UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-04-15

RAS 8202

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ATOMIC SAFETY AND LICENSING BOARD

SERVED 07/28/04

Before Administrative Judges:

Dr. Paul B. Abramson, Chairman
Ann Marshall Young
Dr. Richard F. Cole

In the Matter of	Docket Nos. 50-336-LR, 50-423-LR
DOMINION NUCLEAR CONNECTICUT, INC.	ASLBP No. 04-824-01-LR
(Millstone Nuclear Power Station, Units 2 and 3)	July 28, 2004

MEMORANDUM AND ORDER
(Ruling on Standing and Contentions)

Pending before the Licensing Board are (a) two June 2004 motions for stay, and (b) a March 2004 petition and a June 2004 amended petition for leave to intervene and request for hearing, along with related documents, filed by petitioner Connecticut Coalition Against Millstone ("CCAM"). These pleadings were submitted in connection with the January 20, 2004 applications of licensee Dominion Nuclear Connecticut, Inc. ("Dominion") seeking the renewal of the operating licenses for Units 2 and 3 of its Millstone Nuclear Power Station in Waterford, Connecticut. Both Dominion and the NRC staff oppose the CCAM stay motions and petition. For the reasons set forth below, we (a) deny both of CCAM's motions for stay, and (b) deny CCAM's petition for leave to intervene.

I. BACKGROUND

In response to a March 8, 2004 notice of opportunity for hearing,[1] on March 22, 2004, CCAM submitted a petition to intervene and request for hearing in proceedings concerning the applications of Dominion to renew the operating licenses for Millstone Units 2 and 3.[2] The matter was referred to the Atomic Safety and Licensing Board Panel by the Secretary of the Commission in a March 24, 2004 order,[3] which led to the establishment of this Licensing Board on May 19, 2004.[4]

On June 7, both Dominion and the staff filed answers opposing CCAM's March 22 petition, arguing that CCAM had not only failed to make any showing regarding its standing to participate in the subject proceedings, but also had not proffered an admissible contention meeting the requirements of 10 C.F.R. § 2.309(f)(1).[5]

On June 8, this Board issued an order directing the participants to set aside the dates of June 29 and 30 for a possible prehearing conference and setting out certain administrative guidelines.[6] On June 15 and 16, CCAM filed, essentially simultaneously, a motion for leave to file an amended petition, an amended petition together with several supporting affidavits, a

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[1] 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) [hereinafter Hearing Notice].

[2] See Petition to Intervene and Request for Hearing (Mar. 22, 2004) [hereinafter CCAM Petition].

[3] See Commission Order (Mar. 24, 2004) at 1 (unpublished).

[4] See 69 Fed. Reg. 29,759 (May 25, 2004).

[5] See Dominion's Answer to CCAM's Petition to Intervene and Request for Hearing (June 7, 2004); NRC Staff Answer to Petition to Intervene and Request for Hearing of [CCAM] (June 7, 2004).

[6] See Licensing Board Order (Initial Prehearing Order) (June 8, 2004) (unpublished).

motion for leave to file a reply to the staff and Dominion answers nunc pro tunc, and the subject reply (which provided certain new bases and arguments to support CCAM's standing and its contentions).[7]

Despite questions regarding the admissibility of CCAM's amended petition and other late-filed documents, which arguably constitute untimely attempts to amend the original petition without any attempt to address the late-filing factors set forth in 10 C.F.R. § 2.309(f)(2), this Board determined to conduct a prehearing conference to address all the issues raised by the various filings in the proceeding. Toward that end, on June 21 this Board issued an order convening a prehearing conference for June 30, 2004.[8]

In the period following that order and prior to beginning the prehearing conference, CCAM: (a) filed on the evening of Sunday June 27, a motion for a stay of this proceeding pending the outcome of CCAM's challenge, filed before the United States Court of Appeals for the Second Circuit on Friday June 25, 2004, to the Commission's non-acceptance of the CCAM February 12, 2004 petition to intervene as premature in the as-yet-not-commenced proceeding to consider the renewal of the licenses at issue in this proceeding;[9] and (b) delivered to this Board at the outset of the prehearing conference a second motion for a stay based, in this instance, upon CCAM's assertion that a June 28 resolution of the Legislature of the County of

