CCAM has not submitted a new petition conforming with the Commission's current rules. Rather, CCAM's electronic message on March 22 states that CCAM resubmits is Petition "as earlier filed on February 12, 2004." The Petition remains dated February 12, 2004, is unsigned, is not accompanied by any certificate of service, and has not been properly served.² It appears identical to the previous, premature request, written without regard to the new rules. Thus, while the Petition lists certain items as contentions, it states that "CCAM will elaborate upon the basis for this petition in its formal submission of contentions" (CCAM Petition at 2), implying that the items in the Petition do not represent CCAM's formal contentions. Further, the Petition states that CCAM reserves the right to supplement its petition. CCAM's Petition at 11. While the old rules provided for the identification of contentions in a supplement to a petition, that procedure no longer exists under the new rules.³

Dominion assumes that CCAM has resubmitted its original Petition to the NRC without change for acceptance as of February 13 and consideration under the old hearing rules, as CCAM's Motion to Vacate insists that the NRC should do. Further, Dominion assumes that the items listed in CCAM's Petition are not CCAM's formal contentions (based on CCAM's statement that it will elaborate in a formal submission of contentions), and that CCAM intends to file a supplement as was allowed under the old rules. Because of the confusion created by CCAM's disregard for the new rules, and to avoid the unnecessary burden and expense of responding to a petition that apparently does not include CCAM's final specification of contentions,⁴ Dominion intends (unless otherwise directed by the Licensing Board) to defer any answer to CCAM's intervention request until a petition conforming to the new rules (*i.e.*, a petition not dependent on further

² While CCAM served a signed, paper copy of its Motion to Vacate, accompanied by a certificate of service, it has not served a signed, paper copy of its "resubmitted" petition. Therefore, this petition has not been properly served in accordance with 10 C.F.R. § 2.305(c).

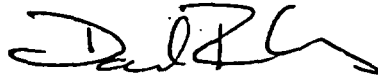
³ Under the new hearing rules, an intervention petition must provide a specification of the contentions which the person seeks to have litigated in the hearing, and amended or new contentions may only be filed after the initial filing with leave of the Presiding Officer upon a showing addressing the factors in 10 C.F.R. § 2.309(f)(2)(i)-(iii). 10 C.F.R. § 2.309(a), (f)(2).

⁴ As Dominion observes in its answer to CCAM's Motion to Vacate, CCAM has a history of wasting the resources of the Commission by initiating the hearing process without paying sufficient attention to its own obligations as a participant. See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station Unit No. 2), CLI-03-14, 58 N.R.C. 207, 220 (2004).

Chief Administrative Judge
G. Paul Bollwerk, III
April 2, 2004
Page 3

supplementation) is submitted.⁵ If CCAM makes no further filing by the May 11 deadline for intervention requests, Dominion will submit an answer within 25 days after the close of the period for intervention.

Sincerely,



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

cc: Service List

Attachment

⁵ For much the same reason, the NRC staff has moved to extend the date for its response to CCAM's petition, as it may be amended or supplemented, to June 7 (25 days after the close of the intervention period). NRC Staff's Unopposed Motion for Extension of Time to Respond to Connecticut Coalition Against Millstone's Petition to Intervene and Request for Hearing (Apr. 1, 2004). Dominion supports the NRC staff's request, but does not believe a motion is needed when CCAM has failed to submit a signed, properly dated, properly served petition with a final specification of contentions.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
DOMINION NUCLEAR CONNECTICUT, INC.) Docket Nos. 50-336-LR
) 50-423-LR
(Millstone Power Station, Units 2 and 3))

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