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OFFICE OF SECRETARY
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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 Nuclear Power Station, :
Units 2 and 3) : ASLBP No. 04-824-01-LR

CONNECTICUT COALITION AGAINST MILLSTONE
MOTION FOR STAY OF PROCEEDINGS

The Connecticut Coalition Against Millstone ("CCAM") moves herewith for a stay of proceedings convened by the Atomic Safety and Licensing Board Panel ("Board") on the application of Dominion Nuclear Connecticut, Inc. to renew the operating licenses of Millstone Nuclear Power Station, Units 2 and 3, pending adjudication of an appeal of the Commission's order in CLI-04-12 as filed by CCAM in the U.S. Court of Appeals for the Second Circuit on June 25, 2004.

Factual Background

On January 22, 2004, Dominion Nuclear Connecticut, Inc. formally submitted an application to the Commission to obtain relicensing of its Millstone Unit 2 and Millstone Unit 3 nuclear reactors. Submission of the license renewal application ("LRA") followed numerous contacts and private meetings between Dominion and the Commission staff concerning such application.

On February 3, 2004, the Commission published "Dominion Nuclear Connecticut, Inc. Notice of Receipt and Availability of Application for Renewal of Millstone [Nuclear] Power Station, Units 2 and 3, Facility Operating License Nos.

DPR-65 and NPF-49 for Additional 20-Year Period" in the Federal Register (69 FR 5197) as Docket Nos. 50-336 and 50-423.

By letters dated February 5, 2004, the Commission notified the Waterford (CT) Public Library and the Three Rivers Community College in Norwich (CT) that it was thereupon submitting to each respective facility a copy of the application as it had been filed with the Commission in Docket Nos. 50-336 and 50-423.

On February 6, 2004, Dominion met with Commission staff in Rockville, Maryland to formally discuss the LRA.

On February 6, 2004, the Commission posted on its official website a notice that it would hold a public meeting in Waterford on February 17, 2004 regarding the LRA.

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

On February 12, 2004, the Coalition submitted its "Petition to Intervene and Request for Hearing" to the Commission's Office of the Secretary with a copy to the licensee. The Office of the Secretary emailed notice of its acknowledgment of the filing on February 12, 2004.

On February 13, 2004, revisions to 10 CFR Part 2 severely curtailing *inter alia* the right of intervenors in hearing procedures before the Commission became effective. The revisions are the subject of a challenge mounted in the U.S. Court of Appeals for the First Circuit on January 26, 2004 by Citizens Awareness

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Network, Inc., Docket No. 04-1145. Upon information and belief, the Attorney General of the State of Connecticut, *inter alia*, has intervened as an *amicus curiae* party in the appeal.

On or before February 16, 2004, the Commission posted on its official website a chart entitled "Applicability of Old and New 10 CFR Part 2 to NRC Proceedings." Such chart (Exhibit A hereto) posits various scenarios of potential events occurring with regard to license applications and interventions and it assigns applicability of "old" versus "new" rules. The fifth and ninth scenarios are particularly apt. They posit the following potential events:

Fifth Scenario:

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

Ninth Scenario:

Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing published on NRC web site before February 13, 2004, but not in Federal Register; hearing request/intervention petition received after February 13, 2004.

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

On February 17, 2004, representatives of the Commission, including Commission technical experts and two representatives from the Office of the

General Counsel, conducted a public meeting regarding the Millstone LRA in Waterford, as scheduled. During such meeting, Commission representatives stated that the Commission was not legally required to conduct a hearing on the application in the absence of a formal request for a hearing. The Commission expended a significant amount of money in preparing for the presentation, including commissioning a large mounted visual depiction of the Millstone Nuclear Power Station, assembling voluminous informational documents and transporting no fewer than seven (7) of its representatives to participate in the presentation.

Upon information and belief, the LRA as posted on the Commission website on or before February 8, 2004 is unchanged in substance.

On March 10, 2004, the Commission Secretary issued a letter of notification of its rejection of the CCAM Petition and returned the Petition to its sender by U.S. Mail. The Petition was resubmitted as originally filed.

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

On March 22, 2004, CCAM submitted its "Motion to Vacate NRC Secretary Determination of Petition Prematurity and to Accept Petition to Intervene and Request for Hearing as of Date of Filing and to Apply 'Old' CFR Hearing Rules to Said Petition."

The licensee and Commission staff filed objections to such motion.

