

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:	:	DOCKET NOS. 50-336, 50-423
Nils J. Diaz, Chairman	:	DOCKETED
Edward McGaffigan, Jr.	:	USNRC
Jeffrey S. Merrifield	:	May 20, 2004 (10:15AM)
In re:	:	OFFICE OF SECRETARY
DOMINION NUCLEAR	:	RULEMAKINGS AND
CONNECTICUT, INC.	:	ADJUDICATIONS STAFF
(Millstone Nuclear Power Station)	:	
(Millstone Units 2 and 3)	:	MAY 14, 2004

**MOTION FOR RECONSIDERATION OF CLI-04-12**

The Connecticut Coalition Against Millstone ("CCAM") moves for reconsideration of the Commissioners' Order CLI-04-12 issued on May 4, 2004 dismissing CCAM's "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 Hearing Rulers to Said Petition."

**Factual Background**

On January 22, 2004, Dominion Nuclear Connecticut, Inc. formally submitted an application to the NRC to obtain relicensing of its Millstone Unit and Millstone Unit 3 nuclear reactors. Submission of the license renewal application ("LRA") followed numerous contacts and private meetings between Dominion and the NRC staff concerning such application.

On February 3, 2004, NRC published "Dominion Nuclear Connecticut, Inc. Notice of Receipt and Availability of Application for Renewal of Millstone [Nuclear] Power Station, Units 2 and 3, Facility Operating License Nos. DPR-65 and NPF-49 for Additional 20-Year Period" in the Federal Register (69 FR 5197)

as Docket Nos. 50-336 and 50-423.

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, Dominion met with NRC staff in Rockville, Maryland to formally discuss the LRA.

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 LRA.

On February 8, 2004 or earlier, the NRC posted notice on its official website of the pendency of the Millstone LRA. The posting included the complete Millstone LRA, consisting of some 3,000 pages.

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 13, 2004, revisions to 10 CFR Part 2 severely curtailing *inter alia* the right of intervenors in hearing procedures before the NRC became effective. The revisions are the subject of a challenge mounted in the U.S. Court of Appeals for the First Circuit on January 26, 2004 by Citizens Awareness Network, Inc., Docket No. 04-1145.

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 (Exhibit A hereto) posits various scenarios of potential events occurring with regard to license applications and interventions and it assigns applicability of "old" versus "new" rules. The fifth and ninth scenarios are particularly apt. They posit the following potential events:

**Fifth Scenario:**

Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing not published in either Federal Register or NRC Web site; hearing request/intervention petition prepared and submitted before February 13, 2004.

**Ninth Scenario:**

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.

In each case, the NRC has determined that the "old" CFR Regulations apply. See Exhibit A.

On February 17, 2004, representatives of the NRC, including NRC technical experts and two representatives from the Office of the General Counsel of the NRC, conducted a public meeting regarding the Millstone LRA 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. The NRC expended a significant amount of money

in preparing for the presentation, including commissioning a large mounted visual depiction of the Millstone Nuclear Power Station, assembling voluminous informational documents and transporting no fewer than seven (7) of its representatives to participate in the presentation.

Upon information and belief, the LRA as posted on the NRC website on or before February 8, 2004 is unchanged in substance. Attempts to confirm this fact by placing telephone queries directed to the NRC staff overseeing the license amendment application as well as the NRC Public Affairs Office were futile. In the absence of notification to the contrary, CCAM assumes that the application remained unchanged in substance during the critical period.

On March 10, 2004, the NRC Secretary issued a letter of notification of its rejection of the CCAM Petition and returned the Petition to its sender by U.S. Mail. The Petition, as stated, is being resubmitted as originally filed on this date.

On March 12, 2004, the NRC published "Notice of Acceptance for Docketing of the Applications and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-65 and NPF-49 for an Additional 20-Year Period" under Docket Nos. 50-336 and 50-423.

On March 22, 2004, CCAM submitted its "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 Hearing Rulers to Said Petition."

The licensee and NRC staff filed objections to such motion.

By order dated May 4, 2004, the NRC Commissioners issued CLI-04-12

whereby it dismissed the Motion to Vacate.

CCAM now seeks reconsideration of such order.

### **Legal Argument**

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, as requested by CCAM in its Motion to Vacate.

CCAM respectfully submits that the CLI-04-12 is premised upon a faulty interpretation of the pertinent facts and law and NRC’s own website guidance.

Although the order relies heavily on the Commissioners’ conclusion that a petition to intervene and request a hearing in a relicensing application need await the NRC’s issuance of a “notice of hearing” or “notice of proposed action,” the Order fails to recognize that the NRC’s scenario 5<sup>1</sup> provides that a petition is timely filed for purposes of the “old” CFR rules as long as the application was docketed prior to February 13, 2004 – even if “notice of docketing and opportunity for hearing not published in either Federal Register or NRC website.”

