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USNRC

August 12, 2004 (3:47PM)

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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

NOTICE OF APPEAL

The Connecticut Coalition Against Millstone ("CCAM") herewith serves notice of appeal of the decision of the Atomic Safety and Licensing Board's ("Board") Memorandum and Order (Ruling on Standing and Contentions), LBP-04-15, issued on July 28, 2004, by which it dismissed the Coalition's Petition to Intervene and Request a Hearing on the application of Dominion Nuclear Connecticut, Inc. ("Dominion") to extend the operating licenses for Millstone Nuclear Power Station Unit 2 to the year 2015 and Unit 3 to the year 2025.

With regard to each of the contentions submitted by CCAM, the Board determined each was inadmissible. CCAM argues herein that such conclusions are not justified on the facts or the law and further argues that considerations of the public interest compel reversal of the Board's decision.

1. Contention 1 - Health

CCAM's first contention asserts 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," 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.”

Dominion and the NRC Staff (“Staff”) both refute this contention.

Dominion’s application for license renewal nowhere addresses the issue of the effects on human health from the continued emissions to the air and water of radioactive effluent. See application. As CCAM argued at the Board’s June 30, 2004 proceedings, this issue is implicated in relicensing proceedings which require an analysis of whether the licensee can, for instance, assure the reactors can be safely shut down during the relicensing term.

As stated, CCAM intends to rely in part on government documents which have compiled Millstone radioactive effluent emission history.¹ The government documents alluded to refer as well to the State of Connecticut Department of Public Health Connecticut Tumor Registry, and in particular the Connecticut Tumor Registry’s publication entitled “Cancer Incidence in Connecticut Counties, 1995-99.” This document was referred to in the declaration of Michael Steinberg, which was implicitly accepted by the Board despite its asserted lateness, and in CCAM’s arguments to the Board on June 30, 2004. The official Connecticut Tumor Registry report released in January 2003 concludes that cancers affecting women are at their highest level in the New London area surrounding Millstone, in comparison with other areas within the state. The report finds that cancers

¹ Some of these documents are referenced in Millstone and Me (Steinberg), and see e.g., Dominion Nuclear Connecticut, Inc. Millstone Power Station Units 1, 2 and 3 2003 Annual Radiological Environmental Operating Report of April 28, 2003 (available on NRC website at ADAMS, ML041270333) and Dominion Nuclear Connecticut, Inc. Millstone Power Station Units 1, 2 and 3 2003 Radioactive Effluent Release Report of April 29, 2004, Volumes I and II. (also available on the NRC website).

affecting men in the New London area are exceeded only by cancer rates in Tolland County.² Mr. Steinberg's further examination of the Tumor Registry report appears on the NRC's website and is available in ADAMS ML041770179.

The meaning of the term "safety" is critical to this discussion, as CCAM argued at the Board's June 30, 2004 proceedings. This issue is implicated in relicensing proceedings which require an analysis of whether the licensee can, for instance, assure the reactors can be safely shut down during the relicensing term.

The operational history of the Millstone nuclear reactors is instructive. As recently as March 7, 2003, Millstone Unit 2 suffered a reactor trip – and was not safely shut down. Over a 24-hour period following the trip, an "abnormal" release of radioactivity occurred which was acknowledged by Dominion to be "an increase in airborne radioactive material released to the environment that was unplanned or uncontrolled due to an unanticipated event. . . . The amount of iodines released was higher than normal due to fuel defects."³

Extremely small doses of radioactivity carry with them serious health consequences. These health consequences may not be immediately apparent, but they can cause devastating illness and death.

It is CCAM's position that in the present relicensing proceedings, it is incumbent on the regulating authority to consider issues relative to safety in the context of current knowledge and information about the human health effects of even low doses of ionizing radiation.

² TR at 29

³ See Dominion Nuclear Connecticut, Inc. Millstone Power Station Units 1, 2 and 3 2003 Radioactive Effluent Release Report at 2.1.4.

The Journal of the American Medical Association has recently published a study linking dental X-rays at low doses to pregnant women in their first trimesters and subsequent low birth weight.⁴

The fact of high rates of cancer among women, men and children in the Millstone community – and planned and unplanned releases of radioactivity from Millstone to the environment - have previously been documented but to date have not been addressed in the ongoing “monitoring of Millstone operations by the NRC. The present application is missing a significant chapter: a chapter seriously identifying and analyzing the health crisis CCAM believes Millstone has played a significant part in bringing to bear upon its host community.

