

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 & 3))	ASLBP No. 04-824-01-LR

NRC STAFF ANSWER TO PETITION TO
INTERVENE AND REQUEST FOR HEARING OF
CONNECTICUT COALITION AGAINST MILLSTONE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309 and the Chief Administrative Judge's Order dated April 5, 2004, the Staff of the Nuclear Regulatory Commission ("Staff") hereby answers the Petition to Intervene and Request for Hearing ("Petition") of the Connecticut Coalition Against Millstone ("CCAM"). As discussed below, CCAM has neither demonstrated standing to participate in this proceeding nor proffered an admissible contention. Accordingly, its Petition should be denied.

BACKGROUND

By letter dated January 20, 2004, Dominion Nuclear Connecticut, Inc. ("DNC") submitted applications to renew Operating License Numbers DPR-65 and NPF-49 for Millstone Power Station, Units 2 and 3, for an additional 20 years. The current operating licenses for Millstone, Units 2 and 3, expire on July 31, 2015, and November 25, 2025, respectively.

On February 12, 2004, CCAM filed a Petition to Intervene and Request for Hearing with regard to DNC's license renewal application. On March 4, 2004, the Secretary of the Commission returned the Petition to CCAM, stating that since the NRC had not yet issued a notice of the proceeding and the opportunity for a hearing, there was not yet a proceeding in which CCAM could

seek to intervene.¹ Subsequently, on March 12, 2004, the NRC published in the *Federal Register* a notice of acceptance for docketing and opportunity for a hearing regarding the license renewal application.² On March 22, 2004, CCAM resubmitted a Petition identical to that filed on February 12. CCAM stated in its Petition that it intended to “elaborate on the basis for the petition in its formal submission of contentions.” Petition at 2.³ In light of CCAM’s representation, on April 1, 2004, the Staff filed an unopposed motion for an extension of time to respond to CCAM’s Petition by June 7, 2004, twenty-five days after the close of the 60-day period for filing a petition to intervene. The Chief Administrative Judge granted the Staff’s motion by Order issued April 5, 2004. An Atomic Safety and Licensing Board was established on May 19, 2004.⁴

¹ On March 22, 2004, CCAM filed a motion to vacate the Secretary’s determination and to apply the “old” Rules of Practice to this proceeding. The Commission denied the motion by Memorandum and Order dated May 4, 2004. See *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-12, 59 NRC ___, slip op. May 4, 2004. On May 14, 2004, CCAM filed a motion for reconsideration of CLI-04-12, which was denied by the Commission on May 18, 2004.

² See *Dominion Nuclear Connecticut, Inc., Millstone Power Station, Units 2 and 3; 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*, 69 Fed. Reg. 11,897 (Mar. 12, 2004).

³ Despite its stated intent, CCAM did not supplement its Petition.

⁴ On March 2, 2004, the Commission received a request from the Town of Waterford (“Waterford”) to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.315(c). Millstone Power Station is located within the town boundaries. Waterford re-submitted its request on March 16, 2004, following publication of the notice of opportunity for hearing. In its request, Waterford states that it has not proposed any contentions of its own. Should the Board determine that CCAM has demonstrated standing and proffered an admissible contention in this proceeding, the Staff does not object to Waterford’s participation as an interested governmental entity.

DISCUSSION

A. CCAM's Standing

1. *Legal Requirements for Standing*

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so. Section 189a.(1) of the Atomic Energy Act of 1954, as amended ("AEA" or "Act"), 42 U.S.C. § 2239(a), states (emphasis added):

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interests may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.

The Commission's regulations in 10 C.F.R. § 2.309(d) provide that a request for hearing or petition to intervene must state:

- (i) The name, address and telephone number of the petitioner;
- (ii) The nature of the petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest.

The relevant case law provides that, to attain standing, a petitioner must demonstrate that:

- (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;
- (2) the injury can fairly be traced to the challenged action; and
- (3) the injury is likely to be redressed by a favorable decision.

See, e.g., *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

To establish standing, there first must be an “injury in fact” that is either actual or threatened. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) citing *Wilderness Soc’y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987). The injury must be “concrete and particularized,” not “conjectural” or “hypothetical.” *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). As a result, standing will be denied when the threat of injury is too speculative. *Id.* at 72. Furthermore, the alleged “injury in fact” must lie within the “zone of interests” protected by the statutes governing the proceeding -- either the AEA or the National Environmental Policy Act (“NEPA”). *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998) (citing cases), *aff’d sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999).