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[7] See [CCAM] Motion for Leave to File Amended Petition to Intervene and Request for Hearing (June 15, 2004); [CCAM] Amended Petition to Intervene and Request for Hearing (June 15, 2004) [hereinafter CCAM Amended Petition]; [CCAM] Motion for Leave to File Reply to Licensee and NRC Staff Answers to Petition, Amended Petition and Declarations of CCAM Members Nunc Pro Tunc (June 16, 2004); [CCAM] Reply to Licensee and NRC Staff Answers to Petition (June 16, 2004) [hereinafter CCAM Reply].

[8] See Licensing Board Order (Initial Prehearing Conference Schedule) (June 21, 2004) (unpublished).

[9] See [CCAM] Motion for Stay of Proceedings (June 27, 2004) [hereinafter June 27 Stay Motion].

Suffolk of the State of New York authorized that body to participate in the instant proceedings (despite the facts that neither CCAM nor its counsel had any connection with, or authorization to speak for, that legislative body).[10]

At commencement of the prehearing conference, following brief oral argument on the issues raised by the two stay motions,[11] this Board determined that there was no foundation for the grant of, and therefore denied, the stay motions insofar as they related to the conduct of the prehearing conference.[12]

II. DISCUSSION

A. CCAM's Stay Motions

1. The June 27 Stay Motion. CCAM in its first motion for stay relies largely on its pending petition before the U.S. Court of Appeals for the Second Circuit regarding, inter alia, CCAM's challenge to the Commission's initial March 10, 2004 non-acceptance of the CCAM February 12 petition to intervene.[13] CCAM, however, (a) has failed to indicate any irreparable injury which might come to CCAM as a result of the carrying out of the instant proceedings on the schedule required by our regulations;[14] (b) has not provided any written or oral argument to suggest that CCAM has a reasonable likelihood of success on the merits in its pending adjudication before the Second Circuit; and (c) has not addressed specifically or in any

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[10] See [CCAM] Second Motion for Stay of Proceedings (June 30, 2004) [hereinafter June 30 Stay Motion].

[11] See Tr. at 10-26.

[12] See id. at 26.

[13] See June 27 Stay Motion at 1-7.

[14] See id. at 7-8; see also Tr. at 10-11, 25-26.

significant way any of the other bases that must be established to support the grant of a stay.[15] Therefore, the CCAM June 27, 2004 motion for a stay of these proceedings is denied.

2. The June 30 Stay Motion. In its second motion for stay, CCAM relies on a resolution CCAM states was passed by the Suffolk County, New York Legislature regarding some form of participation in this proceeding, according to CCAM.[16] Not only, however, has CCAM failed to indicate, as with the prior stay motion, any irreparable injury which might flow to CCAM as a result of continuation of these proceedings in their normal course, but it has also demonstrated no relationship whatsoever between either CCAM or its counsel and the Suffolk County Legislature,[17] whose actions it cites as a foundation for the requested stay.[18] On these grounds, the CCAM June 30, 2004 motion for a stay of these proceedings is denied.

B. CCAM's Contentions

1. Contention Admissibility Standards

a. The Rules of Practice. Section 2.309(f)(1) of the Commission's Rules of Practice specify that, for a contention to be admissible, it must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise

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[15] Pursuant to 10 C.F.R. § 2.342(e), in determining whether to grant or deny a motion for stay, a presiding officer is to consider the following four factors: (1) whether the moving party has made a strong showing that it is likely to prevail on the merits; (2) whether the moving party will be irreparably injured unless a stay is granted; (3) whether the granting of a stay would harm other parties; and (4) where the public interest lies. Although the presiding officer is to consider all four section 2.342 factors in ruling on a stay motion, the first two factors -- likelihood of success on the merits and irreparable injury -- are generally regarded as being the two most important, and the moving party has the burden of demonstrating that they weigh in its favor. See Cuomo v. NRC, 772 F.2d 972, 974 (D.C. Cir. 1985); Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6-8 (1994).

[16] See June 30 Stay Motion at 1-4.

