

June 7, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED  
USNRC

June 15, 2004 (10:08AM)

In the Matter of )  
 )  
Dominion Nuclear Connecticut, Inc )  
 )  
(Millstone Nuclear Power Station )  
Units 2 and 3 )  
 )  
 )

Docket Nos. 50-336-LR  
50-423-LR  
  
ASLBP No. 04-824-01-LR

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

DOMINION'S ANSWER TO CCAM'S  
PETITION TO INTERVENE AND REQUEST FOR HEARING

I. INTRODUCTION

Dominion Nuclear Connecticut, Inc. ("Dominion") hereby answers and opposes the "Petition to Intervene and Request for Hearing" (the "Petition") dated February 12, 2004, submitted by the Connecticut Coalition Against Millstone ("CCAM") regarding Dominion's application to renew the operating licenses for the Millstone Power Station, Units 2 and 3. The Petition should be rejected because CCAM fails to make any showing of standing. The Petition should also be rejected because CCAM has identified no admissible contention. CCAM proffers only vague, sweeping, and totally unsupported allegations that fail to address Dominion's application and are largely outside the scope of this proceeding. Indeed, CCAM's contentions do not contain a single reference to Dominion's application, which suggests that perhaps CCAM formulated its contentions without even reading the application.<sup>1</sup> In any event, it is clear that

<sup>1</sup> This is not the first time that CCAM has requested a hearing without making any effort to become familiar with and understand the application. See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit No. 2), CLI-03-14, 58 N.R.C. 207, 220 (2004).

CCAM has not satisfied the NRC's standards for intervention and has no meaningful contribution to make to this proceeding. Accordingly, its hearing request should be denied.

## II. PROCEDURAL BACKGROUND

Dominion submitted its application for renewal of the operating licenses for the Millstone Power Station, Units 2 and 3, on January 22, 2004. On February 12, 2004, before completion of the NRC's sufficiency review and docketing of Dominion's application, and before any notice of opportunity for hearing was published, CCAM prematurely filed its Petition. On March 1, 2004, CCAM wrote a letter to the Secretary asserting that because CCAM had filed its petition prior to recent revision to 10 C.F.R. Part 2, which became effective on February 13, 2004,<sup>2</sup> the "Coalition Petition proceedings must be conducted pursuant to the 'old' 10 CFR Part 2 rules." Letter from N. Burton to NRC Secretary (Mar. 1, 2004) at 2.<sup>3</sup> On March 4, 2004, the NRC Office of the Secretary returned the Petition to CCAM because it was premature.

A Notice of Docketing and Opportunity for Hearing was later issued on March 12, 2004. 69 Fed. Reg. 11,897 (2004). The Notice permitted any person whose interest may be affected to file a request for hearing and petition for leave to intervene within 60 days of the notice (i.e., by May 11, 2004). *Id.* The Notice stated that hearing requests shall be filed in accordance with the Rules of Practice in 10 C.F.R. Part 2 and advised interested persons to consult a current copy of 10 C.F.R. § 2.309 (the pertinent provision under the new Part 2 rules). The Notice directed any person requesting a hearing to set forth with particularity the interest of the petitioners in the

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<sup>2</sup> 69 Fed. Reg. 2,182, "Changes to Adjudicatory Process, Final Rule" (Jan. 14, 2004).

<sup>3</sup> Dominion responded by letter dated March 4, 2004, pointing out that under the NRC rules, a proceeding commences when a notice of hearing or notice of proposed action under section 2.105 is issued, and that the date of this notice then determines whether the new Part 2 rules apply. Letter from D. Lewis to NRC Secretary (Mar. 4, 2004). The NRC Staff made similar observations in a letter dated March 10, 2004. Letter from M. Bupp to A. Vietti-Cook (March 10, 2004).

proceeding and how that interest may be affected, and also, consistent with the new Part 2 rules, to “set forth the specific contentions which the petitioners/requestor seeks to have litigated at the proceeding.” *Id.* at 11,898.

Subsequently, on March 22, 2004, 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, 2004, unchanged, unsigned, and without a certificate of service.<sup>4</sup> Petitioner made no attempt to conform its Petition to the new Part 2 rules. Thus, while the Petition listed certain items as contentions, it stated that “CCAM will elaborate upon the basis for this petition in its formal submission of contentions” (Petition at 2), implying that the items in the Petition did not represent CCAM’s formal contentions. Further, the Petition stated that CCAM reserves the right to supplement its Petition. 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.<sup>5</sup>

On March 25, 2004, the Commission referred the Petition to the Atomic Safety and Licensing Board, while retaining jurisdiction over CCAM’s Motion to Vacate. On April 2, 2004, Dominion and the NRC Staff responded opposing CCAM’s Motion to Vacate.<sup>6</sup> In addition, by

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<sup>4</sup> Electronic message from N. Burton to the Commissioners, NRC Staff and Parties (March 22, 2004).

<sup>5</sup> 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).

<sup>6</sup> Dominion’s Answer to CCAM’s Motion to Vacate Secretary’s Determination (Apr. 2, 2004); NRC Staff’s Response to Connecticut Coalition Against Millstone’s Motion to Vacate and to Accept Petition to Intervene and Request for Hearing (Apr. 2, 2004).

letter that same day, Dominion informed the Chief Administrative Judge that Dominion intended, unless otherwise directed by the Licensing Board, to defer any answer to CCAM's Petition until one conforming to the new Part 2 rules (i.e., a petition not dependent on further supplementation) was submitted. Letter from D. Lewis to Judge G. Bollwerk (Apr. 2, 2004). Dominion stated that if CCAM made no further filing by the May 11, 2004 deadline for intervention requests, Dominion would submit an answer within 25 days after the close of the period for intervention. Neither CCAM nor the NRC Staff objected to this approach, and CCAM consented to a motion by the NRC Staff to extend the time for the NRC Staff's response to the Petition to 25 days after close of the intervention period.<sup>7</sup>

On May 4, 2004, the Commission denied CCAM's Motion to Vacate. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-12, 59 N.R.C. \_\_\_, slip op. (May 4, 2004). The Commission held that the new Part 2 applies to all proceedings noticed on or after February 12, 2004, and inasmuch as this proceeding was noticed after that date, the new Part 2 Rules apply to this proceeding. Id. at 5. CCAM submitted a Motion for Reconsideration of CLI-04-12 on May 14, 2004, essentially repeating its previously rejected arguments. By Order dated May 18, 2004, the Commission denied the motion.

