

RAS 99162

COUNTY OF SUFFOLK



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

DOCKETED
USNRC

May 10, 2005 (3:48pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

CHRISTINE MALAFI
COUNTY ATTORNEY

DEPARTMENT OF LAW

ADDRESS ALL COMMUNICATIONS
IN THIS MATTER TO:

MUNICIPAL LAW BUREAU
(631) 853-4049

May 10, 2005

Office of the Secretary
U.S. Nuclear Regulatory Commission
Sixteenth Floor, One White Flint North
11555 Rockville Pike
Rockville, MD 20852
Attn: Rulemakings and Adjudication Staff

Re: **Dominion Nuclear Connecticut, Inc.**
(Millstone Nuclear Power Station, Units 2 &3)
Docket Nos.: 50-336 & 50-423

Honorable Sir/Madam:

Please accept for filing the enclosed Letter, dated May 10, 2005, submitted on behalf of the County of Suffolk, State of New York. An original and two copies are enclosed. The Affidavit of Service is attached.

Thank you for your attention to this matter.

Very truly yours,

CHRISTINE MALAFI
Suffolk County Attorney

By: Jennifer B. Kohn,
Assistant County Attorney

cc: Office of the Commission Appellate Adjudication, U.S.N.R.C.
Michael C. Farrar, Chief
Alan S. Rosenthal, Administrative Judge
Peter S. Lam, Administrative Judge

Template = SEC4-037

SEC4-02

Lillian M. Cuoco, Esq.
David R. Lewis, Esq.
Matias F. Travieso-Diaz, Esq.
Timothy J.V. Walsh, Esq.
Brooke D. Poole, Esq.

COUNTY OF SUFFOLK



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SUFFOLK COUNTY EXECUTIVE

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IN THIS MATTER TO:

(631) 853-4049

May 10, 2005

Michael C. Farrar, Chief
Peter S. Lam, Administrative Judge
Alan S. Rosenthal, Administrative Judge
Atomic Safety & Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: In the Matter of Dominion Nuclear Connecticut Inc.
(Millstone Power Station, Units 2 & 3)
Docket Nos. 50-336, 50-423, ASLBP No. 05-837-01-LR

Honorable Sirs:

This letter responds to the requests by Dominion and the NRC Staff that the Atomic Safety and Licensing Board rule on Suffolk County's Petition, and not hold the ruling in abeyance pending proposed discussions. In the Conference Call on April 12, 2005, the Board requested that the:

[P]arties ... 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 and even decades (if the sought-after license renewals are granted) of operation of the Millstone reactors.¹

¹ *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Units 2 & 3), Memorandum of Conference call (April 15, 2005), slip op. at 2.

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May 10, 2005
Michael C. Farrar, Chief

This worthy goal has not been accomplished due to scheduling difficulties that were not the fault of the County. While Dominion and the NRC staff state that they are committed to meeting with the County, the County feels that the request by the Board gives the parties added incentive to ensure that the meeting takes place.

Dominion and the NRC staff also suggest that any further intervention by the Board in the proposed discussions is inappropriate and beyond the scope of the Board. The County disagrees with this contention. 10 C.F.R. §2.338, which encourages the fair and reasonable settlement and resolution of issues in dispute, authorizes the Board to encourage these discussions. *Carolina Power and Light Company* (Shearon Harris Nuclear Power Plant, Units 1,2,3, and 4), 11 N.R.C. 514 (1980), cited by Dominion's counsel, is inapposite, because the Board is neither directing the NRC Staff on how to perform its administrative functions nor ordering it to conduct a hearing. The Board is seeking to resolve the dispute. Furthermore, contrary to the assertions by opposing Counsel, it is for the Board to determine whether or not relief can be granted, and whether the matter of evacuation should be considered herein. The matters raised by the County are within the scope of the proceeding because one of its purposes is to:

produce an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense and security, and the environment.²

The proposed discussions are within the parameters of this objective, and support the statutory goal of protecting public safety. See, 42 U.S.C. §2012(d), (e), (f) and 42 U.S.C. §2013(d).

Finally, there will be no unfairness to the applicant by having the Board set a new reporting date because a final Commission decision on this license renewal is not expected until 7/22/06, and the licenses to be renewed do not expire until ten (10) and twenty (20) years from now.

For all of the above reasons, the County respectfully requests the Atomic Safety and Licensing Board Panel to set a new reporting date and to continue to encourage

² Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 1998 NRC LEXIS 86 at *2

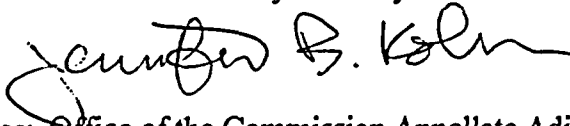
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May 10, 2005
Michael C. Farrar, Chief

settlement discussions regarding the important public safety issues. Ruling on the County's motion at this time would take away the parties' incentive to continue these discussions.

Very truly yours,

Christine Malafi
Suffolk County Attorney

By: Jennifer B. Kohn,
Assistant County Attorney



cc: Office of the Commission Appellate Adjudication, U.S.N.R.C.
Michael C. Farrar, Chief
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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.
(Millstone Nuclear Power Station, Units 2 and 3)

AFFIDAVIT OF SERVICE

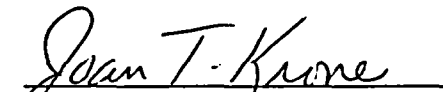
Docket Nos. 50-336, 50-423

STATE OF NEW YORK)
)SS:
COUNTY OF SUFFOLK)

The undersigned, being duly sworn, deposes and says: she is over the age of 18 years and associated with the Suffolk County Attorney. That on the 10th day of May, 2005 she served the within LETTER, dated May 10, 2005, upon those set forth herein by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York. Where E-mail addresses are indicated, the individual or office was also served by electronic mail.


Angela M. Laudadio

Sworn to before me this
10th day of May, 2005


Notary Public

JOAN T. KRONE
Notary Public, State of New York
Qualified in Suffolk County
No. 4766275
Commission Expires March 30, 2006

Michael C. Farrar, Chief
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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the matter of:

DOMINION NUCLEAR CONNECTICUT, INC.
(Millstone Nuclear Power Station, Units 2 and 3)

PETITION FOR LATE INTERVENTION of the COUNTY OF SUFFOLK
of the STATE OF NEW YORK

Docket Nos. 50-336, 50-423

**LETTER
with
AFFIDAVIT of SERVICE**

Submitted by:

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