[17] See Tr. at 23.

[18] See id. at 12-13; June 30 Stay Motion at 1-4.

statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case where the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.[19] In addition, the petitioner must demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding."[20] Failure to comply with any of these requirements is grounds for the dismissal of a contention.[21]

b. Interpretation. The application of these requirements, which were in effect either as part of 10 C.F.R. § 2.714 of the Rules of Practice in effect prior to adoption of the current rules, or as discussed in case law prior to the current rules, has been further developed by NRC case law, as is summarized below:

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[19] See 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi).

[20] See id. § 2.309(f)(1)(iii), (iv).

[21] See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

(1) Need for Adequate Factual Information or Expert Opinion. A contention must, if it is to be admissible, provide the alleged facts or expert opinions which support the petitioner's position, together with references to specific sources and documents on which it intends to rely to support its position.[22] A petitioner has the obligation to provide the analysis and expert opinion showing why its bases support its contentions, and the Board may not make factual inferences on the petitioner's behalf.[23] Interpreting the predecessor equivalent sections to our current rules, the Commission held that these requirements "demand that all petitioners provide an explanation of the bases for the contention, a statement of fact or expert opinion upon which they intend to rely, and sufficient information to show a dispute with the applicant on a material issue of law or fact."[24] Moreover, where a contention amounts to mere speculation, it is insufficient to merit further consideration.[25] Furthermore, the supporting information must be specifically identified; a petitioner "may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions."[26] Rather, petitioners are expected "to clearly identify the matters on which they intend to rely with reference to a specific point."[27]

(2) Materiality; Alleged Deficiencies and Errors. In order to be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding; that is, the subject matter of the contention must impact the

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[22] See 10 C.F.R. § 2.309(f)(1)(v).

[23] See Palo Verde, CLI-91-12, 34 NRC at 155-56.

[24] See id. at 155.

[25] See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 267 (1996).

[26] See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

[27] See id. at 241.

grant or denial of a pending license application.[28] Where a contention alleges a deficiency or error in the application, the deficiency or error must have some independent health and safety significance.[29]

(3) Improper Challenges to Application. All properly formulated contentions must focus on the license application in question, challenging either specific portions or alleged omissions of the application.[30] Any contention that fails directly to controvert the application, or mistakenly asserts the application does not address a relevant issue, can be dismissed.[31]

(4) Challenges Outside Scope of Proceeding. A petitioner must demonstrate that the issue raised in its contention is within the scope of the proceeding.[32] A licensing board appropriately looks "to the Commission's hearing notice to ascertain its subject matter jurisdiction", i.e. to define the scope of the proceeding,[33] and any contention that falls outside the specified scope of the proceeding must be rejected.[34] In proceedings concerning the renewal of an operating license, the scope is limited to "a review of the plant structures and components that will require an aging management review for the period of extended operation

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[28] See 10 C.F.R. § 2.309(f)(1)(iv).

[29] See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179-80 (1998), aff'd in part, CLI-98-13, 48 NRC 26 (1998).

[30] See 10 C.F.R. § 2.309(f)(1)(vi).

[31] See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), review declined, CLI-94-2, 39 NRC 91 (1994); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

[32] See 10 C.F.R. § 2.309(f)(1)(iii).

[33] See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985).

[34] See Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979).

and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analysis."[35]

(5) Challenges to Statutory Requirements/Regulations. With limited exception, no rule or regulation of the Commission can be challenged in an adjudicatory proceeding.[36]

2. Proposed Contentions

> a. CCAM 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.

As the basis for Contention 1, CCAM asserts, without identifying any sources or supporting authority, that (a) 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,"[37] and (b) "cancer clusters have been identified in many areas close to Millstone" since Units 2 and 3 became operational and that the cancers "are scientifically and medically linked to the routine and unplanned emissions of Millstone."[38]

Even taking into consideration certain later-provided, non-specific references, including a "tumor registry" that is not identified further, this contention fails because it fails to set forth the specific factual or legal basis required by 10 C.F.R. § 2.309(f)(1)(v).[39] Nor did CCAM

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[35] See Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000).

[36] See 10 C.F.R. § 2.335; Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (citing Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974)).