### III. CCAM HAS NOT DEMONSTRATED STANDING

CCAM's Petition fails to establish CCAM's standing to participate in this proceeding. Standing is not a mere legal technicality, but "an essential element in determining whether there is any legitimate role" for the Commission "in dealing with a particular grievance."

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<sup>7</sup> NRC Staff's Unopposed Motion for an Extension of Time to Respond to Connecticut Coalition Against Millstone's Petition to Intervene and Request for Hearing (Apr. 1, 2004). The Chief Administrative Judge granted this motion by Order dated April 5, 2004.

Westinghouse Electric Corp. (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 N.R.C. 322, 331-32 (1994).

The Commission's Rules of Practice establish the following general requirements for standing. A request for hearing or petition for leave to intervene must state:

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

10 C.F.R. § 2.309(d). The Notice of Opportunity for Hearing in this proceeding repeats these requirements. 69 Fed. Reg. at 11,898. Other than identifying its name and address, CCAM has essentially ignored all of these requirements.<sup>8</sup>

To determine whether a petitioner's interest provides a sufficient basis for intervention, "the Commission has long looked for guidance to current judicial concepts of standing." Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998).

Judicial concepts of standing require a petitioner to establish 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) that

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<sup>8</sup> CCAM is no stranger to NRC proceedings and therefore has little excuse for its failure to demonstrate standing. See e.g., Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), LBP-00-2, 51 N.R.C. 25 (2000); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), LBP-00-26, 52 N.R.C. 181 (2000); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), LBP-01-1, 53 N.R.C. 75 (2001); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 N.R.C. 273 (2001); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-01-17, 53 N.R.C. 398 (2001); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-01-29, 54 N.R.C. 223 (2001); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-02-5, 55 N.R.C. 131 (2002); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-02-16, 56 N.R.C. 83 (2002); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), LBP-03-3, 57 N.R.C. 45 (2003).

the injury can be fairly traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 N.R.C. 1, 6 (1996) (citation omitted).

In order to meet these standards, an organization must show that the action will cause injury-in-fact to either its own organizational interests or to the interests of its members. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 N.R.C. 95, 102 n.10 (1994).

Where an organization asserts a right to represent the interests of its members, the “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, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 N.R.C. 26, 30-31 (1998), citing Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333, 343 (1977). Under NRC practice, an organization seeking to establish representational standing “must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized by that member to request a hearing on behalf of that member.” Northern States Power Co. (Monticello Nuclear Generating Plant), CLI-00-14, 52 N.R.C. 37, 47 (2000); see also GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 202 (2000).

CCAM has made none of these showings. CCAM makes no showing of an injury in fact to its own organizational interests, and therefore makes no showing that it has any direct standing. CCAM asserts, vaguely, that it seeks intervention “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” (Petition at 1-2), but this “concern” is insufficient. An organization’s “mere ‘interest in the problem,’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient” to render the organization adversely affected by the proceeding Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 N.R.C. 420, 421 (1976) (quoting Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972)).

Nor has CCAM established standing to represent any members. While CCAM asserts vaguely that it is an organization that includes “families and individuals who reside within and beyond the five-mile emergency evacuation zone of Millstone” (Petition at 1), CCAM does not identify any member and does not demonstrate how such member would be adversely affected by this proceeding. Further, CCAM does not make any showing that any member has authorized CCAM to represent his or her interest in this proceeding. Moreover, CCAM fails to identify any specific injury-in-fact or show that any purported injury is within the zone of interest of the proceeding.

In short, CCAM makes no showing of standing. This failure alone requires denial of the Petition.

#### **IV. CCAM’S CONTENTIONS ARE INADMISSIBLE**

CCAM’s has also failed to submit any admissible contention. As discussed below, CCAM completely ignores the NRC’s rules requiring that contentions be within the scope of the proceeding and supported by a sufficient basis to establish a genuine dispute on a material issue. This failure too, by itself, requires denial of the Petition.

**A. Standards for Admissibility of Contentions**

**1. Contentions Must Be Within the Scope of the Proceeding and May Not Challenge NRC's Rules**

As a fundamental requirement, a contention is only admissible if it addresses matters within the scope of the proceeding and does not seek to attack the NRC's regulations governing the proceeding. This fundamental limitation is particularly important in a license renewal proceeding, because the Commission has conducted extensive rulemaking proceedings to define specifically and limit the technical and environmental showing that an applicant must make. The rules governing health and safety matters are contained in 10 C.F.R. Part 54, and the rules governing environmental matters are contained in 10 C.F.R. §§ 51.53(c), 51.95(c), and Appendix B to Part 51. As discussed later in this response, CCAM's contentions ignore and exceed the limited scope of this proceeding.

The rules in 10 C.F.R. Part 54 are intended to make license renewal a stable and predictable process. 60 Fed. Reg. 22, 461, 22,465 (1995). As the Commission has explained, "We sought to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC staff to focus its resources on the most significant safety concerns at issue during the renewal term." Florida Power & Light Co. (Turkey Point Nuclear Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 7 (2001). "License renewal reviews are not intended to 'duplicate the Commission's ongoing reviews of operating reactors.'" Id. (citation omitted). To this end, the Commission has confined 10 C.F.R. Part 54 to those issues uniquely determined to be relevant to the public health and safety during the period of extended operation, leaving all other issues to be addressed by the existing regulatory processes. 60 Fed. Reg. at 22,463. This scope is based on the principle, established in the rulemaking proceedings, that with the exception of the detrimental effects of aging and a few

other issues related to safety only during the period of extended operation, the existing regulatory processes are adequate to ensure that the licensing bases of currently-operating plants provide and maintain an adequate level of safety. 60 Fed. Reg. at 22,464, 22,481-82. Accordingly, the Commission has limited the scope of the safety review to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a), which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging evaluations. See Turkey Point, CLI-01-17, 54 N.R.C. at 7-8; Duke Power Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 363 (2002). The Commission has stated explicitly that the scope of review under its rules determines the scope of admissible issues in a renewal hearing. 60 Fed. Reg. at 22,482 n.2. "Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review, for our hearing process (like our Staff's review) necessarily examines only the questions our safety rules make pertinent." Turkey Point, CLI-01-17, 54 N.R.C. at 10.