By order dated May 4, 2004, the Commission issued CLI-04-12 whereby it dismissed the Motion to Vacate. By order dated May 18, 2004, the Commission denied CCAM's Motion for Reconsideration.

On June 25, 2004, CCAM filed a Petition for Review in the U.S. Court of Appeals for the Second Circuit, by which petition it seeks an adjudication of the legal propriety of the Commission's rejection of the February 12, 2004 petition. A copy of the Petition for Review is annexed hereto.

CCAM intends to argue before the Court of Appeals that it is clear from an examination of the "old" and "new" rules, and a review of pertinent materials made available by the NRC on its website and in the Federal Register, that the Petition must be docketed and considered by the Commission under the "old" rules, as requested by CCAM in its Motion to Vacate.

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

Although the order relies heavily on the Commission's conclusion that a petition to intervene and request a hearing in a relicensing application need await the Commission's issuance of a "notice of hearing" or "notice of proposed action," the Order fails to recognize that the Commission's scenario 5¹ provides that a petition is timely filed for purposes of the "old" CFR rules as long as the application was docketed prior to February 13, 2004 – even if "notice of docketing and opportunity for hearing not published in either Federal Register or NRC website."

¹ See CCAM Exhibit A, annexed hereto.

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

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

The Order states in pertinent part as follows:

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

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

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

CCAM further intends to argue on appeal that the Order is in error because it utterly disregards the Commission's own published guidance which sets specific parameters pursuant to which CCAM's petition qualifies for full consideration under the "old" CFR rules.

With regard to the issue of whether the circumstances give rise to the appearance that NRC simply withheld publication of its March 12, 2004 notice until after the "new" 10 CFR Part 2 rules legally took effect, subject to the legal challenge underway in the First Circuit, with or without the cooperation of Dominion, in order to limit challenges by CCAM and others to the LRA, CCAM intends to further argue to the Court of Appeals that limited discovery should have been permitted to determine the facts. If such conduct did occur, CCAM's rights, and those of other individuals and organization, have been improperly abridged and they have suffered serious prejudice in these proceedings. The difference between the rights accorded an intervenor under the "old" rules versus the "new" rules is no less than the difference between night and day.

Legal Argument

The present proceedings should be stayed in order to avoid the prospect of unnecessary duplicative administrative proceedings and potentially contrary results.

Should CCAM's appeal to the U.S. Court of Appeals be successful, and the relief as sought be granted, the Court will order the February 12, 2004 petition remanded to the Commission for further proceedings pursuant to 10 CFR Part 2 as in effect on February 12, 2004. Thus, therein lies the prospect of duplicative


administrative proceedings, and potentially contrary results, which would be wasteful, costly and inefficient to all parties. See, e.g., Gold v. Johns-Manville Sales Corp., 723 F.2d 1068, 1073 (3rd Cir. 1983) (considering argument that a stay would avoid wasteful and duplicative litigation, an issue left to the discretion of the trial court).

Conclusion

It is respectfully submitted that the Board should properly stay the instant proceedings pending adjudication of the aforementioned appeal in the U.S. Court of Appeals.

**THE PETITIONER
CONNECTICUT COALITION
AGAINST MILLSTONE**

By:



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Dated: June 27, 2004

Exhibit A

Applicability of Old and New 10 CFR Part 2 to NRC Proceedings

The following table associates a variety of potential notice, licensing, and regulatory scenarios with the applicable version of 10 CFR Part 2.

Proceeding status	Old Part 2	New Part 2
Application submitted and docketed before February 13, 2004; notice of docketing and opportunity for hearing published in <i>Federal Register</i> but not on NRC Web site before February 13, 2004; hearing request/intervention petition submitted and granted by NRC before February 13, 2004	•	
Application submitted and docketed before February 13, 2004; notice of docketing and opportunity for hearing published in <i>Federal Register</i> but not on NRC Web site before February 13, 2004; hearing request/intervention petition for intervention submitted before February 13, 2004, but not yet acted upon by NRC on February 13, 2004	•	
Notice of docketing and opportunity for hearing published in <i>Federal Register</i> but not on NRC Web site before February 13, 2004; hearing request/intervention petition submitted after February 13, 2004	•	
Pre-application meetings and correspondence occurring before February 13, 2004, but application submitted on or after February 13, 2004; hearing request/intervention petition submitted after February 13, 2004		•
Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing <i>not</i> published in either <i>Federal Register</i> or NRC Web site; hearing request/intervention petition prepared and submitted before February 13, 2004	•	
Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing <i>not</i> published in either <i>Federal Register</i> or NRC Web site; hearing request/intervention petition prepared and submitted on or after February 13, 2004		•
Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing published in the <i>Federal Register</i> before February 13, 2004, but <i>not</i> on NRC Web site; hearing request/intervention petition received before February 13, 2004	•	
Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing published in the <i>Federal Register</i> before February 13, 2004, but <i>not</i> on NRC Web site; hearing request/intervention petition received after February 13, 2004	•	
Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing published on NRC Web site before February 13, 2004, but <i>not</i> in <i>Federal Register</i> ; hearing request/intervention petition received after February 13, 2004	•	
Application submitted and docketed by NRC before February 13, 2004; notice of docketing and opportunity for hearing published on NRC Web site on or after February 13, 2004, but <i>not</i> in <i>Federal Register</i> ; hearing request/intervention petition submitted on or after February 13, 2004		•