[37] See CCAM Petition at 2; CCAM Amended Petition at 2.

[38] See CCAM Petition at 3; CCAM Amended Petition at 3.

[39] See section II.B.1.b.(1) above; see also Tr. at 41-49, 169-72. CCAM has not provided any specific factual basis or expert opinion to support this assertion. In affidavits submitted with CCAM's amended petition, declarants Geralyn Winslow, William Honan, and Clarence Reynolds -- none of whom indicate having any basis for their knowledge or any expert

counsel give any reasons why CCAM had not provided any reasonably specific sources of information to support the contention.[40] This is only one of several examples in which CCAM has expressed very serious concerns but provided little or no sources or specificity so as to warrant admission of a contention. Such lack of care is unjustifiable, notwithstanding counsel representing CCAM on a pro bono basis.[41] If there is information to support the allegations, at least some reasonably specific basis or source is necessary -- and should not be difficult to provide or describe specifically, if it exists. Certainly, mere references to "the public domain" do not suffice.[42] Nor are the problems with CCAM's petition mere "niceties of pleading," as discussed in Houston Lighting and Power Co.[43] What has been provided as a basis for Contention I consists essentially of bare assertions, and this is insufficient to support admission of a contention under either the new or the old contention rules.

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knowledge of any kind -- merely state that they are "familiar with the high rate of cancer and other diseases within the Millstone host community and [they] believe the toxic and radiological emissions from Millstone play a key role in this phenomenon, which will continue and worsen if the present application is granted." See Declaration of Geralyn Winslow (June 14, 2004) ¶ 15; Declaration of William H. Honan (June 14, 2004) ¶ 14; Declaration of Clarence O. Reynolds (June 14, 2004) ¶ 19 [hereinafter Reynolds Decl.]. In support of this contention, CCAM also submitted the declaration of Michael Steinberg, an investigative journalist and author of the book Millstone and Me. See Declaration of Michael Steinberg (June 29, 2004) ¶¶ 4-7. Notwithstanding Mr. Steinberg's studies into the relationship between low level radiation and human health, neither he nor CCAM has provided sufficient information to establish any expertise on his part in this area.

[40] See Tr. at 41-47.

[41] See id. at 52.

[42] See id. at 43.

[43] See Houston Lighting and Power Co. (South Texas Project, Units 1 and 2, ALAB-549, 9 NRC 644, 649 (1979).

Finally, notwithstanding a poorly articulated and misapprehended reference in its reply to the provisions of 10 C.F.R. § 54.4(a)(1)(ii),[44] CCAM has not shown how its allegations may be related to the potential detrimental effects of aging.

Based on the preceding analysis, we conclude that this contention is inadmissible because it fails to comply with the requirements of 10 C.F.R. § 2.309(f)(1)(v).[45] If CCAM can support the concerns it has expressed, it should bring them to the attention of the Commission under 10 C.F.R. § 2.206.

b. CCAM Contention II: Millstone Units 2 and 3 are terrorist targets of choice.

In its second contention, CCAM asserts, again without offering any specific supporting documentation, that the Millstone facility has been identified by the Office of Homeland Security as a primary terrorist target and 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."[46]

The Commission has expressly determined that "contentions related to terrorism are beyond the scope of the NRC staff's safety review under the Atomic Energy Act and [a license renewal] proceeding."[47] Upon questioning by the Board during the oral argument, counsel for the Petitioner was unable to offer either any controlling precedent contradictory to the Commission's McGuire ruling or any factual basis to distinguish McGuire from the instant

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[44] See CCAM Reply at 3.

[45] See section II.B.1.b.(1) above.

[46] See CCAM Petition at 4; CCAM Amended Petition at 4.

[47] See Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002).

proceeding.[48] And, again, CCAM's reliance[49] on the provisions of 10 C.F.R. § 54.4(a)(1)(ii) with respect to this contention is both insufficiently articulated and plainly misplaced. We conclude, therefore, that this contention is inadmissible because it fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(iii).[50]

> c. CCAM 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 Discharge Elimination System permit and the facility lacks such a valid permit.