The regulations in 10 C.F.R. Part 51 governing license renewal are similarly intended to produce a more focused and, therefore, more effective review. 61 Fed. Reg. 28,467 (1998); Turkey Point, CLI-01-17, 54 N.R.C. at 11. To accomplish this objective, the NRC prepared a comprehensive Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants (NUREG-1437) and made generic findings reflected in the GEIS and in Appendix B to 10 C.F.R. Part 51. Those issues that could be resolved generically for all plants are designated as Category 1 issues and are not evaluated further in a license renewal proceeding (absent waiver or suspension of the rule by the Commission based on new and significant information). 61 Fed. Reg. at 28,468, 28,470, 28,474; Turkey Point, CLI-01-17, 54 N.R.C. at 12. The remaining (i.e., Category 2) issues that must be addressed in an applicant's Environmental

Report ("ER") are defined specifically in 10 C.F.R. § 51.53(c). See generally, Turkey Point, CLI-01-17, 54 N.R.C. at 11-12

10 C.F.R. § 2.309(f)(1)(iii)-(iv) requires a petitioner to demonstrate that the issue raised by each of its contentions is within the scope of the proceeding and material to the findings that the NRC must make. Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given [them]." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170 (1976) (footnote omitted); accord Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 N.R.C. 287, 289-90 n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's Notice of Opportunity for Hearing. Id.; see also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

It is also well established that a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations. Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999). "[A] licensing proceeding . . . is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 20, aff'd in part on other grounds, CLI-74-32, 8 A.E.C. 217 (1974) (footnote omitted). Thus, a contention which collaterally attacks a Commission rule or regulation is not appropriate for litigation and must be rejected. 10 C.F.R. § 2.335; Potomac Electric Power Co. (Douglas Point Nuclear Generating

Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 89 (1974). A contention which "advocate[s] stricter requirements than those imposed by the regulations" is "an impermissible collateral attack on the Commission's rules" and must be rejected. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1656 (1982); see also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 N.R.C. 397, 410, aff'd in part and rev'd in part on other grounds, CLI-91-12, 34 N.R.C. 149 (1991). Likewise, a contention that seeks to litigate a generic determination established by Commission rulemaking is "barred as a matter of law." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 N.R.C. 5, 30 (1993).

These limitations are very germane to this proceeding in that the scope of admissible environmental contentions is constrained by the NRC's GEIS, and the scope of technical contentions is constrained by 10 C.F.R. Part 54. See Turkey Point, CLI-01-17, 54 N.R.C. at 5-13. See also Florida Power & Light Co. (Turkey Point Plant, Units 3 and 4), CLI-00-23, 52 N.R.C. 327, 329 (2000); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998), motion to vacate denied, CLI-98-15, 48 N.R.C. 45, 56 (1998); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 N.R.C. 123, 125 (1998).

## **2. Contentions Must Be Specific and Supported By a Basis Demonstrating a Genuine, Material Dispute**

In addition to the requirement to address issues within the scope of the proceeding and material to the NRC's findings, a contention is admissible only if it provides:

- a "specific statement of the issue of law or fact to be raised or controverted," accompanied by
- (i) a "brief explanation of the basis for the contention;"

- (ii) a “concise statement of the alleged facts or expert opinion” supporting the contention together with references to “specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;” and
- (iii) “[s]ufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” which showing 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)(i), (ii), (v) and (vi). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155-56 (1991).

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now § 2.309, which was intended “to raise the threshold for the admission of contentions.” 54 Fed. Reg. 33,168 (1989); see also Oconee, CLI-99-11, 49 N.R.C. at 334; Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. The Commission has stated that the “contention rule is strict by design,” having been “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.’” Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001) (citation omitted). The pleading standards are to be enforced rigorously. “If any one . . . is not met, a contention must be rejected.” Palo Verde, CLI-91-12, 34 N.R.C. at 155 (citation omitted). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

The Commission has explained that this “strict contention rule” serves multiple purposes, which include putting other parties on notice of the specific grievances and assuring that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions. Oconee, CLI-99-11, 49 N.R.C. at 334. By raising the threshold for admission of contentions, the NRC intended to obviate lengthy hearing delays caused in the past by poorly defined or supported contentions. Id. As the Commission reiterated in incorporating these same standards into the new Part 2 rules, “[t]he threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of concern and that issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues.” 69 Fed. Reg. at 2,189-90.

Under these standards, a petitioner is obligated “to provide the [technical] analyses and expert opinion” or other information “showing why its bases support its contention.” Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, vacated in part and remanded on other grounds, CLI-95-10, 42 N.R.C. 1, aff’d in part, CLI-95-12, 42 N.R.C. 111 (1995). Where a petitioner has failed to do so, “the [Licensing] Board may not make factual inferences on [the] petitioner’s behalf.” Id., citing Palo Verde, CLI-91-12, 34 N.R.C. 149.

Further, admissible contentions “must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].” Millstone, CLI-01-24, 54 N.R.C. at 359-60. In particular, this explanation must demonstrate that the contention is “material” to the NRC’s findings and that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(iv), (vi) (emphasis added). The Commission has defined a “material” issue as

meaning one where “resolution of the dispute would make a difference in the outcome of the licensing proceeding.” 54 Fed. Reg. at 33,172 (emphasis added).

As observed by the Commission, this threshold requirement is consistent with judicial decisions, such as Conn. Bankers Ass’n v. Bd. of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980), which held that:

[A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an “inquiry in depth” is appropriate.

Id. (footnote omitted); see also Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998) (“It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . .”). A contention, therefore, is not to be admitted “where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts.” 54 Fed. Reg. at 33,171.<sup>9</sup> As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

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<sup>9</sup> See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 N.R.C. 1041 (1983) (“[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a of the Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.”).

Therefore, under the Rules of Practice, a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for an admissible contention.

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994). Similarly, a mere reference to documents does not provide an adequate basis for a contention. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

Rather, NRC's pleading standards require a petitioner to read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,170; Millstone, CLI-01-24, 54 N.R.C. at 358. If the petitioner does not believe these materials address a relevant issue, the petitioner is "to explain why the application is deficient." 54 Fed. Reg. at 33,170; Palo Verde, CLI-91-12, 34 N.R.C. at 156. A contention that does not directly controvert a position taken by the applicant in the license application is subject to dismissal. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 N.R.C. 370, 384 (1992). An allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990).

**B. CCAM's Contentions Are Beyond the Scope of this Proceeding, Vague, Unsupported, and Entirely Inadmissible**

As explained below, CCAM's contentions do not meet any of the applicable standards.

Instead, they are nothing more than vague, sweeping, and baseless allegations, totally unsupported, and largely outside the scope of the proceeding.