Application submitted before February 13, 2004, but docketed by NRC on or after February 13, 2004; notice of docketing and opportunity for hearing <i>not</i> published in either <i>Federal Register</i> or NRC Web site; hearing request/intervention petition submitted on or after February 13, 2004		•
Application submitted but docketed by NRC on or after February 13, 2004; notice of docketing and opportunity for hearing published in either <i>Federal Register</i> or NRC Web site on or after February 13, 2004; hearing request/intervention petition submitted after February 13, 2004		•
Application submitted and docketed by NRC on or after February 13, 2004; notice of docketing and opportunity for hearing <i>not</i> published in either <i>Federal Register</i> or NRC Web site; hearing request/intervention petition submitted on or after February 13, 2004		•

- Commission may determine and order the application of either the superseded or new Part 2 provisions.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CONNECTICUT COALITION	:	Docket No. 50-423 LA-3
AGAINST MILLSTONE,	:	
<i>Petitioner</i>	:	
	:	
v.	:	
	:	
U.S. NUCLEAR REGULATORY	:	
COMMISSION,	:	
<i>Respondent</i>	:	JUNE 25, 2004

PETITION FOR REVIEW

The proposed Intervenor, Connecticut Coalition Against Millstone (CCAM), hereby petitions this Court, pursuant to 28 U.S.C. Sections 2342 and 2344 and Rule 15(a) of the Federal Rules of Appellate Procedure, to review the decision of the U.S. Nuclear Regulatory Commission issued on May 4, 2004 (Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-12, 59 N.R.C.____ Slip Op.). This petition also seeks review of the Commission's decision dated May 18, 2004 denying CCAM's Motion for Reconsideration of such order.

In CLI-04-12, the Commission denied CCAM's Motion to Vacate and thereby issued a final ruling terminating proceedings on a petition filed by CCAM on February 12, 2004 to intervene and request a hearing in the matter of the license renewal application of Dominion Nuclear Connecticut, Inc.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. Section 2342. Venue lies in the Second Circuit pursuant to 28 U.S.C. Section 2343 in that CCAM is based in the State of Connecticut, its membership principally resides in the State of Connecticut, and the subject of this petition, the Millstone Nuclear Power Station, is located in Waterford, Connecticut.

CCAM submits that the U.S. Nuclear Regulatory Commission decision was contrary to law, was not supported by substantial evidence and was arbitrary and capricious. More particularly, CCAM submits that the Commission acted in violation of 10 C.F.R. Part 2 and its own policy and guidance documents in rejecting the February 12, 2004 filing as legally improper and premature and in determining that any proceeding on the Millstone license renewal application need be considered pursuant to the applicable provisions of the Code of Federal Regulations in effect on February 13, 2004. The Connecticut Coalition Against Millstone requests a declaration that the Commission's action was unlawful; an order to convene an evidentiary hearing pursuant to the applicable provisions of the Code of Federal Regulations in effect on February 12, 2004; and any other appropriate relief.

Respectfully submitted,



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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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DOMINION NUCLEAR CONNECTICUT, INC. :Docket Nos. 50-336-LR,
50-423-LR
(Millstone Nuclear Power Station, :
Units 2 and 3) : ASLBP No. 04-824-01-LR

CERTIFICATION

I hereby certify that a copy of the foregoing "Connecticut Coalition Against Millstone Motion for Stay" and accompanying "Petition for Review" was sent via U.S. Mail, postage pre-paid on June 28, 2004 to the following and emailed to the addresses below indicated on June 27, 2004:

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