

May 6, 2005

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, 50-423
)	
(Millstone Power Station, Units 2 & 3))	ASLBP No. 05-837-01-LR

NRC STAFF'S STATUS REPORT

INTRODUCTION

On April 12, 2005, the Atomic Safety and Licensing Board ("Licensing Board") conducted a telephonic prehearing conference with the participants in this matter. Following the completion of oral argument, the Licensing Board directed the participants to attempt, in the next three weeks, to:

. . .agree upon a Memorandum of Understanding, or other similar arrangement, that would not only guide the resolution of any current controversy among them but would, more importantly, provide a framework for cooperative solutions of similar emergency planning matters that might arise over the coming years . . .

Dominion Nuclear Conn., Inc. (Millstone Power Station, Units 2 & 3), Memorandum of Conference Call (April 15, 2005), slip op. at 2. The Licensing Board indicated that it would hold this proceeding in abeyance pending a progress report on the parties' discussions. *Id.* The Staff herein provides its status report.¹

DISCUSSION

The Staff has been working with counsel for the applicant and Suffolk County to establish a mutually convenient date to meet, pursuant to the Licensing Board's direction. Although, to date,

¹ As discussed further below, because the participants have not yet met, a joint status report was not formulated. Staff counsel advised counsel for both the applicant and Suffolk County of the content of this status report prior to filing.

the participants have been unable to meet due to schedular conflicts, the Staff remains committed to engaging in discussions with the participants, particularly Suffolk County, in the near future. The Staff regards its interactions with the County on emergency preparedness concerns to constitute performance of the NRC's ongoing regulatory processes.

Therefore, the Staff is of the view that such discussions should be divorced from this proceeding.² As the Staff has argued in its papers³ and at the prehearing conference,⁴ there is no matter in controversy in this proceeding for which relief can be granted to the County. The County's Petition was impermissibly late without good cause and otherwise procedurally deficient. Moreover, and more importantly, the proposed contentions raised by the County are plainly outside the scope of this license renewal proceeding. For this reason, even as the Staff continues to

² As the Commission recently reiterated, "[L]icensing boards do not sit to . . . supervise or direct NRC Staff regulatory reviews." *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), CLI-04-6, 59 NRC 62, 74 (2004), citing *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 349 (1998); *Curators of the Univ. of Mo.*, CLI-95-1, 41 NRC 71, 121 (1995) ("As a general matter, the Commission's licensing boards and presiding officers have no authority to direct the Staff in the performance of its safety reviews."). See also *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), CLI-80-12, 11 NRC 514, 516 (1980); *Rockwell Int'l Corp.* (Rocketdyne Division), ALAB-925, 30 NRC 709, 721-22 (1989), *aff'd*, CLI-90-5, 31 NRC 337 (1990).

³ See "NRC Staff Answer Opposing the Petition for Late Intervention of the County of Suffolk of the State of New York," dated February 28, 2005; "NRC Staff Motion to Strike, in Whole or in Part, the Reply of the County of Suffolk of the State of New York and Response to Request for Waiver Pursuant to 10 C.F.R. § 2.335(b)," dated March 18, 2005.

⁴ See Tr. at 1-96.

engage the County outside the confines of this proceeding, the Staff requests that the Licensing Board lift its stay regarding this matter and issue a decision on the matters briefed by the participants.

Respectfully submitted,

/RA/
Brooke D. Poole
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of May 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S STATUS REPORT" in the captioned proceeding have been served on the following through electronic mail and with copies by deposit in the NRC's internal mail system, or through electronic mail with copies by deposit in the U.S. Postal Service as indicated by an asterisk, this 6th day of May, 2005:

Michael C. Farrar, Chief
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mcf@nrc.gov

Alan S. Rosenthal, Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: RSNTHL@comcast.net

Peter S. Lam, Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: psl@nrc.gov

Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lillian M. Cuoco, Esq.*
Senior Nuclear Counsel
Millstone Power Station
Building 475/5
Rope Ferry Road (Route 156)
Waterford, CT 06385
E-mail: Lillian_Cuoco@dom.com

David R. Lewis, Esq.*
Matias F. Travieso-Diaz, Esq.*
Timothy J.V. Walsh, Esq.*
Shaw Pittman, LLP
2300 N St., NW
Washington, DC 20037-1128
E-mail: david.lewis@shawpittman.com
matias.travieso-diaz@shawpittman.com
timothy.walsh@shawpittman.com

Christine Malafi*
Suffolk County Attorney
H. Lee Dennison Building, 6th Floor
P.O. Box 6100
100 Veterans Memorial Highway
Hauppauge, NY 11788
E-mail:
Christine.Malafi@suffolkcountyny.gov

/RA/

Brooke D. Poole
Counsel for NRC Staff