**1. Contention I**

Contention I is inadmissible because it challenges the NRC's rules limiting the scope of this proceeding and fails to satisfy the NRC's requirements for admissible contentions.

Contention I alleges that 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." Petition at 2. CCAM also alleges that the "public was misled" at initial licensing and that the "licenses must be immediately revoked, not extended."

Id. To the extent that these vague and baseless allegations are intended to raise a safety issue, they are outside of the scope of the proceeding. First, they are not issues related to the management of the aging or time-limited aging analyses. Thus, the contention represents a challenge to the scope of 10 C.F.R. Part 54, which is limited to these aging-related issues. See Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-01-6, 53 N.R.C. 138, 163-64 (2001), aff'd, CLI-01-17, 54 N.R.C. at 15-16 (holding that a contention alleging that the release of radionuclides and chemicals would endanger the public was unrelated to aging management and therefore outside the scope of a license renewal proceeding). Second, CCAM's allegation appear to take issue with initial licensing and current operation, seek revocation of the current licenses, and thus do not appear to relate to license renewal.

To the extent that this contention might be construed as raising an issue under the National Environmental Policy Act ("NEPA"), it similarly represents a challenge to the scope of

the environmental review specified in 10 C.F.R. § 51.53(c) and to the NRC's generic environmental findings in the GEIS and Appendix B to C.F.R. Part 51. See id. CCAM's allegations do not relate to any of the issues required to be addressed by 10 C.F.R. § 51.53(c). Instead, to the extent that these allegations may be construed as having any bearing on environmental impacts during the period of extended operation, they relate to Category 1 issues resolved generically in this proceeding. Radiation exposure to the public during the renewal term is a Category 1 issue determined to be small, based on a generic finding that radiation doses to the public will continue at current levels associated with normal operations. 10 C.F.R. Part 51, App. B, Table B-1. The discharge of chlorine and other biocides, the discharge of metals, the discharge of sanitary wastes and minor chemical spills, are also Category 1 issues determined to be small. Id.; see also GEIS § 4.4.2.2 and Table 4.4. Challenges to these generic findings are barred, absent a waiver of the NRC's rules.

Contention I is also inadmissible because it fails to satisfy the NRC's pleading requirements for basis and specificity. CCAM's allegations in Contention I are utterly vague and fail to satisfy the requirements to provide a "specification" of the contentions and "a specific statement of the issue of law or fact." 10 C.F.R. §§ 2.309(a), 2.309(f)(1)(i). Nor does CCAM provide "facts or expert opinions" together with "references to . . . specific sources and documents" to support its assertions, or "sufficient information to show that a genuine dispute exists." Id. § 2.309(f)(1)(v)-(vi). CCAM also ignores the requirement to include references to the specific portions of the application that CCAM disputes and the reasons for each dispute. Id., § 2.309(f)(1)(vi).

Contrary to the Commission's explicit requirements for admissible contentions, CCAM's "facts" are vague, unsupported, and conclusory statements that "the licensee and the Government

withheld” information regarding purported “horrors” caused by operation of the Millstone facility and “cancer clusters” have been identified near the facility. Petition at 2-3. CCAM does not provide one whit of support for these baseless claims. Instead, it states that it intends to rely on unspecified documents maintained by the Connecticut Department of Health, and other information that “may be disclosed in discovery in these proceeding.” *Id.* at 3. This is precisely the type of contention that the Commission has identified as being inadmissible – one “where an intervenor has no facts to support its position and where the intervenor contemplates using discovery . . . as a fishing expedition which might produce relevant supporting facts.” 54 Fed. Reg. at 33,171. The Commission’s rules bar such “generalized suspicions.” *McGuire*, CLI-03-17, 58 N.R.C. at 424. Therefore, Contention I must be rejected.

## 2. Contention II

Contention II is inadmissible because it challenges the NRC’s rules limiting the scope of this proceeding and fails to meet the NRC’s standards for admissible contentions. Contention II asserts that Millstone is a “primary terrorist target” and an “unprotected nuclear weapon awaiting detonation.”<sup>10</sup> Petition at 4. Petitioners also assert that “[w]hile it is operating, Millstone cannot be protected against a malevolent attack.” *Id.* To the extent that Contention II is intended to raise a safety issue, it is beyond the scope of this proceeding, because it is not related to the management of the aging or to time-limited aging analyses. Thus, the contention represents a challenge to the scope of 10 C.F.R. Part 54, which is limited to these aging-related issues.

The Commission has specifically ruled that “contentions related to terrorism are beyond the scope of the NRC Staff’s safety review under the Atomic Energy Act and this [license

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<sup>10</sup> Commercial reactors cannot suffer a nuclear “detonation,” intentionally or unintentionally. To the extent that this contention is based on an allegation that is physically impossible, it should be dismissed.

renewal] proceeding.” McGuire, CLI-02-26, 56 N.R.C. at 363. Terrorism contentions “are, by their very nature, directly related to security and are, therefore, under our rules, unrelated to ‘the detrimental effects of aging.’” Id. at 364. Thus, such contentions “are beyond the scope of, not ‘material’ to, and inadmissible in, a license renewal proceeding.” Id.

Similarly, to the extent that this contention could be construed as raising an issue under NEPA, it is again outside the scope of this proceeding. First, terrorism is not within the scope of any of the NEPA issues that must be addressed in this proceeding pursuant to 10 C.F.R. § 51.53(c). Second, the Commission has explicitly ruled “that NEPA imposes no legal duty on the NRC to consider intentional malevolent acts, such as the [September 11, 2001, attacks] on a case-by-case basis in conjunction with commercial power reactor license renewal applications.” McGuire, CLI-02-26, 56 N.R.C. at 365. More generally, the Commission has held that terrorism is not cognizable under NEPA. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 357 (2002); Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3), CLI-02-27, 56 N.R.C. 367 (2002).

In addition to being outside the scope of the proceeding and an attack on the NRC’s rules, Contention II is inadmissible because it is vague and unsupported. CCAM’s “statement of facts” consist of nothing more than a single, unsupported sentence asserting that “[n]either Millstone Unit 2 nor Unit 3 was constructed to withstand, nor would it, the force of a terrorist attack, which is credible.” Petition at 4. CCAM fails to provide any reference to any specific document, expert opinion, or other source to support this assertion.<sup>11</sup> CCAM again states that it intends to

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<sup>11</sup> CCAM provides no basis suggesting that Millstone is not complying with measures required by 10 C.F.R. § 73.55 to protect against the design basis threat, as defined in 10 C.F.R. § 73.1(a). To the extent that CCAM is suggesting the need to protect against some greater threat by an enemy of the state, its contention is barred by 10 C.F.R. § 50.13.

rely on documents that may be disclosed during discovery, but this is exactly the type of fishing expedition that the Commission's rules are intended to prevent. Contention II should therefore be rejected.