In Contention III, CCAM states that Dominion currently lacks a valid National Pollution Discharge Elimination System ("NPDES") permit and that "[w]ithout the lawful ability to cool the reactors and prevent core meltdown, the applicant cannot safe[l]y operate the facility."[51] Relying entirely on the declaration of Mr. Reynolds, CCAM contends that "given past practices involving criminal misconduct at Millstone, it is doubtful that the applicant will be able to obtain a lawful NPDES permit."[52]

This contention raises an issue solely within the purview of the Connecticut State Department of Environmental Protection ("DEP"), which administers the Federal Water Pollution Control Act ("FWPCA" or "Clean Water Act") within the jurisdiction of the State of Connecticut. While 10 C.F.R. § 51.45(d) requires an applicant seeking a license renewal to "list all Federal permits, licenses, approvals, and other entitlements which must be obtained in connection with

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[48] See Tr. at 63-64, 69-72.

[49] See CCAM Reply at 4-5.

[50] See section II.B.1.b.(4) above.

[51] See CCAM Petition at 5-6; CCAM Amended Petition at 5-6.

[52] See CCAM Amended Petition at 5; see also CCAM Reply at 5 (citing Reynolds Decl. ¶ 11).

the proposed action,"[53] it does not impose a requirement that the applicant actually possess such permits at the time of application.[54] Therefore, even if the CCAM allegation that Dominion does not have a "valid" DEP permit were accurate (and the Licensee has presented record testimony of the DEP to the effect that the current permit is valid), that would not be relevant for this proceeding. In short, CCAM asks to litigate before this Board the State of Connecticut's DEP permitting process, a matter outside the scope of this proceeding and outside the reach of the jurisdiction of this Board.[55] This contention is, therefore, inadmissible.

d. CCAM Contention IV: The operations of Millstone Units 2 and 3 have caused irreversible harm to the environment.

Contention IV alleges that the "operations of Millstone Units 2 and 3 have caused devastating losses to the indigenous Niantic winter flounder population" and that "[c]ontinued operations will increase the severity of the environmental damage."[56]

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[53] 10 C.F.R. § 51.45(d) (emphasis added).

[54] On this point, there is a long-established principle that "[NRC] licensing is in no way dependent upon the existence of a [FWPCA] permit." See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 58 (1974); see also Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 124 (1979). In Palisades, the licensing board dismissed a contention that claimed the FWPCA would be violated by the discharge of polluted effluents without a valid FWPCA permit. In addition to noting that radioactive effluents discharged by a nuclear plant were not "pollutants" covered by the FWPCA, the Palisades Board determined that the NRC no longer had authority over matters concerning FWPCA discharge permits, which resided with the Environmental Protection Agency and the states. See Palisades, LBP-79-20, 10 NRC at 124.

[55] Indeed, the NRC has been barred by statute from making substantive determinations regarding compliance with the Clean Water Act. See Section 511(c)(2) of the FWPCA (33 U.S.C. § 1371(c)(2)).

[56] See CCAM Petition at 7; CCAM Amended Petition at 7.

The only even arguably specific information supplied by CCAM in support of this contention relates to an observed decline in the indigenous winter flounder population.[57] However, Petitioner fails to identify any specific portion of either the Unit 2 or Unit 3 application with which it takes issue,[58] and fails to provide any expert opinion or reference to substantiate the general allegation that the two Units at issue in this proceeding have somehow played a material role in the flounder population decline. Instead, Petitioner has stated that it intends to rely upon information it asserts is to be found in unspecified "[r]ecords and documents maintained by the Connecticut Department of Environmental Protection and other state, federal and local agencies"[59] -- but not even one specific document is identified.[60] Of equal import is the fact that CCAM makes no dispute over the Licensee's compliance with 10 C.F.R. § 51.53(c)(3)(ii)(B), which requires an applicant to either provide a copy of its Clean Water Act Section 3.16(b) determination or its Clean Water Act Section 316(a) variance or, if it cannot, to address entrainment and impingement. Upon inspection of the applications, we see that Dominion did, in fact, provide the Section 316(b) materials in its environmental report, and did address entrainment and impingement in Section 4.2 of the environmental report.[61] These facts are not disputed by CCAM with any specificity whatsoever, nor is any specific reference to a

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[57] See CCAM Reply at 7 (referring to documented declines of the Niantic winter flounder species over decades in official annual environmental reports filed with the DEP by Dominion and Millstone's predecessor owner, Northeast Utilities).

