

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 10235**  
COMMISSIONERS

**DOCKETED 08/04/05**

**SERVED 08/04/05**

Nils J. Diaz, Chairman  
Jeffrey S. Merrifield  
Gregory B. Jaczko  
Peter B. Lyons

\_\_\_\_\_)  
In the Matter of )  
)  
DOMINION NUCLEAR CONNECTICUT, INC. )  
(Millstone Nuclear Power Station, Units 2 and 3) )  
)  
\_\_\_\_\_)

Docket Nos. 50-336-LR & 50-423-LR

**CLI-05-18**

**MEMORANDUM AND ORDER**

On July 20, 2005, the Licensing Board in this case issued a Memorandum and Order. LBP-05-16, 62 NRC \_\_\_\_\_. The Board order concluded that Suffolk County’s tardiness in submitting its petition to intervene was excusable under the late-filing standards of 10 C.F.R. § 2.309(c). Additionally, the Board found no basis to exclude the County from participation under the contention requirements of 10 C.F.R. § 2.309(f). The Board also certified to the Commission the question whether to grant Suffolk County’s request for an exemption from (or waiver of) 10 C.F.R. § 50.47(a)(1) (which provides that emergency planning issues are not germane to license renewal determinations). Today we grant review of that certified question. In doing so, we follow our “customary practice” of accepting Board-certified questions.<sup>1</sup>

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<sup>1</sup> See, e.g., *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), CLI-05-9, 61 NRC 235, 236 (2005); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 209 (2004); *Private Fuel Storage, L.L.C.* (ISFSI), CLI-01-12, 53 NRC 459, 461 (2001).

We also intend to consider, *sua sponte*, three other questions -- (1) whether Suffolk County's late-filed contention was admissible under the criteria for considering late-filed pleadings and contentions set out in 10 C.F.R. § 2.309(c); (2) whether Suffolk County's contention regarding "emergency planning" satisfied the contention requirements in 10 C.F.R. § 2.309(f); and (3) whether, under the circumstances of this case, the Board properly postponed its contention-admissibility decision pending settlement talks.

We solicit the views of the adjudication's participants on these three questions, plus the certified question. To this end, we establish the following filing schedule. No later than August 18, 2005, the Staff, licensee and petitioner may file initial briefs, each of which may not exceed 25 pages, exclusive of the tables of contents and authorities (both of which we require). No later than August 25, 2005, the Staff, licensee and petitioner may file response briefs, each of which may not exceed 10 pages and need not include tables of contents and authorities. Each participant should ensure that we *receive* each of its briefs no later than 4:15 p.m. on the due date.

IT IS SO ORDERED.

For the Commission<sup>2</sup>

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 4<sup>th</sup> day of August, 2005.

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<sup>2</sup> Chairman Diaz was not present when this item was affirmed. Accordingly the formal vote of the Commission was 3-0 in favor of the decision. Chairman Diaz, however, had previously voted to approve this Memorandum and Order and had he been present he would have affirmed his prior vote.

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(Millstone Nuclear Power Station, )  
Unit Nos. 2 and 3) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-05-18) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution, with copies by electronic mail as indicated.

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

Administrative Judge  
Michael C. Farrar, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [mcf@nrc.gov](mailto:mcf@nrc.gov)

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

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

Brooke D. Poole, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [bdp@nrc.gov](mailto:bdp@nrc.gov)

Nancy Burton, Esq.  
147 Cross Highway  
Redding Ridge, CT 06876  
E-mail: [nancyburtonsq@aol.com](mailto:nancyburtonsq@aol.com)

Docket Nos. 336/423-LR  
COMMISSION MEMORANDUM AND ORDER  
(CLI-05-18)

Lillian M. Cuoco, Esq.  
Senior Nuclear Counsel  
Dominion Resources Services, Inc.  
Rope Ferry Road  
Waterford, CT 06385  
E-mail: [lillian\\_cuoco@dom.com](mailto:lillian_cuoco@dom.com)

David R. Lewis, Esq.  
Matias F. Travieso-Diaz, Esq.  
Timothy J. V. Walsh, Esq.  
Pillsbury Winthrop ShawPittman, LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
E-mail: [david.lewis@pillsburylaw.com](mailto:david.lewis@pillsburylaw.com);  
[matias.travieso-diaz@pillsburylaw.com](mailto:matias.travieso-diaz@pillsburylaw.com);  
[timothy.walsh@pillsburylaw.com](mailto:timothy.walsh@pillsburylaw.com)

Christine Malafi, Esq.  
Suffolk County Attorney  
H. Lee Dennison Building, 6<sup>th</sup> Floor  
P.O. Box 6100  
100 Veterans Memorial Highway  
Hauppauge, NY 11788  
E-mail: [christine.malafi@suffolkcountyny.gov](mailto:christine.malafi@suffolkcountyny.gov)

[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 4<sup>th</sup> day of August 2005