### 3. Contention III

CCAM's Contention III, which inaccurately alleges that the Millstone units<sup>12</sup> lack a "valid" National Pollutant Discharge Elimination System ("NPDES") permit, seeks to raise an issue beyond the scope of the NRC's jurisdiction, lacks any legal or factual basis, and fails to establish any genuine dispute concerning a material issue. Therefore, it too must be rejected.

The status of Dominion's current NPDES permit (which remains in effect pending action by the Connecticut Department of Environmental Protection ("DEP") on a timely application for its renewal<sup>13</sup>) is a matter within the sole province of the DEP, which administers the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq., in Connecticut.<sup>14</sup> The Commission has made it clear that Licensing Boards should narrowly construe their scope to avoid where possible the litigation of issues that are the primary responsibility of other agencies and whose resolution is not necessary to meet NRC's statutory responsibilities. Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-96-16, 48 N.R.C. 119, 121-22 (1996). As a general matter, "NRC licensing is in no way dependent upon the existence of a [FWPCA section] 402 permit." Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 N.R.C. 108, 124 (1979). Moreover, Contention III appears focused on whether

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<sup>12</sup> Contention III mistakenly refers to Millstone Units 1 and 2. Millstone Unit 1 has permanently ceased operation. Dominion's application in this proceeding seeks to renew the facility operating licenses for Units 2 and 3.

<sup>13</sup> ER at E-4-8.

<sup>14</sup> NPDES permits are issued under section 402 of the FWPCA, 33 U.S.C. § 1342. Under section 402(b) of the FWPCA, 33 U.S.C. § 1342(b), the EPA may authorize a State to implement the NPDES permitting program for

Footnote continued on next page

current operation of the station is permitted.<sup>15</sup> For all these reasons, Contention III is outside the scope of this proceeding.

Contention III is also inadmissible because it lacks any basis and fails to establish a genuine dispute on a material issue. Dominion's environmental report provides a copy of the current NPDES permit for the Millstone Station.<sup>16</sup> ER, Appendix B. Dominion's ER also states that a timely application for renewal of the NPDES permit was filed in June 1997, and that the current NPDES permit remains in effect until the State acts on the application for renewal of the NPDES permit.<sup>17</sup> ER at E-4-8. CCAM does not address this information in the application, or provide any basis to controvert it.

Moreover, CCAM conveniently omits mentioning that the Connecticut DEP has testified that Millstone's current NPDES permit is valid.<sup>18</sup>

Q. . . . Is there the slightest doubt in your mind that this facility currently has a valid discharge permit?

\* \* \*

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Footnote continued from previous page

discharges into navigable waters within the State's jurisdiction. Connecticut is an authorized state. See U.S. EPA NPDES State Program Status at <http://cfpub.epa.gov/npdes/statestats.cfm>.

<sup>15</sup> In its Statement of Facts, CCAM asserts that Dominion does not hold a valid NPDES permit authorizing operation of the cooling water system during the years 2015 through 2035 for Unit 2, nor the years 2025 through 2045 in the case of Unit 3. Petition at 6. Since NPDES permits are issued for five year terms (33 U.S.C. §§ 1342(a)(3), 1342(b)(1)(B)), this assertion is irrelevant.

<sup>16</sup> This permit was issued on December 15, 1992 to Northeast Nuclear Energy Company and was transferred to Dominion Nuclear Connecticut, Inc., effective as of the date on which Dominion acquired the facility. Appendix B to the ER includes both the 1992 NPDES permit and the notice of its transfer to Dominion.

<sup>17</sup> Connecticut's Uniform Administrative Procedure Act provides:

When a licensee has made a timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency. . . .

Conn. Gen. Stat. § 4-182(b) (2003).

<sup>18</sup> CCAM's failure to mention this testimony is particularly remarkable, since it was given in proceeding in which the plaintiffs, including a group called Coalition Against Millstone, were represented by Ms. Burton.

A. There is no doubt in my mind.

Testimony of Michael Harder,<sup>19</sup> Fish Unlimited v. Northeast Utils. Serv. Co., CV-99-0587693, Transcript (Apr. 14, 1999) at 139 (attached as Exhibit A hereto).

Q. But the department has determined that the permit application itself was complete based upon its preliminary review. Is that correct?

A. Yes.

Q. And has the department made a determination with respect to the timeliness of the permit application?

A. Yes.

Q. And what's that conclusion?

A. It's – it was completed in a timely fashion.

Q. And does the department have a position with respect to whether or not the facility currently has a valid permit?

A. Yes.

Q. And what is the department's position on that?

A. That's a valid permit.

Q. And, in fact, that permit, without regard to whether or not electricity is being produced, regulates ongoing discharges from the facility. Is that right?

A. Yes

Testimony of David Cherico,<sup>20</sup> Fish Unlimited v. Northeast Utils. Serv. Co., CV-99-0587693, Transcript (Apr. 28, 1999) at 44-45 (attached as Exhibit B hereto).

In that proceeding, plaintiffs claimed that Millstone's application to renew the NPDES permit was legally deficient, because Millstone was not producing electricity at the time and therefore was not engaged in a continuing activity. See Fish Unlimited v. Northeast Utils. Serv. Co., 755 A.2d 860, 864 (Conn. 2000). Plaintiffs also claimed that Northeast Utilities had acted

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<sup>19</sup> At the time of this testimony, Mr. Harder was the Director of the Permitting, Enforcement and Remediation Division within DEP's Bureau of Water Management.

<sup>20</sup> Mr. Cherico was the permit writer at the DEP assigned to Millstone's NPDES permit renewal application.

in bad faith in its efforts to renew the permit, and that the Connecticut Department of Environmental Protection had acted in bad faith and collusion. Id. The Connecticut Supreme Court upheld the dismissal of this complaint, holding that plaintiffs' claims "have been placed within the exclusive domain of the [Connecticut] department [of Environmental Protection]," which "has statutory and regulatory authority to issue water discharge permits, to determine the completeness of renewal applications and to pursue any one of several remedies if it concludes that a discharge is creating unreasonable pollution or is occurring without a valid permit." Id. at 866-67 (footnotes and citations omitted).<sup>21</sup>

In sum, CCAM fails to demonstrate the existence of any genuine dispute on a material issue. It seeks to raise an issue within the exclusive province of the Connecticut DEP, and one that is therefore outside of the scope of the NRC's jurisdiction and this proceeding.