Further, a petitioner must also establish a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998), *aff’d*, CLI-99-4, 49 NRC 185 (1999), *pet. for review denied sub nom. Dienethal v. U.S. Nuclear Regulatory Comm’n*, 203 F.3d 52 (2000). A determination that the injury is fairly traceable to the challenged action does not depend “on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Finally, the redressability element of standing requires a petitioner to show that its claimed actual or threatened injury could be cured by some action of the tribunal. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).⁵

⁵ Under the long-recognized “proximity presumption,” an individual petitioner, or a member of an organization, may base its standing upon a showing that his or her residence, or that of its members, is within the geographical area that might be affected by an accidental release of fission products. This approach “presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4),
(continued...)

An organization may satisfy the standing criteria of 10 C.F.R. § 2.309(d) based either on its own interests or that of its members. To establish “organizational standing,” the organization must allege with particularity that the proposed action will cause an “injury in fact” to the organization itself, with respect to its own organizational interests. The asserted “injury” to the organization must meet the three-part judicial test for the standing of a “person.” See *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646 (1979) and discussion *supra* at 3.

Alternatively, an organization can plead standing based on representing its members’ interests (“representational standing”). To do this, it must demonstrate that at least one individual member has standing to participate, in accordance with a three-part judicial test. *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-394 (1979). The organization must (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354; *aff’d in part, rev’d in part*, CLI-98-21, 48 NRC 185 (1998). Moreover, “judicial concepts of standing” require a showing that (1) its members would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization’s lawsuit. *Private Fuel Storage*, CLI-99-10, 49 NRC at 323.

2. *CCAM Has Not Demonstrated Standing to Intervene in this Proceeding.*

CCAM states as follows with respect to its interest in the proceeding:

⁵(...continued)
LBP-01-6, 53 NRC 138, 146 (2001), *aff’d on other grounds*, CLI-01-17, 54 NRC 3 (2001).

The petitioner, of P.O. Box 415, Niantic, Connecticut, is an organization of environmental advocacy and safe-energy groups, former employees of the Millstone Nuclear Power Station and families and individuals who reside within and beyond the five-mile emergency evacuation zone of Millstone. *CCAM petitions to intervene in these proceedings and requests a hearing because of its concerns of adverse health and safety risks to its membership, as well as the health and safety of Millstone workers and the surrounding community*, should the amendment be granted [sic].

Petition at 1 (emphasis added). This recitation is insufficient to establish standing to intervene in this proceeding. As stated above, there are two routes by which an organization can attempt to demonstrate standing in an NRC proceeding. First, it can assert injury to organizational interests and demonstrate that these interests are protected by the AEA or NEPA. See, e.g., *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 529-30 (1991). Or, second, an organization can base standing on the interests of individuals that it represents. CCAM does not assert an injury to its organizational interests. It appears, therefore, that CCAM's claim of standing is based on its representation of the interests of its members. In this regard, CCAM has failed to establish standing in that it has neither (1) identified members of CCAM who have authorized the organization to represent them; nor (2) shown an "injury in fact" to the interests of its members that is fairly traceable to the license renewal application. Accordingly, CCAM has not established standing to intervene in this proceeding.

To establish representational standing, a group must show that the licensing action it wishes to challenge may injure the group or someone the group is authorized to represent. *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-97-14, 46 NRC 55 (1997). In this vein, a potential intervenor group must identify at least one of its members by name and address, demonstrate how that member may be affected, and show that the group is authorized to request a hearing on behalf of the member. *Yankee Rowe*, LBP-98-12, 47 NRC at 354.

The Petition states that CCAM's membership includes "environmental advocacy and safe-energy groups, former employees of [Millstone] and families and individuals who reside within

and beyond the five-mile emergency evacuation zone of Millstone.” This information fails to identify the name and address of any member of CCAM who will be affected by issuance of a renewed license. The Petition also fails to state whether affected members have authorized CCAM to represent them in this proceeding. For these reasons, CCAM has failed to provide the basic information required to establish representative standing through its members.

Moreover, a petitioner seeking to intervene bears the burden of establishing that an injury may occur to its interests protected by the AEA and/or NEPA. CCAM fails to address -- let alone satisfy -- this “injury in fact” requirement. In its Petition, CCAM states only that it has “concerns of adverse health and safety risks to its membership, as well as the health and safety of Millstone workers⁶ and the surrounding community.”⁷ Such generalized concerns do not result in a distinct and palpable harm that is sufficient to support standing. See *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 333 (1983). CCAM has not alleged an “injury in fact” fairly traceable to the license renewal application. Thus, CCAM has failed to demonstrate how issuing a renewed license to Millstone might result in adverse health effects to

⁶ A group does not have standing to assert the interest of plant workers, where it has no such workers among its members. See *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant, Units 1 & 2), LBP-93-1, 37 NRC 5, 11 (1993). Although the Petition states that CCAM counts former plant workers in its membership, CCAM has not stated that it has current plant workers among its membership. Accordingly, it has not demonstrated standing to represent current plant workers. In any event, the mere assertion that CCAM represents former workers is, without more, insufficient to demonstrate standing.