[58] See Tr. at 112.

[59] See CCAM Reply at 8.

[60] See section II.B.1.b.(1) above.

[61] See Applicant's Environmental Report -- Operating License Renewal Stage, Millstone Power Station Units 2 and 3, Dominion Nuclear Connecticut (Jan. 2004) at E-4-6 to E-4-8; id. at Appendix B.

section of the applications provided, as required under 10 C.F.R. § 2.309(f)(1)(vi).[62] Therefore, because with respect to this contention CCAM has failed to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi), this contention is inadmissible.

e. CCAM Contention V: Millstone Units 2 and 3 suffer technical and operational defects which preclude safe operation.

In support of its fifth contention, CCAM asserts that both Units 2 and 3 "have suffered excessive occasions of unplanned emergency shutdowns" and that "[s]ystem malfunctions and failures recur without adequate correction."[63] As a result, according to the Petitioner, "[b]oth units suffer from premature aging."[64]

CCAM fails here to cite a single specific deficiency, alleging, instead, "excessive occasions of unplanned emergency shutdowns." Although its late-filed reply refers to the declaration of Clarence Reynolds as support for the proposition that Millstone Unit 2 suffers from weak areas in the reactor vessel head,[65] CCAM does not seek to qualify Mr. Reynolds as an expert, nor are any source materials cited. Stating simply that "Dominion has been permitted by the NRC to operate with the unsafe condition until the next scheduled refueling outage,"[66] CCAM does not assert any aging-related problem.[67]

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[62] See section II.B.1.b.(3) above.

[63] See CCAM Petition at 8; CCAM Amended Petition at 9.

[64] See CCAM Petition at 8; CCAM Amended Petition at 9.

[65] See CCAM Reply at 12.

[66] See Reynolds Decl. ¶ 12.

[67] During oral argument, Dominion noted that as part of its "aging management program," it has already considered the stress corrosion cracking issues with the Unit 2 reactor vessel head and that the reactor vessel head is scheduled to be replaced with an entirely new one at the time of the next refueling. See Tr. at 134-35.

CCAM has contended that the applications are deficient because they fail to incorporate the effects of the allegedly excessive number of emergency shutdowns upon the relevant systems,[68] but during the oral argument it became apparent that Dominion's methodology incorporated the historical data regarding those (and other transient events) when developing the fatigue (and other aging-related) analysis of the components required to be examined in the aging analysis,[69] and this approach has not been specifically challenged. For example, all of that information is contained in Section 4.3 of each application,[70] as to which Petitioner has raised not a single objection. Therefore, the Petitioner's assertion that the applications are deficient is simply based upon a failure to read or perform any meaningful analysis of the applications.[71] In addition, Petitioner failed to cite any particular section of either application or any specific system, structure or component as being deficient.[72] Finally, CCAM counsel's argument that certain plant modifications that are examined for possible implementation should be required for implementation[73] fails as an impermissible challenge to Commission rules and regulations.[74]

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[68] See CCAM Reply at 13.

[69] See Tr. at 151-54, 157-65.

[70] See Millstone Power Station Unit 2, Application for Renewed Operating License, Technical and Administrative Information (Jan. 20, 2004) at 4-14 to 4-22; Millstone Power Station Unit 3, Application for Renewed Operating License, Technical and Administrative Information (Jan. 20, 2004) at 4-12 to 4-23.

[71] See Tr. at 146-47.

[72] See id. at 165.

[73] See id. at 168-69.

[74] See section II.B.1.b.(5) above.