#### 4. Contention IV

CCAM's Contention IV is not admissible because it is an impermissible challenge to the NRC's rules and also because it is vague and unsupported. Contention IV alleges that operations of Millstone Units 2 and 3 have caused devastating losses to the indigenous winter flounder population, and irreversible damage to the marine environment, and that continued operations will increase the severity of the environmental damage. However, the NRC's rules do not require an applicant to analyze aquatic impacts where, as Dominion as done in this proceeding,

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<sup>21</sup> The Connecticut Supreme Court also stated, albeit in dicta:

The defendants' most recent NPDES permit was issued by the department on December 14, 1992, for a maximum term of five years. The five year term was due to expire on December 13, 1997. Prior to that date, however, the defendants submitted a timely renewal application pursuant to § 22a-430 (c). That application is still pending. Accordingly, pursuant to General Statutes § 4-182(b), the defendants' 1992 permit will remain in effect until the renewal application has been finally resolved by the department.

Id. at 864 (footnote omitted).

the applicant provides certain determinations made under the FWPCA. Moreover, CCAM does not provide one whit of support for its broad and conclusory allegations.

To be admissible at this stage of the proceeding, a contention must dispute a specific portion of the application (including the environmental report) or, if the petitioner believes that the application fails to contain information on a relevant matter, identify each such failure and the supporting reasons. 10 C.F.R. § 2.309(f)(1)(vi). See also Turkey Point, CLI-01-17, 54 N.R.C. at 24-25 (contentions must be based on applicant's application and environmental report). CCAM fails to identify any deficiency in the environmental report (indeed, it is not even mentioned). However, to the extent that CCAM's contention could be construed as alleging that Dominion's environmental report is inadequate in some respect in addressing aquatic impacts, it is clearly barred by the NRC's rules.

The NRC's rule governing the information that must be provided in an license renewal applicant's environmental report states:

If the applicant's plant utilizes once-through cooling or cooling pond heat dissipation systems, the applicant shall provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant can not provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.

10 C.F.R. § 51.53(c)(3)(ii)(B).<sup>22</sup> When it proposed this provision, the NRC explained,

The permit process authorized by the FWPCA is an adequate mechanism for control and mitigation of these potential aquatic

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<sup>22</sup> Section 316(a) of the FWPCA allows the EPA or an authorized state to approve a variance from proposed thermal effluent limitations if alternative limitations will assure the protection and propagation of a balanced, indigenous, population of shellfish, fish, and wildlife in and on that body of water. 33 U.S.C. § 1326(a) (2004). Section 316(b) requires that any standard established under the FWPCA for cooling water intake structures require the "location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." 33 U.S.C. § 1326(b) (2004).

impacts. If an applicant to renew a license has appropriate EPA or State permits, further NRC review of these potential impacts is not warranted.

56 Fed. Reg. 47,016, 47,019 (1991).

10 C.F.R. § 51.53(c)(3)(ii)(B) is intended to be consistent with the limitation on the NRC's authority under section 511(c) of the FWPCA, 33 U.S.C. § 1371(c)(2), which prohibits the NRC from using NEPA to review any effluent limitation or requirement established under that Act.<sup>23</sup> In promulgating its rule, the Commission stated:

The Commission has considered the impacts of license renewal on aquatic ecology and, in doing so, has reviewed existing NPDES permits.... Agencies responsible for existing permits are not constrained from reexamining the permit issues if they have reason to believe that the basis for their issuance is no longer valid. The Commission does not have authority under NEPA to impose an effluent limitation other than those established in permits issued pursuant to the [Clean Water Act].

61 Fed. Reg. at 28,475.

Dominion has provided its current 316(b) determination and 316(a) variance in its environmental report. See ER §§ 4.2-4.4. See also ER §§ 2.2. Therefore, under 10 C.F.R. § 51.53(c)(3)(ii)(B) quoted above, it is not required to provide any further assessment of the

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<sup>23</sup> Section 511(c) of the FWPCA states:

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to –

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act or the adequacy of any certification under section 401 of this Act; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this Act.

33 U.S.C. § 1371(c)(2) (2004).

aquatic impacts. Consequently, any suggestion by CCAM that Dominion's application is inadequate in addressing aquatic impacts is barred by this rule.<sup>24</sup>

Contention IV is also inadmissible because it is totally unsupported and fails to demonstrate the existence of a genuine dispute on a material issue. Its allegation that plant operations have caused irreversible damage to the marine environment (Petition at 7) is impermissibly vague. CCAM also fails to provide any facts, expert opinion or references supporting its allegations. It provides no information demonstrating that there is any genuine dispute on a material issue. For all of these reasons, Contention IV is inadmissible.

#### 5. Contention V

Most of the allegations in Contention V are inadmissible because they seek to raise issues outside of the scope of this proceeding and therefore constitute impermissible challenges to the NRC's rules. All of the allegations in Contention V are inadmissible because they are vague, unsupported, and fail to establish any genuine dispute on a material issue.

The first three sentences of Contention V are outside the scope of the proceeding. They allege that Millstone "Units 2 and 3 suffer technical and operational defects which preclude safe operation," that "[s]ystem malfunctions and failures recur without adequate correction," and that

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<sup>24</sup> Under the NRC case law interpreting section 511 of the FWPCA, where the EPA or an authorized state has approved a plant's cooling water system, the obligation of the NRC is to weigh the overall project in light of the conclusions of the EPA or authorized state. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-366, 5 N.R.C. 39, 62 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 N.R.C. 33, 70 (1977). Where the EPA or authorized state has assessed the aquatic impacts in approving a plant's cooling water system, the NRC must accept that assessment at face value. Carolina Power & Light Co. (H. B. Robinson, Unit No. 2), ALAB-569, 10 N.R.C. 557, 561-62 (1979). NRC may not undercut these judgments by undertaking independent analyses or setting its own standards. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 N.R.C. 702, 712-13 (1978).