⁷ With respect to representation of “community” interests, CCAM likewise fails to demonstrate standing. “[N]othing in the Commission's regulations authorizes requestors to undertake to represent the general public as if they were private attorneys general.” *Chematron Corp.* (Bert Avenue, Harvard Avenue, and McGean Rohco Sites, Newburgh Heights & Cuyahoga Heights, Ohio), LBP-94-20, 40 NRC 17, 19 (1994), citing *Babcock & Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 50 (1994); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 484 (1977).

its members and, consequently, it fails to demonstrate an injury in fact.⁸ Accordingly, CCAM has not met the requirements for standing to intervene in this proceeding.⁹

B. CCAM's Proposed Contentions

1. *Legal Standards for Admissibility of Contentions*

To gain admission to a proceeding as a party, a petitioner, in addition to establishing standing, must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.309(f)(1).

This section states that a petitioner must provide:

- (i) specific statement of the issue of law or fact to be raised or controverted;
- (ii) a brief explanation of the basis for the contention;
- (iii) a demonstration that the issue raised in the contention is within the scope of the proceeding;
- (iv) a demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and

⁸ Nor has CCAM addressed -- let alone established -- standing under the "proximity presumption." No demonstration has been made that any member of CCAM has a residence within (or other frequent contacts with) the geographical area that might be affected by an accidental release of fission products.

⁹ CCAM has been found to have standing in other NRC proceedings pertaining to licensing actions for Millstone. See, e.g., *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 2), LBP-03-3, 57 NRC 45 (2003). However, it is well established that "a prospective petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate since a petitioner's status can change over time and the bases for its standing in an earlier proceeding may no longer obtain." *Northeast Nuclear Energy Co. & Consolidated Edison Co. of N.Y.* (Millstone Nuclear Power Station, Unit Nos. 1, 2, & 3), CLI-00-18, 52 NRC 129, 132 (2000), quoting *Texas Util. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 163 (1993). Petitioner's past demonstrations of standing in other proceedings are simply not relevant here.

- (vi) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1). These provisions "incorporate the longstanding contention support requirements of former 10 C.F.R. § 2.714—no contention will be admitted for litigation in an NRC adjudicatory proceeding unless these requirements are met." Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004). The Commission has emphasized that its rules on admission of contentions establish an evidentiary threshold more demanding than a mere pleading requirement and are "strict by design." *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Units 2 & 3), CLI-03-14, 58 NRC 207, 213 (2003). The intervenor must "be able to identify some facts at the time it proposes a contention to indicate that a dispute exists between it and the applicant on a material issue." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 335 (1999), quoting Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989). "These requirements are intended to 'preclude a contention from being admitted where an intervenor has no facts to support its position and [instead] contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts.'" *Id.*

Under the rule, a petitioner "must do more than submit 'bald or conclusory' allegation(s) of a dispute with the applicant." *Millstone*, CLI-03-14, 58 NRC at 216. Rather, the petitioner must "read the pertinent portions of the license application, . . . state the applicant's position and the petitioner's opposing view." *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), LBP-04-4, 59 NRC 129, 146 (2004). Moreover, a petitioner must provide a "clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific

documents and sources that establish the validity of the contention.” *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

Furthermore, the scope of a license renewal proceeding is limited, in both the safety and environmental contexts. Review of safety issues is limited to “a review of the plant structures and components that will require an *aging* management review for the period of extended operation and the plant’s systems, structures and components that are subject to an evaluation of time-limited *aging* analyses.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 363-64 (2002)(citations omitted)(emphasis in original); *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998). See 10 C.F.R. §§ 54.21(a) and (c); 54.4.