In this case, the NRC docketed the application on February 3, 2004 and published such notice in the Federal Register. 69 FR 5197. As of February 13, 2004, the notice of opportunity for hearing had not yet been published in the Federal Register or the NRC website. Clearly, under the NRC’s own guidance and interpretation of the law, the petition is timely and should be considered under the “old” CFR rules.

---

<sup>1</sup> See CCAM Exhibit A attached to Motion to Vacate (“Applicability of Old and New 10 CFR Part 2 to NRC Proceedings”).

The NRC's rejection of CCAM's argument, namely, that the facts of the present application clearly fall within the parameters of Scenario 5, is clearly contrary to the logic of Scenario 5.

The Order states in pertinent part as follows:

Moreover, in order for Scenario 5 to apply, the NRC Staff must not have published a notice of docketing and opportunity for a hearing. But in this case the Staff did, in fact, publish such a notice; thus, Scenario 5 cannot apply.

Clearly, whether or not such Federal Register notice was published is to be determined **as of February 13, 2004** in order for Scenario 5 to make any sense. The NRC did not "cure" the applicability of Scenario 5 with subsequent Federal Register notice.

Moreover, Scenario 5 assumes that a "proceeding" has commenced once an application has been submitted and docketed by the NRC regardless of whether a notice of docketing and opportunity for hearing had yet been published in the Federal Register or on the NRC website by February 13, 2004. As long as the petition to intervene and request for hearing was submitted prior to February 13, 2004, Scenario 5 dictates the petition is timely and properly filed and entitled to consideration under the "old" CFR rules.

The Order is in error because it utterly disregards the NRC's own published guidance which sets specific parameters pursuant to which CCAM's petition qualifies for full consideration under the "old" CFR rules.

With regard to the issue of whether the circumstances give rise to the appearance that NRC simply withheld publication of its March 12, 2004 notice until after the "new" 10 CFR Part 2 rules legally took effect, subject to the legal

challenge underway in the First Circuit, with or without the cooperation of Dominion, in order to limit challenges by CCAM and others to the LRA, CCAM submits that limited discovery should be permitted to determine the facts. If such conduct did occur, CCAM's rights, and those of other individuals and organization, have been improperly abridged and they have suffered serious prejudice in these proceedings. The difference between the rights accorded an intervenor under the "old" rules versus the "new" rules is no less than the difference between night and day. In this highly significant contested application, the NRC would seriously undermine public confidence and abuse its discretion if it deprived CCAM the applicability of a hearing under the "old" rules. Therefore, the NRC should exercise its discretion in accord with CCAM's request.


#### **Conclusion**

The NRC Commissioners should accept the Petition as timely filed pursuant to the "old" 10 CFR Part rules, vacate the Secretary's determination of prematurity, process the Petition under Docket Nos. 50-336 and 50-423 and adjudicate the petition pursuant to the Code of Federal Regulations in effect on the date the Petition was filed, that is, February 12, 2004.

Respectfully submitted,

**CONNECTICUT COALITION  
AGAINST MILLSTONE**

By:

  
Nancy Burton, Esq.  
147 Cross Highway  
Redding Ridge CT 06876  
Tel. 203-938-3952  
Fed. Bar No. 10836

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS: : DOCKET NOS. 50-336, 50-423

Nils J. Diaz, Chairman :  
Edward McGaffigan, Jr. :  
Jeffrey S. Merrifield :

In re: :  
DOMINION NUCLEAR :  
CONNECTICUT, INC. :  
(Millstone Nuclear Power Station) :  
(Millstone Units 2 and 3) : MAY 14, 2004

**CERTIFICATION**

I hereby certify that a copy of the foregoing "Motion for Reconsideration of CLI-04-12" was mailed on May 14, 2004 via U.S. Mail, postage pre-paid to the following and emailed as indicated below:

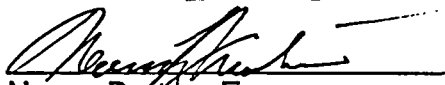
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington DC 20555  
(Attention: Rulemakings and Adjudication Staff)  
(Original + 2)  
[hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
[JMC3@nrc.gov](mailto:JMC3@nrc.gov)

Office of Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001

Margaret Bupp, Esq.  
Office of General Counsel  
Nuclear Regulatory Commission  
Washington DC 20555  
[MJB5@nrc.gov](mailto:MJB5@nrc.gov)

David R. Lewis, Esq.  
Shaw Pittman LLP  
2300 N Street NW  
Washington DC 20037-1128  
[David.Lewis@shawpittman.com](mailto:David.Lewis@shawpittman.com)

Lillian M. Cuoco, Esq.  
Millstone Nuclear Power Station  
Rope Ferry Road  
Waterford CT 06385  
[Lillian\\_Cuoco@dom.com](mailto:Lillian_Cuoco@dom.com)

  
Nancy Burton, Esq.  
147 Cross Highway  
Redding Ridge CT 06876