Here, Millstone has an existing 316(b) determination and 316(a) variance in its NPDES permit issued by the State of Connecticut. Dominion has provided the permit with these determinations along with the supporting documentation, as required by NRC's rule. Under these circumstances, the NRC should factor Connecticut's judgments reflected by this documentation into its environmental impact statement.

both units “have suffered excessive occasions of unplanned emergency shutdowns.” Petition at 8. None of these allegations relate to the management of the aging or to time-limited aging analyses. Thus, they are beyond the scope of and represent a challenge to 10 C.F.R. Part 54, which limits the technical issues in license renewal proceeding to these aging-related issues.

All four sentences in Contention V, including the fourth alleging that “[b]oth units suffer from premature aging” (Petition at 8), fail to meet the NRC’s standards for an admissible contention. All of the allegations are fatally vague. They provide no meaningful notice of any specific problems that CCAM wishes to litigate. Further, CCAM fails to provide any support – any facts, expert opinion, references to documents, or other sources – supporting these vague claims. CCAM provides no information demonstrating that there is a genuine dispute on a material issue. It identifies no deficiency in Dominion’s application. With respect to the vague and conclusory allegation of “premature aging,” CCAM provides no information to suggest that the aging effects and aging management programs identified in Dominion’s application are in any way inadequate.

#### 6. Contention VI

Contention VI is inadmissible because it raises issues beyond the scope of the proceeding and therefore challenges the NRC’s rules limiting the scope of this proceeding. Contention VI asserts that all or parts of Connecticut and Long Island cannot as a factual matter be evacuated in the event of a serious accident at the Millstone facility. This contention is beyond the scope of the proceeding because it does not relate to the management of aging or to time-limited aging analyses. Thus, the contention represents a challenge to the scope of 10 C.F.R. Part 54, which is limited to these aging-related issues.

As stated by the Commission when it first promulgated 10 C.F.R. Part 54, “the Commission concludes that the adequacy of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license.” 56 Fed. Reg. 64,943, 64,967 (1991).

Through mandated periodic reviews and emergency drills, “the Commission ensures that existing plans are adequate throughout the life of any plant even in the face 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. 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 N.R.C. at 9. See also Turkey Point, LBP-01-6, 53 N.R.C. at 160 (holding that emergency preparedness contentions are not admissible in license renewal proceedings).

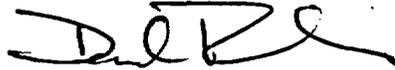
Contention VI is also inadmissible because it fails to meet any of the NRC’s pleading standards. CCAM offers only a few vague, unsupported and conclusory assertions in support of its contention (e.g., “there is no evacuation plan in effect that will work” – Petition at 10). CCAM does not identify any specific facts, and provides no expert opinion or references to documents or other sources to support its allegations. It provides no information demonstrating that there is a genuine dispute on any material issue.

Lacking any relevance to this proceeding, as well as any factual basis or specificity, Contention VI is clearly inadmissible. Therefore, it must be rejected.

**V. CONCLUSION**

For the reasons stated above, CCAM has failed to demonstrate standing and has failed to offer any admissible contention in this proceeding. Therefore, its Petition to Intervene and Request for Hearing should be denied.

Respectfully Submitted,



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Dated: June 7, 2004

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-336-LR
Dominion Nuclear Connecticut, Inc	)	50-423-LR
	)	
(Millstone Nuclear Power Station,	)	ASLBP No. 04-824-01-LR
Units 2 and 3)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of "Dominion's Answer to CCAM's Petition to Intervene and Request for Hearing," dated June 7, 2004, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 7<sup>th</sup> day of June, 2004.

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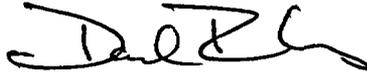
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**David R. Lewis**

Document #: 1404787 v.2

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SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD

AT HARTFORD

-----X

FISH UNLIMITED, ET AL,  
Plaintiffs,

CV 99-0587693

vs.

April 14, 1999

NORTHEAST UTILITIES SERVICE  
COMPANY and NORTHEAST NUCLEAR  
ENERGY COMPANY,  
Defendants.

-----X

B e f o r e :

HONORABLE ROBERT HALE  
STATE JUDGE REFEREE

A p p e a r a n c e s :

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By: ELIZABETH C. BARTON, ESQ.  
HAROLD M. BLINDERMAN, ESQ.  
CHARLES NICOL, ESQ.

Patricia L. Masi, RDR  
Court Reporter

10:10 O'CLOCK A.M.

1  
2 THE COURT: Good morning, everybody. Be seated,  
3 please.

4 Will the witness retake the stand.

5  
6 M I C H A E L H A R D E R,

7 having previously been duly sworn, was examined,  
8 and testified further under oath as follows:

9 THE COURT: Mr. Harder, just for the record, I  
10 remind you that you're still under oath in this case.  
11 And people on the witness stand often get thirsty, if  
12 you will just help yourself to the water.

13 THE WITNESS: I'll just grab some right now.  
14 Thank you.

15 MS. BURTON: Your Honor, the parties are preparing  
16 to stipulate to additional exhibits at this time before  
17 I continue.

18 THE COURT: That will be fine.

19 MS. BARTON: Your Honor, Elizabeth Barton on  
20 behalf of the defendants. Attorney Burton has asked me  
21 if we would have any objection to putting into the  
22 record the 1992 NPDES permit with respect to which  
23 there has been some testimony. We have no problem with  
24 that, so we're attempting to find a copy for her.

25 We have also been asked if we would agree to put  
26 in the 1974 permit. Similarly, we have no problem with  
27 that, with the understanding that it would only seem to

1 A Not that I'm aware of, no.

2 Q So that the public petition mechanism is not available  
3 with respect to those, correct?

4 A I believe that's true, yes.

5 Q And they can be issued without notice to the public,  
6 unlike an NPDES permit?

7 A That's right.

8 Q And, in fact, that is what occurred in these  
9 instances?

10 A Yes.

11 Q Now, can you tell us, Mr. Harder -- you're very  
12 familiar with the permitting process, with the NPDES permits,  
13 correct?

14 A Yes.

15 Q And we know that in this case a permit was issued on  
16 December 14, 1992, with a term of five years.

17 A That's right.

18 Q And that term is now over and behind us. Can you tell  
19 me what procedure is followed with respect to an application  
20 which has a limited term of five years where the term limit  
21 has run out, if an application wishes to have the benefit of  
22 operating under the terms of the original application, the  
23 original license?

24 A Under the law now -- excuse me. Under the law now, if  
25 a timely application is filed, which now means if it's filed  
26 before that expiration date, the permit continues in effect.  
27 Under the old law, it had to be submitted at a minimum of 180

1 BY MS. BURTON:

2 Q In a considering the economic advantage to a permittee  
3 to delay proceedings on a renewal application, wouldn't you  
4 want to consider the benefit that the utility enjoys by having  
5 more freedom to commit more environmental degradation?