The scope of the environmental review is limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c). *Turkey Point*, CLI-01-17, 54 NRC at 11-13. As reflected in *Turkey Point*, consideration of environmental issues in the context of license renewal proceedings is specifically limited by NRC regulations in 10 C.F.R. Part 51 and by the NRC’s “Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants” (NUREG-1437). A number of environmental issues potentially relevant to license renewal are classified in 10 C.F.R. Part 51, Subpart A, Appendix B as “Category 1” issues, which means that “the Commission resolved the[se] issues generically for all plants and those issues are not subject to further evaluation in any license renewal proceeding.” *Turkey Point*, LBP-01-17, 53 NRC at 152-53. The remaining issues in Appendix B designated as “Category 2” issues must be addressed by the Applicant in its environmental report, and in the NRC’s supplemental environmental impact statement for the facility at issue pursuant to Sections 51.71(d) and 51.95(c). *Id.*

2. *CCAM Has Not Proffered an Admissible Contention.*

For the reasons set forth below, none of CCAM’s six contentions is admissible.

CCAM Proposed Contention I

The operations of Millstone Units 2 and 3 have caused death, disease, biological and genetic harm and human suffering on a vast scale.

Basis: The routine and unplanned releases of radionuclides and toxic chemicals into the air, soil and water have caused death, disease, biological and genetic harm and human suffering on a vast scale. The public was misled when the facility was initially licensed. The licenses must be immediately revoked, not extended.

Petition at 2.

Staff Response to Proposed Contention I

The Staff opposes admission of this contention on the grounds that it is outside of the scope of the proceeding; is not material to the findings the NRC must make to support the action that is involved in the proceeding; and does not set forth a specific factual or legal basis, as required. See 10 C.F.R. § 2.309(f)(1)(iii)- (vi).

First, this contention falls outside of the scope of the proceeding since it pertains to “everyday operating issues” and does not relate to aging analyses of the plant’s structures, systems and components. See *McGuire*, CLI-02-26, 56 NRC at 363. The scope of license renewal is to focus upon potential detrimental effects of *aging* “that are not routinely addressed by ongoing regulatory oversight programs.” See *Turkey Point*, CLI-01-17, 54 NRC at 7. The focus of the Staff’s license renewal review is on the systems, structures, and components for which current regulatory activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation. *Id.* at 10, quoting Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,469 (May 8, 1995). The Staff’s review (and adjudicatory hearings in individual license renewal proceedings) encompass the same scope. *Id.* at 10. Nowhere in its contention does CCAM raise any issue related to the potential detrimental effects of *aging*.

With respect to operating concerns, the Commission has the ongoing responsibility to “oversee the safety and security of operating nuclear reactors.” *Id.* at 8. Thus, license renewal

reviews are not intended to “duplicate the Commission’s ongoing review of operating reactors.” *Id.* at 7. Therefore, CCAM’s contention asserting that the operations of Millstone Units 2 and 3 “have caused death, disease, biological and genetic harm and human suffering on a vast scale” falls outside of the scope of this license renewal proceeding.

Furthermore, the Commission’s regulations require a “detailed, fact-based showing that a genuine and material dispute of law or fact exists.” See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-14, 55 NRC 278, 289 (2002). CCAM’s argument entirely rests on general and speculative claims about “releases of radionuclides and toxic chemicals” that have caused “death, disease, biological and genetic harm and human suffering on a vast scale.” CCAM also refers to cancer clusters in areas close to Millstone and states that the cancers are “scientifically and medically linked” to the emissions of Millstone. Petition at 3. This proposed contention fails to do more than identify “‘bald or conclusory allegations’ of a dispute with the applicant.” See *Millstone*, CLI-03-14, 58 NRC at 213 (rejecting CCAM contention that rests on “general and speculative statements about an alleged ‘significant increase in the amounts of radiological effluents that may be released offsite’ that will cause an ‘adverse impact’ on public health and safety.”). Therefore, Proposed Contention I should be rejected.¹⁰

¹⁰ Further, CCAM’s statements of the sources on which it intends to rely fall far short of the requirements set forth in 10 C.F.R. § 2.309(f)(1)(v). For each proposed contention, including Proposed Contention I, CCAM states that it intends to rely upon “records and documents maintained by” various government agencies. See, e.g., Petition at 3. “A simple reference to a large number of documents does not provide a sufficient basis for a contention.” *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 465 (2001), citing *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 348 (1998). At a minimum, the petitioner is obliged to “clearly reference and then summarize” the information relied upon. *Id.* In addition, as basis for all of its proposed contentions, including Proposed Contention I, CCAM states that it intends to rely upon “such additional . . . sources and documents as are a matter of public record and as may be disclosed in discovery in these proceedings.” E.g., Petition at 3. It is well established that a petitioner may not obtain discovery to assist it in framing contentions. See *Calvert Cliffs*, CLI-98-25, (continued...)

CCAM Proposed Contention II

Millstone Units 2 and 3 are terrorist targets of choice.