To the extent that this contention can be construed as one relating to the effects of aging upon the plant's structures, systems and components, it is inadmissible, as it fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi) to provide specificity, and to the extent that it could be construed as a contention of omission, it fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi) relating to identification of each failure and the supporting reasons, including an apparent misapprehension of the content of the applications by CCAM. In addition, to the extent that this contention raises issues regarding historical defects, it is inadmissible because, by failing to present any expert testimony or documentary references indicating a link between historical defects and projected aging-related issues for critical structures, systems and components which are not adequately considered by the Licensee in its aging management program (as described in the applications), the contention is outside the scope of our proceeding. Finally, this contention fails to provide sufficient specificity regarding any alleged error or defect, and fails to provide sufficient supporting expert opinion, facts or documents.[75]

f. CCAM Contention VI: Connecticut and Long Island cannot be evacuated.

Contention VI asserts that "[i]n the event of a serious nuclear accident at Millstone 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."[76]

CCAM has offered no source or authority of any kind to support its claim that parts of Connecticut and Long Island "cannot as a factual matter be evacuated." Moreover, it is well-settled that emergency planning issues are outside the scope of this proceeding. The Commission has stated that because the agency's ongoing regulatory process ensures that

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[75] See 10 C.F.R. § 2.309(f)(1)(v) and (vi).

[76] See CCAM Petition at 9; CCAM Amended Petition at 10.

existing emergency plans are adequate throughout the life of any facility, notwithstanding changing demographics and other site-related factors, "[e]mergency planning . . . is one of the safety issues that need not be re-examined within the context of license renewal."[77] Therefore, this contention is inadmissible because it is outside the scope of this proceeding as established by a Commission ruling by which this Board is bound.[78]

Even if we were not so bound, this contention would have to be found to fall short of the contention admissibility standards in that it fails to provide sufficiently specific facts and/or expert opinion supporting the contention to demonstrate that a genuine dispute exists on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi).[79]

III. CONCLUSION

For the reasons set forth above, we deny CCAM's June 27 and June 30 stay motions. In addition, we find that none of CCAM's six proffered contentions satisfies the requirements of 10 C.F.R. § 2.309(f)(1) so as to be admissible for litigation. Accordingly, pursuant to 10 C.F.R. § 2.309(a), CCAM's petition for leave to intervene and request for hearing is denied, and this proceeding is terminated.

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[77] See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001).

[78] See section II.B.1.b.(5) above.

[79] Because CCAM has failed to proffer any admissible contentions, we need not determine whether it has demonstrated standing to intervene in this proceeding. See 10 C.F.R. § 2.309(a).

Pursuant to 10 C.F.R. § 2.311(b), this ruling may be appealed by filing a notice of appeal and accompanying supporting brief within ten (10) days of service of this memorandum and order.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD[80]

/RA/

Dr. Paul B. Abramson, Chairman
ADMINISTRATIVE JUDGE

/RA/

Ann Marshall Young
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 28, 2004

[80] Copies of this memorandum and order were sent this date by internet e-mail transmission to counsel for (1) licensee Dominion Nuclear Connecticut, Inc.; (2) petitioner CCAM; and (3) the NRC staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON STANDING AND CONTENTIONS) (LBP-04-15) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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

Administrative Judge
Paul B. Abramson, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Ann Marshall Young
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Catherine L. Marco, Esq.
Margaret J. Bupp, Esq.
Brooke D. Poole, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Docket Nos. 50-336/423-LR
LB MEMORANDUM AND ORDER
(RULING ON STANDING AND
CONTENTIONS) (LBP-04-15)

Lillian M. Cuoco, Esq.
Senior Counsel
Dominion Resources Services, Inc.
Rope Ferry Road
Waterford, CT 06385

David R. Lewis, Esq.
ShawPittman, LLP
2300 N Street, NW
Washington, DC 20037-1128

Paul B. Eccard
First Selectman, Town of Waterford
15 Rope Ferry Road
Waterford, CT 06385-2886

Robert A. Avena, Esq.
Town Attorney for Waterford, CT
Kepple, Morgan & Avena, P.C.
Box 3A Anguilla Park
20 South Anguilla Road
Pawcatuck, CT 06379

Thomas V. Wagner
AICP Planning Director
Town of Waterford
15 Rope Ferry Road
Waterford, CT 06385

Ralph Bunge
NRC Proceedings Representative for
Waterford, CT
510 Carr Avenue
Rockville, MD 20850

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of July 2004