



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

August 20, 2004

Roseann B. MacKechnie, Clerk  
United States Court of Appeals,  
For the Second Circuit  
United States Court House  
40 Foley Square  
New York, N.Y. 10007

Attention: Tynetta Wilder-Hope, Deputy Clerk

RE: *Connecticut Coalition Against Millstone v. NRC*, Case No. 04-0109

VIA OVERNIGHT MAIL

Dear Ms. MacKechnie,

This letter transmits the original and four copies of the Respondent's "Motion To Amend Caption" and a Certificate of Service. Please file stamp the extra copy of this letter to indicate date of filing and return it to me in the enclosed pre-paid envelope.

Respectfully,

A handwritten signature in cursive script that reads "Geraldine R. Fehst".

Geraldine R. Fehst  
Attorney  
(301) 415-1614  
[GRF@NRC.GOV](mailto:GRF@NRC.GOV)

Enclosures: As Stated

cc: Nancy Burton, Esq.  
David Repka, Esq.  
Greer Goldman, Esq. (U.S. DOJ)  
Ann E. Peterson, Esq. (U.S. DOJ)

MOTION INFORMATION STATEMENT

Docket Number(s): 04 - 0109 Caption [use short title]  
Motion for: To Amend Caption CCAM  
Set forth below precise, complete statement of relief sought: V.  
NRC  
and  
MOTION SEEKS TO AMEND CASE CAPTION Dominion Nuclear Connecticut Inc.  
TO INCLUDE UNITED STATES OF AMERICA  
AS A RESPONDENT

MOVING PARTY: US Nuclear Regulatory Commission OPPOSING PARTY: Connecticut Coalition Against Millstone, Petitioner  
 Plaintiff  Defendant Intervenor: Dominion Nuclear Connecticut Inc.  
 Appellant/Petitioner  Appellee/Respondent

MOVING ATTORNEY: Geraldine R. Fehst OPPOSING ATTORNEY [Name]: Nancy Burton (CCAM)  
[name of attorney, with firm, address, phone number and e-mail] [name of attorney, with firm, address, phone number and e-mail]  
US Nuclear Regulatory Commission 147 Cross Highway  
11555 Rockville Pike Redding Ridge, CT 06876  
Rockville, MD 20555 Dominion Nuclear Connecticut Inc.  
GRF@NRC.GOV David Repka, Esq.  
1400 L Street, N.W.  
Washington, DC 20005

Court-Judge/Agency appealed from: Nuclear Regulatory Commission

Please check appropriate boxes:  
Has consent of opposing counsel:  
A. been sought?  Yes  No  
B. been obtained?  Yes  No  
Is oral argument requested?  Yes  No  
(requests for oral argument will not necessarily be granted)  
Has argument date of appeal been set?  Yes  No  
If yes, enter date \_\_\_\_\_

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:  
Has request for relief been made below?  Yes  No  
Has this relief been previously sought in this Court?  Yes  No  
Requested return date and explanation of emergency: \_\_\_\_\_

Signature of Moving Attorney: Geraldine R. Fehst Date: 8-20-04 Has service been effected?  Yes  No  
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED** ~~DENIED~~.  
FOR THE COURT:  
ROSEANN B. MacKECHNIE, Clerk of Court  
Date: \_\_\_\_\_ By: \_\_\_\_\_



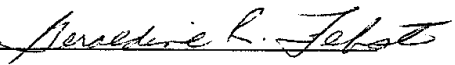
the Federal Rules of Appellate Procedure make the United States a statutory respondent whose name should appear in the caption of the case.

Section 2344, which addresses “Review of orders; time; notice; contents of petition; service,” provides that once a final order reviewable under the Hobbs Act is entered and made public by the agency, a “party aggrieved by the final order . . . [may] file a petition to review the order in the court of appeals with proper venue. . .[and] [T]he action *shall be* against the United States.” (emphasis added); *see also Arnov v. NRC*, 868 F.2d 223, 225 n. 1 (7<sup>th</sup> Cir. 1989)(citing section 2344 and also citing Fed. R. App. P. 15(a)). Rule 15(a) says “(even though not named in the petition, the United States is a respondent if required by statute).” Section 2344 also requires the clerk of the Court to “serve a copy of the petition on the agency and on the Attorney General by registered mail. . . .”

Pursuant to the requirements of the Hobbs Act and Rule 15(a), Fed. R. App. P., the caption in the above-referenced case should read “Connecticut Coalition Against Millstone, Petitioner, v. United States Nuclear Regulatory Commission, and the United States of America, Federal Respondents, and Dominion Nuclear Connecticut, Inc., Intervenor.”

Neither counsel for Petitioner, Nancy Burton, nor counsel for the Intervenor, Dominion Nuclear Connecticut, Inc. David A. Repka, have any objection to this motion. A declaration accompanies this motion.

U.S. Nuclear Regulatory Commission

By: 

Geraldine R. Fehst  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
(301) 415-1614  
[GRF@NRC.GOV](mailto:GRF@NRC.GOV)

Dated: August 20, 2004

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

<b>CONNECTICUT COALITION AGAINST MILLSTONE,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>V.</b>	)	
	)	
	)	
<b>UNITED STATES NUCLEAR REGULATORY</b>	)	<b>Case No. 04-0109</b>
<b>COMMISSION,</b>	)	
<b>Respondent,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>DOMINION NUCLEAR CONNECTICUT, Inc.</b>	)	
<b>Intervenor.</b>	)	

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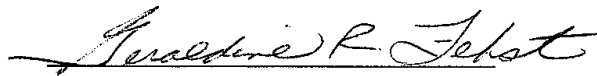
**DECLARATION IN SUPPORT  
OF MOTION TO AMEND CAPTION**

I, Geraldine R. Fehst, under penalty of perjury, do hereby declare and affirm as follows:

1. I am above the age of eighteen (18).
2. I am an attorney in the Office of the General Counsel for the United States Nuclear Regulatory Commission ("NRC" or "Commission") and am representing the NRC in this matter
3. This declaration is submitted in support of the accompanying Motion To Amend Caption.
4. The amendment to the caption is necessary because when Petitioner Connecticut Coalition Against Millstone ("CCAM") filed its timely petition for review in this Court from a final decision of the Commission, the caption on the petition named the NRC as a Respondent but omitted naming the United States of America, even though the Hobbs Act, 28 U.S.C. §2344, makes the United States a statutory respondent; *see also Arnow v. NRC*, 868 F.2d 223, 225 n.1 (7<sup>th</sup> Cir. 1989)(citing section 2344 and also Rule 15(a) of

the Federal Rules of Appellate Procedure, for the point that "even though not named in the petition, the United States is a respondent if required by statute").

5. Neither counsel for the petitioner, Nancy Burton, nor counsel for the Intervenor, Dominion Nuclear Connecticut, Inc., David Repka, has any objection to this motion.
6. As set forth in 28 U.S.C. §1746, I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on August 20, 2004.

A handwritten signature in cursive script, reading "Geraldine R. Fehst". The signature is written in black ink and is positioned above the printed name.

Geraldine R. Fehst

Dated: August 20, 2004