Basis: The federal Office of Homeland Security has identified the Millstone Nuclear Power Station as a primary terrorist target. It is an unprotected nuclear weapon awaiting detonation. As long as Units 2 and 3 generate electricity, the facility is a key element of the region's infrastructure and all the more appealing as a terrorist target. As a nuclear weapon, Millstone possesses the explosive force of thousands of Nagasaki and Hiroshima-size bombs. While it is operating, Millstone cannot be protected against a malevolent attack.

Petition at 4.

Staff Response to Proposed Contention II

The Staff opposes admission of this contention on the grounds that it is outside of the scope of the proceeding; is not material to the findings the NRC must make to support the action that is involved in the proceeding; and does not set forth a specific factual or legal basis, as required. See 10 C.F.R. § 2.309(f)(1)(iii)- (vi).

The Commission has determined that contentions related to terrorism are beyond the scope of the NRC Staff's license renewal review and related adjudicatory proceedings. *McGuire*, CLI-02-26, 56 NRC at 363. As discussed by the Commission, a license renewal review is "narrow in scope, confined to aging analyses of the plant's structures, systems and components." *Id.* The Commission determined that terrorism contentions are, "by their very nature, directly related to security and therefore, under our rules, unrelated to 'the detrimental effects of aging.'" *Id.* at 364. Consequently, the Commission declared terrorism contentions "beyond the scope of, not 'material' to, and inadmissible in, a license renewal proceeding." *Id.* Therefore, since CCAM's Proposed Contention II pertains strictly to terrorism and does not raise any issue associated with the potential detrimental effects of *aging*, the proposed contention is outside of the scope of the proceeding and should be rejected.

¹⁰(...continued)
48 NRC at 351 (and cases cited therein).

Furthermore, CCAM does not set forth the required specific factual or legal basis to support its proposed contention. CCAM makes several generalized assertions as part of its contention. These assertions allege, without support, that: 1) the Office of Homeland Security has identified the Millstone Nuclear Power Station as “a primary terrorist target”; 2) Millstone possesses the explosive force of “thousands of Nagasaki and Hiroshima-size bombs”; and 3) Millstone “cannot be protected” against a malevolent attack. These assertions amount to mere “generalized suspicions” and should be rejected. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 424 (2003). For these reasons, Proposed Contention II does not meet the standards for an admissible contention.

CCAM Proposed Contention III

Millstone Units 1 and 2 operations require the uninterrupted flow through intake and discharge structures of cooling water, which conduct requires a valid National Pollution [sic] Discharge Elimination System permit and the facility lacks such a valid permit.

Basis: In order to avoid a reactor core meltdown, the Millstone Unit 2 and Unit 3 reactors require the continuous flow of cooling water, through intakes and discharge structures. Such water flow requires a valid National Pollution Discharge Elimination System (“NPDES”) permit pursuant to the federal Clean Water Act. The applicant lacks such a permit. Without the lawful ability to cool the reactors and prevent core meltdown, the applicant cannot safety [sic] operate the facility. Moreover, given past practices involving criminal misconduct at Millstone, it is doubtful that the applicant will be able to obtain a lawful NPDES permit.

Petition at 5-6.

Staff Response to Proposed Contention III

The crux of CCAM’s argument in Proposed Contention III is that Dominion does not hold a valid NPDES permit for Millstone Units 2 and 3, either currently or for a future license renewal term. Petition at 6. For the reasons discussed below, this proposed contention is beyond the scope of this license renewal proceeding and does not raise a genuine dispute on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(iii), (vi). Accordingly, the proposed contention should be rejected.

As an initial matter, NRC regulations simply do not require that a license renewal applicant have in place a valid NPDES permit in order to obtain a renewed license. Rather, 10 C.F.R. § 51.45(d) requires only that an applicant for license renewal identify and indicate in its environmental report the status of state and local approvals regarding water use.¹¹ Accordingly, CCAM's proposed contention does not raise a genuine dispute with the applicant on an issue of law. In any event, while CCAM alleges a violation of the Clean Water Act, the NRC has no jurisdiction to adjudicate alleged violations of that Act. See 10 C.F.R. § 51.10(c);¹² *Consumers Power Co. (Palisades Nuclear Plant)*, LBP-79-20, 10 NRC 108, 124 (1979) ("NRC . . . has no

¹¹ Specifically, Section 51.45(d) states:

The environmental report shall list all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action and shall describe the status of compliance with these requirements. The environmental report shall also include a discussion of the status of compliance with applicable environmental quality standards and requirements including, but not limited to, applicable zoning and land-use regulations, and thermal and other water pollution limitations or requirements which have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection. The discussion of alternatives in the report shall include a discussion of whether the alternatives will comply with such applicable environmental quality standards and requirements.