CCAM has demonstrated its first contention is legally admissible.

2. Contention 2 -Terrorism

CCAM contends in its second contention that Millstone Units 2 and 3 are terrorist targets of choice. The amended petition further states:

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

⁴ Philippe P. Huel et al., “Antepartum Dental Radiography and Infant Low Birth Weight,” Journal of the American Medical Association, Volume 291, No. 16, April 28, 2004, pp. 1987-1993.

The Board determined that this issue cannot be considered in a relicensing proceeding in light of the NRC decision in CLI-02-26 released on December 12, 2002 ("McGuire").

In the intervening time since the McGuire decision was released, the federal 911 Commission has released its report of the September 21, 2001 terrorist attacks, including in its findings that the terrorist masterminds considered diving fully fueled passenger jumbojets into the Indian Point Nuclear Power Plant 29 miles north of New York City – instead of flying directly over it as actually occurred.

In common with Indian Point – and in contrast to the McGuire and Catawba facilities in the Carolinas - Millstone is a critical component of the infrastructure of the Northeast Corridor linking metropolitan New York to metropolitan Boston. In common with Indian Point, Millstone is located on the shores of a water body near densely populated areas close to airports and it was not constructed to standards that would repel or resist such an attack.

CCAM re-asserts that the Millstone Nuclear Power Station has been identified by the federal Department of Homeland Security as a primary terrorist target. CCAM does not have access to the Department of Homeland Security's records. However, this fact was reported by then-Governor John G. Rowland to the news media in his release of a letter to the federal agency referencing that agency's identification of Millstone as a "Connecticut site of 'high interest' for additional security protection." Other media reports have quoted the federal agency staff as identifying Millstone as a primary terrorist target.

In light of these circumstances, the NRC should re-assess the rationale it expressed in McGuire in support of its disinclination to permit consideration of potential acts of terrorism in reactor relicensing proceedings.

The present application is seriously deficient in completely lacking information as to how the facility will be refurbished to withstand terrorist attack – or the design basis accidents which will most probably occur in the event of a terrorist attack.

CCAM has demonstrated its second contention is legally admissible.

Contention 3 - NPDES Permit

In contention 3, CCAM asserts that 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.

CCAM asserted in its Amended Petition applicant has submitted false information with regard to its permit status. As an example, Dominion represented that it had filed complete documentation of its NPDES permit.

However, Dominion withheld its Emergency Authorization (“EA”) as issued by the Department of Environmental Protection in 2000. This EA derives from earlier EAs which the DEP began to issue to Northeast Utilities (“NU”), Dominion’s predecessor, to enable it to legally conduct the activities for which it pleaded guilty to conducting as federal felonies in 1998. CCAM appends hereto a copy of the EA. The permit itself has expired as a matter of law; furthermore, the Connecticut Department of Environmental Protection has

authorized waiver of the expired permit outside its lawful authority by virtue of the EA. In effect, Millstone has been operating with illegal "emergency authorizations" routinely since 1998.

The parties are in material dispute as to the validity of the NPDES permit and Dominion has submitted erroneous information with regard to the permit.

CCAM has demonstrated its third contention is legally admissible.

3. Contention 4 – Irreversible Harm to the Environment

CCAM asserts in its fourth contention that the operations of Millstone Units 2 and 3 have caused devastating losses to the indigenous Niantic winter flounder population; the operations of Millstone Units 2 and 3 have caused irreversible damage to the marine environment; and continued operations will increase the severity of the environmental damage.

CCAM has demonstrated its fourth contention is legally admissible.

The applicant's submissions acknowledge that Millstone operations have contributed to the collapse of the Niantic winter flounder; however, the applicant attributes the collapse principally to other causes, including supposed overfishing. On this point, there is a substantial difference as to material facts.

During the June 30, 2004 proceedings, CCAM quoted from a passage contained in one of the state DEP documents intended to be offered as evidence in these proceedings as follows: The adult flounder stock size in the Niantic River has already declined by 95% from 1986 (76,180 fish) to 2002 (4,124 fish).