6 MS. BARTON: Objection. It's argumentative. It  
7 assumes multiple facts not in evidence, and it's  
8 clearly not consistent with the testimony this very  
9 witness has given.

10 THE COURT: Sustained.

11 MS. BURTON: Nothing further. Thank you, your  
12 Honor.

13 CROSS-EXAMINATION

14 BY MS. BARTON:

15 Q Mr. Harder, good afternoon. First of all, could you  
16 tell us a little bit more relative to your 25 years with the  
17 department, elaborating on, over those 25 years, the degree of  
18 involvement that you've had specifically with permitting  
19 activity in the nature of NPDES permits and section 22a-430  
20 permits, discharge permits?

21 A Yes. When I first was employed with DEP, I began as an  
22 engineer in the permit section, permitting and enforcement  
23 section, although it wasn't called that. So I've had  
24 responsibilities ranging from doing inspections of facilities,  
25 drafting permits, drafting public notices, drafting all the  
26 documents related to permits, reviewing permits applications,  
27 representing the department at public hearings and various

1 you've been asked some questions concerning whether or not  
2 this facility has a valid discharge permit. Is there the  
3 slightest doubt in your mind that this facility currently has  
4 a valid discharge permit?

5 MS. BURTON: That's a legal question, your Honor.

6 MS. BARTON: I claim it, your Honor. She's been  
7 asking --

8 THE COURT: I think it's a question well within  
9 his province. He is the one who issues them.

10 A There is no doubt in my mind.

11 BY MS. BARTON:

12 Q Thank you. With respect to the permitting process,  
13 including, specific to this facility, the permit application  
14 review process, is it, for a facility of the complexity of  
15 this facility, typical to have there be multiple conversations  
16 and even potentially meetings between department staff and  
17 representatives of the applicant?

18 A Yes.

19 Q And, in fact, isn't it safe to say that you would be  
20 concerned about doing your job if you didn't have the  
21 opportunity to have such dialogue?

22 A That's correct.

23 THE COURT: Before you go on, just for  
24 clarification purposes, with respect to your objection  
25 earlier, it's a legal question, there is no doubt about  
26 that, but he certainly could answer the question that  
27 was asked. It was very carefully drawn. Let's go on.

JUDICIAL DISTRICT OF HARTFORD

AT HARTFORD

FISH UNLIMITED, ET AL,  
Plaintiffs,

CV 99-0587693

vs.

April 28, 1999

NORTHEAST UTILITIES SERVICE  
COMPANY and NORTHEAST NUCLEAR  
ENERGY COMPANY,  
Defendants.

B e f o r e :

HONORABLE ROBERT HALE  
STATE JUDGE REFEREE

A p p e a r a n c e s :

For the Plaintiffs:

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For the Defendants:

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By: ELIZABETH C. BARTON, ESQ.  
HAROLD M. BLINDERMAN, ESQ.  
CHARLES NICOL, ESQ.

Patricia L. Masi, RDR  
Court Reporter

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1                                    10:00 O'CLOCK A.M.

2                    THE COURT: Good morning, everybody. Be seated,  
3 please.

4                    MS. BURTON: Good morning, your Honor.

5                    THE COURT: I discovered that the clock in  
6 chambers is exactly four minutes faster than the clock  
7 out here.

8                    Where is our witness?

9                    MS. BURTON: He was just here. I will see if he's  
10 outside.

11  
12            D A V I D            C H E R I C O ,

13            having previously been duly sworn, was examined,  
14 and testified further under oath as follows:

15                    THE COURT: Be seated, sir. It's customary under  
16 these circumstances to remind you that you're still  
17 under oath in this case.

18                    THE WITNESS: I had a question, your Honor before  
19 I start. I made an error in my testimony, yesterday.  
20 Is it possible to correct it?

21                    THE COURT: Yes. Just wait one moment.

22                    Miss Burton, the gentleman indicates he made an  
23 error in his testimony yesterday and wants to correct  
24 it. I see no reason why he shouldn't.

25                    Do you want to tell Miss Burton what it is,  
26 please?

27                    THE WITNESS: Yes. I was questioned about a

1 this work in progress with respect to the draft permit as  
2 critical to your ability to do your job because of the  
3 complexity of the facility?

4 A Yes.

5 Q And because of the nature of the information and the  
6 volume of information that you've been receiving and will  
7 continue to receive with respect to this application?

8 A Yes.

9 Q And you weren't involved in the review of the  
10 application that led to the '92 permit, were you?

11 A No.

12 Q So, again, to the point you made in terms of requesting  
13 additional information and meeting with the applicant, you,  
14 again, see that as essential to your getting comfortable with  
15 your knowledge of the facility and your knowledge of the  
16 discharges and your knowledge of all the information that  
17 might be deemed relevant to your finalizing that draft  
18 permit. Isn't that correct?

19 A Yes.

20 Q And I believe you've already made it clear that this is  
21 an ongoing process; that is, the fact of collection of  
22 information. Is that correct?

23 A Yes.

24 Q But the department has determined that the permit  
25 application itself was complete based upon its preliminary  
26 review. Is that correct?

27 A Yes.

1 Q And has the department made a determination with  
2 respect to the timeliness of the permit application?

3 A Yes.

4 Q And what's that conclusion?

5 A It's -- it was completed in a timely fashion.

6 Q And does the department have a position with respect to  
7 whether or not the facility currently has a valid permit?

8 A Yes.

9 Q And what is the department's position on that?

10 A That's a valid permit.

11 Q And, in fact, that permit, without regard to whether or  
12 not electricity is being produced, regulates ongoing  
13 discharges from the facility. Is that right?

14 A Yes.

15 Q And Attorney Burton asked you questions when she  
16 pointed to page 5 of 9 of what she characterized as excerpts  
17 from the permit application. I think it was marked as Exhibit  
18 42. She made reference to the activities of the -- the  
19 activities of the applicant as identified on that page. Do  
20 you recall that testimony?

21 A Not -- no.

22 Q Well, she asked you about services provided.

23 A Yes. I'm sorry. Yes, I recall that.

24 Q And it referenced production of electricity. But I  
25 believe you were responding to that question in such a way  
26 that you were indicating that your focus is not on whether or  
27 not electricity is being produced. Without regard to whether