¹² That section provides:

The regulations in this subpart also address the limitations imposed on NRC's authority and responsibility under [NEPA], as amended, by the Federal Water Pollution Control Act Amendments of 1972 [citation omitted]. In accordance with section 511(c)(2) of the Federal Water Pollution Control Act (86 Stat. 893, 33 U.S.C. 1371(c)(2)), the NRC recognizes that responsibility for Federal regulation of nonradiological pollutant discharges² into receiving waters rests by statute with the Environmental Protection Agency.

²On June 1, 1976, the U.S. Supreme Court held that "pollutants' subject to regulation under the FWPCA [Federal Water Pollution Control Act] do not include source, byproduct, and special nuclear materials, . . ." *Train v. Colorado PIRG*, 426 U.S. 1 at 25.

authority to determine whether the Licensee might have to obtain a new [Clean Water Act (“CWA”)] discharge permit for the project or whether an existing permit encompasses the discharges to be generated by the project.”); *Tennessee Valley Auth.* (Yellow Creek Nuclear Plant, Units 1 & 2), ALAB-515, 8 NRC 702 (1978)(holding that, under CWA Section 511(c)(2), the NRC may not undercut the Environmental Protection Agency (“EPA”) by undertaking its own analyses on water quality issues within the exclusive jurisdiction of the EPA). In this regard, to the extent that CCAM alleges a deficiency with respect to the Millstone NPDES permit, it has articulated an issue beyond the scope of the NRC’s jurisdiction in this proceeding.

At the time the Commission implemented new requirements for environmental review of license renewal applications, several commenters recommended withholding approval for license renewal until a facility has complied with Section 401 of the Clean Water Act. The Commission declined to do so, in light of Section 51.45(d) and the strictures of CWA Section 511.¹³ See Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,473 (June 5, 1996). For these reasons, CCAM has not articulated an admissible contention.

In addition, CCAM fails to raise a genuine dispute with the applicant on an issue of fact. Contrary to CCAM’s assertion, Dominion is currently in possession of a valid NPDES permit for Millstone Units 2 and 3. In its Environmental Report (“ER”), Dominion states:

The Section 401 Water Quality Certification for the operation of the Millstone Power Station was issued on April 19, 1974. Subsequently, Millstone Power Station has received a permit to

¹³ Nevertheless, in performing its environmental review in connection with the license renewal application, the Staff will comply with 10 C.F.R. § 51.71(c), which requires, pursuant to NEPA, consideration of environmental requirements imposed by (among others) state agencies for environmental protection, including Clean Water Act requirements. As stated in that section, “The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by such standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.” (Footnote omitted.)

discharge to the waters of the state, and therefore is in compliance with the federal Clean Water Act.

ER § 9.1.5. ER Table 9-1, "Environmental Authorizations for Current Millstone Units 2 and 3 Operations," indicates that the most recent NPDES permit for the Millstone Power Station was issued on December 14, 1992, and that a renewal application for the permit was submitted on June 13, 1997. Connecticut statutes and regulations governing the issuance of NPDES permits specifically provide that an NPDES permit remains in effect, where a timely and sufficient permit renewal application has been submitted, until the permit renewal application has been finally determined by the agency.¹⁴ Absent a specific demonstration to the contrary by CCAM, it would appear that the Millstone NPDES permit is in timely renewal and, therefore, still in effect. In contrast, CCAM has not provided any basis for a contention that Dominion's statements in the ER with respect to the current status of its NPDES permit are incorrect. CCAM has the obligation to "include references to the specific portions of the application (including the applicant's environmental report. . .) that the petitioner disputes *and the supporting reasons* for each dispute." *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 2), LBP-03-12, 58 NRC 75, 81, *aff'd*, CLI-03-14, 58 NRC 207 (2003)(emphasis added). CCAM has not done so here. As such, CCAM has not demonstrated a genuine dispute on a material issue of fact. For this reason as well, Proposed Contention III should be rejected.

CCAM Proposed Contention IV

The operations of Millstone Units 2 and 3 have caused irreversible harm to the environment.