This DEP memorandum, and others, support CCAM's contention that Dominion is principally responsible for the ongoing devastation to the local fish

stocks and the marine environment, contrary to the representations contained in the application.

The NRC staff reviewing the application have had no difficulty identifying pertinent documents from state records. CCAM, as stated, is prepared to produce all pertinent documents from governmental records and other sources to prove this disputed contention at hearing.

5. Contention 5 – Technical Defects

CCAM asserts in Contention 5 that both Units 2 and 3 suffer technical and operational defects which preclude safe operation. These defects have led to numerous unplanned shutdowns when the reactors go from 100 per cent power to zero power in less than one second – an extraordinary physical phenomenon which necessarily and obviously exposes the reactors and their components to sudden changes in heat and pressure of great magnitude. These experiences cause mental fatigue and embrittlement.

The applicant has not addressed this issue nor factored it into its analysis

During the June 30, 2004 proceedings, the following colloquy occurred:

Judge Young: The earlier part that you mentioned, that there was a part that talked about operating experience, in that portion is there any specific discussion of the shutdown history or –

Mr. Lewis: I don't think so. I don't think there is – I mean, and I think that the experience that we've looked at is: when have failures occurred, and why have they occurred, and what have people done to fix them? So I

don't think that there is a specific discussion of, you know, what's been the shutdown history of the plant.

TR at 163.

Dominion produced a document, in other proceedings, which purports to list Unit 2 and Unit 3 shutdowns and their triggering events. On May 5, 2003, Dominion was notified by the NRC that it had crossed the threshold from "Green" to "White" for "Unplanned Scrams Per 7000 Critical Hours." There had been four unplanned scrams between November 2003 and April 29, 2004.

Unit 2's history of excessive numbers of scrams is an issue material to these proceedings because it directly implicates the quality and depth of the applicant's aging management assessment.

Although the applicant, under leading questioning by the Board, stated that it had looked at "historical" information in informing its analysis, and although the applicant cited to Section 4.3 of the Unit 2 and Unit 3 applications, it appears upon review of each section that the discussion of metal fatigue and its implications for the two reactors is closely mirrored, with no discussion of Unit 2's history of excessive unplanned shutdowns and, hence, their effect on aging.

There is indeed a dispute as to material facts which can only be addressed at a hearing.

Similarly, the Board was incorrect in rejecting CCAM's contention as regards Tables G-3-2 and F-3-1 and the SAMA analysis. The Board incorrectly concluded that CCAM's contention challenged an NRC policy, when it clearly challenged decisionmaking which may permit Dominion to avoid implementation of safety

measures to protect the public in a design basis accident. It is CCAM's position that, once having been identified as features which would aid in protection of the public under such circumstances, these features should not be rejected on pure cost-benefit analysis grounds.

As to the SAMAS issue, and as to CCAM's other issues of technical defects, CCAM has demonstrated its fifth contention is legally admissible.

Contention 6 – Evacuation

In its Sixth Contention, CCAM argues that neither Connecticut nor Long Island can be evacuated, although both may be required to be in the event of a terrorist attack, in the aftermath of a terrorist attack leading to a design-basis accident, or otherwise when necessary.

The Board determined that evacuation plans are outside its purview in relicensing proceedings. Its rationale is based in part on its reliance that the NRC adequately updates emergency evacuation plans as appropriate.

However, this reliance is misplaced. At best, the evacuation zone encompasses a ten-mile radius from Millstone. Current circumstances and faithfulness to reality and common sense dictate that Suffolk County, Long Island, with its 1.75 million residents – not to mention the residents of Hartford, the state's capital, and New Haven, the state's educational and cultural capital and all points in between which are within 50 miles of Millstone -should be included in the evacuation plan although they are just a few miles beyond the 10-mile radius.

CCAM has demonstrated its sixth contention is legally admissible.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy Burton", is written over a horizontal line.

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CERTIFICATION

I hereby certify that a copy of the foregoing "Connecticut Coalition Against Millstone Motion for Reconsideration and for Request for Leave to Amend Petition" and accompanying "Petition for Review" was sent via U.S. Mail, postage pre-paid on July 9, 2004 to the following

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