¹⁴ See Conn. Agencies Regs. § 22a-430-4(b)(requiring a permit renewal application to be submitted at least 180 days prior to the expiration date of the existing permit), and (d)(2004) (stating, *inter alia*, that a timely and sufficient permit renewal application will cause an existing permit not to expire until the time period specified by Section 4-182(b) of the Connecticut General Statutes); Conn. Gen. Statutes. Ann. § 4-182(b) (West 2004)(stating, *inter alia*, that where a licensee has made a timely and sufficient renewal application to the appropriate state agency, the existing license shall not expire until the application has been finally determined by the agency).

Basis: The operations of Millstone Units 2 and 3 have caused devastating losses to the indigenous Niantic winter flounder population. The operations of Millstone Units 2 and 3 have caused irreversible damage to the marine environment. Continued operations will increase the severity of the environmental damage.

Petition at 7.

Staff Response to Proposed Contention IV

The Staff opposes admission of this contention on the grounds that it does not set forth sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi).

For issues arising under NEPA, contentions must be based on the applicant's environmental report. See 10 C.F.R. § 2.309(f)(2); *Millstone*, LBP-03-12, 58 NRC at 82-83. A petitioner is required to provide information, including references to specific portions of the applicant's environmental report that the petitioner disputes and "the supporting reasons for each dispute." See 10 C.F.R. § 2.309(f)(2)(vi). CCAM failed to address discussion in the Applicant's environmental report regarding the Niantic winter flounder. Winter flounder are discussed in Section 2.2 ("Aquatic Ecological Communities") of the Applicant's Environmental Report. Therein, the Applicant discusses factors and combinations of factors that "may slow growth of the Niantic Bay winter flounder population." ER, § 2.2. Further, the Applicant addresses entrainment of fish and shellfish in early life stages in section 4.2 of the ER. Impingement of fish and shellfish is discussed in section 4.3 of the ER, and the impact of heat shock is addressed in section 4.4 of the ER. The Applicant concluded in each section that the impact to fish was small. See *also* Table 6-1 ("Category 2 Environmental Impacts Related to License Renewal at MPS"). CCAM does not explain why the Applicant's discussion is in error and does not provide a basis for its dispute with the Applicant. Therefore, this contention should be rejected.

Furthermore, the Commission's regulations require a "detailed, fact-based showing that a genuine and material dispute of law or fact exists." See *Duke Energy Corp.* (McGuire Nuclear

Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-14, 55 NRC 278, 289 (2002). CCAM's argument entirely rests on general and speculative claims about the impacts of past operations on the Niantic winter flounder population and the "marine environment." Petition at 7. CCAM asserts, without support, that "[c]ontinued operations will increase the severity of the environmental damage." Therefore, this contention fails for lack of specificity and basis and should be rejected.

CCAM Proposed Contention V

Millstone Units 2 and 3 suffer technical and operational defects which preclude safe operation.

Basis: Both Units 2 and 3 suffer technical and operational defects which preclude safe operation.

Petition at 8.

Staff Response to Proposed Contention V

The Staff opposes admission of this proposed contention on the grounds that it is outside of the scope of the proceeding; is not material to the findings the NRC must make to support the action that is involved in the proceeding; and does not set forth a specific factual or legal basis, as required. See 10 C.F.R. § 2.309(f)(1)(iii)- (vi).

First, except for one sentence in the contention's Statement of Facts,¹⁵ this contention falls outside of the scope of the proceeding since it pertains to "everyday operating issues" and does not relate to aging analyses of the plant's structures, systems and components. See *McGuire*, CLI-02-26, 56 NRC at 363. The scope of license renewal is potential detrimental effects of *aging* "that are not routinely addressed by ongoing regulatory oversight programs." See *Turkey Point*, CLI-01-17, 54 NRC at 7. Therefore, CCAM's contention asserting that Millstone Units 2 and 3

¹⁵ In its Statement of Facts for this contention, CCAM states, without support, that "[b]oth units suffer from premature aging." Petition at 8.

suffer “technical and operational defects which preclude safe operation” falls outside of the scope of the proceeding.

Furthermore, the proposed contention does not set forth a specific factual or legal basis, as required. The Commission’s regulations require a “detailed, fact-based showing that a genuine and material dispute of law or fact exists.” See *McGuire*, CLI-02-14, 55 NRC at 289. The Commission has long emphasized that the contention rules bar contentions where petitioners have only “what amounts to generalized suspicions.” *McGuire*, CLI-03-17, 58 NRC at 424. The Commission’s contention standards require petitioners to plead specific grievances, not simply to provide general “notice pleadings.” *Id.* at 428. CCAM’s Petition asserts that: “[s]ystem malfunctions and failures recur without adequate correction. Both units have suffered excessive occasions of unplanned emergency shutdowns. Both units suffer from premature aging.” Petition at 8. These assertions do not provide any detailed showing that a material dispute exists with the Applicant. Therefore, CCAM’s Proposed Contention V, alleging vague and unspecified “technical and operational defects” fails for lack of specificity and basis.

CCAM Proposed Contention VI

Connecticut and Long Island cannot be evacuated.

Basis: In the event of a serious nuclear accident at Millstone Unit 1 and/or 2, which is credible, parts or all of Connecticut and Long Island will be required to be evacuated and these areas cannot as a factual matter be evacuated. A nuclear reactor cannot be licensed without an evacuation plan which will work.

Petition at 9.

Staff Response to Proposed Contention VI

The Staff opposes admission of this proposed contention on the grounds that it is outside of the scope of the proceeding; is not material to the findings the NRC must make to support the action that is involved in the proceeding; and does not set forth a specific factual or legal basis. See 10 C.F.R. § 2.309(f)(1)(iii)- (vi).

First, the Commission has previously held that emergency planning issues “do not come within the NRC’s safety review at the license renewal stage” because they are already the focus of ongoing regulatory processes. *Turkey Point*, CLI-01-17, 54 NRC at 10. In this regard, the Commission has stated:

The Commission has various regulations establishing standards for emergency plans. See 10 C.F.R. §§ 50.47, 50.54(s)-(u); Appendix E to Part 50. These requirements are independent of license renewal and will continue to apply during the renewal term. They include provisions to ensure that the licensee’s emergency plan remains adequate and continues to meet sixteen performance objectives. Through mandated periodic reviews and emergency drills, “The Commission ensures that existing plans are adequate throughout the life of any plant even in the fact of changing demographics, and other site-related factors . . . [D]rills, performance criteria, and independent evaluations provide a process to ensure continued adequacy of emergency preparedness.” 56 Fed. Reg. at 64,966. *Emergency planning, therefore, is one of the safety issues that need not be re-examined within the context of license renewal.*

Turkey Point, CLI-01-17, 54 NRC at 9 (emphasis added). Issues pertaining to the effectiveness of evacuation plans are part of emergency planning,¹⁶ and, therefore, do not fall within the scope of a license renewal proceeding.¹⁷ Nowhere in the contention does CCAM raise an issue related to the detrimental effects of *aging*, and therefore, the proposed contention falls outside of the scope of the proceeding. See *McGuire*, CLI-02-26, 56 NRC at 363-64.

Furthermore, Proposed Contention VI does not set forth the requisite specific factual or legal basis. The Commission’s regulations require a “detailed, fact-based showing that a genuine dispute of law or fact exists.” See *McGuire*, CLI-02-14, 55 NRC at 289. A contention alleging that an application is deficient must identify “each failure and the supporting reasons for the petitioner’s belief.” See *Millstone*, CLI-03-14, 58 NRC at 216 (“To trigger an adjudicatory hearing, a petitioner

¹⁶ Evacuation is considered in the development of onsite and offsite emergency response plans. See 10 C.F.R. § 50.47(b)(10).

¹⁷ See also 10 C.F.R. § 50.47(a)(1), which specifically provides that “[n]o finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.”

must do more than submit 'bald or conclusory allegations' of a dispute with the applicant"). CCAM's blanket assertion that "parts or all of Connecticut and Long Island . . . cannot as a factual matter be evacuated" does not provide the requisite specificity for the admissibility of a contention and therefore, the proposed contention should be rejected.¹⁸ For these reasons, Proposed Contention VI is inadmissible.

CONCLUSION

CCAM has failed to establish its standing to intervene in this proceeding, and has failed to proffer an admissible contention. Therefore, the Licensing Board should deny its Petition.

Respectfully submitted,

/RA/

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/RA/

Brooke D. Poole
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Dated at Rockville, Maryland
this 7th day of June 2004

¹⁸ Further, CCAM's assertions that a serious nuclear accident at Millstone "is credible" and that "parts or all of Connecticut and Long Island will be required to be evacuated" are unsupported and should be rejected.

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, 50-423-LR
)
(Millstone Power Station, Units 2 & 3)) ASLBP No. 04-824-01-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO PETITION TO INTERVENE AND REQUEST FOR HEARING OF CONNECTICUT COALITION AGAINST MILLSTONE," and "NOTICE OF APPEARANCE" for Brooke D. Poole, in the captioned proceeding have been served on the following through electronic mail and with copies by deposit in the NRC's internal mail system, or through electronic mail with copies by deposit in the U.S. Postal Service as indicated by an asterisk, this 7th day of June, 2004:

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