

April 11, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DOMINION NUCLEAR CONNECTICUT, INC.)	Docket No. 50-423-LA
)	
MILLSTONE NUCLEAR POWER)	ASLBP No. 08-862-01-OLA-BD01
STATION UNIT 3)	
(License Amendment Request for Stretch)	
Power Uprate))	

NRC STAFF ANSWER TO REQUEST TO INTERVENE AND FOR HEARING OF
THE CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1) and the Atomic Safety and Licensing Board (“Board”) Order dated April 8, 2008 (Confirming Dates for Answers and Replies to Answers), the Staff of the Nuclear Regulatory Commission (“Staff”) hereby answers the Connecticut Coalition Against Millstone and Nancy Burton’s Petition to Intervene and Request for Hearing (“Petition”). As discussed below, the Staff does not contest the standing of the Connecticut Coalition Against Millstone (“CCAM”), nor does it contest Nancy Burton’s individual standing to seek to intervene and for a hearing in this matter. However, for the reasons set forth below, Petitioners’ request to intervene and for a hearing should be denied.

BACKGROUND

By letter dated July 13, 2007, Dominion Nuclear Connecticut, Inc. (“Licensee” or “Applicant”) submitted a license amendment request (LAR) for Millstone Power Station Unit 3 (“Millstone” or “MPS3”) to increase the unit’s authorized core power level from 3411 megawatts

thermal (MWt) to 3650 MWt, and make changes to technical specifications as necessary.¹ This requested change, designated by the NRC as a "stretch power uprate" ("SPU"), represents an increase of approximately seven percent above the current maximum authorized power level and does not involve major plant modifications.² On January 15, 2008, the NRC published in the *Federal Register* a notice of consideration of issuance of the proposed amendment and opportunity for a hearing. *73 Fed. Reg. 2546, 2549 -2550*. In response to this notice, CCAM and Ms. Burton filed their Petition dated March 17, 2008.

DISCUSSION

I. Standing to Intervene

A. Applicable Legal Requirements

In accordance with the Commission's Rules of Practice,³ "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have

¹ The request was supplemented on July 13, September 12, November 19, December 13, and December 17, 2007, January 10 (4 letters), January 11 (4 letters), January 14, and January 18 (5 letters), January 31, February 25 (2 letters), March 5, and March 10 (2 letters), 2008.

² See RS-001, "Review Standard For Extended Power Upgrades," Rev. 0, Dec. 2003, at "Background" (Unnumbered):

The process of increasing the licensed power level at a commercial nuclear power plant is called a "power uprate." Power uprates are categorized based on the magnitude of the power increase and the methods used to achieve the increase. Measurement uncertainty recapture power uprates result in power level increases that are less than 2 percent and are achieved by implementing enhanced techniques for calculating reactor power. Stretch power uprates typically result in power level increases that are up to 7 percent and do not generally involve major plant modifications. EPU result in power level increases that are greater than stretch power uprates and usually require significant modifications to major plant equipment. The NRC has approved EPUs for increases as high as 20 percent. This review standard is applicable to EPUs.

³ See "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 C.F.R. Part 2.

litigated in the hearing.” 10 C.F.R. § 2.309(a). The regulations further provide that the “Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing ... and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section.” *Id.*

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

The Commission traditionally looks to judicial concepts of standing when determining whether a petitioner has established the necessary "interest," as required under § 2.309(d)(iv). *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318,322-23 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) ("*Yankee Rowe*"). Federal jurisprudence requires the petitioner to demonstrate that: (1) he or she has suffered a distinct and palpable harm that constitutes injury in fact within the zone of interests arguable protected by the governing statute⁴; (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See, e.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995). The injury in fact must also be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v.*

⁴ In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co. (Ambrosia Lake Facility)*, CLI-98-11, 48 NRC 1, 6 (1998).

Defenders of Wildlife, 504 U.S. 555, 560 (1992). A petitioner must have a "real stake" in the outcome of the proceeding, and while this stake need not be "substantial," it must be "actual," "direct," or "genuine." *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48 (1979), *aff'd* ALAB-549, 9 NRC 644 (1979).

B. Representational and Organizational Standing

An organization may establish standing in two ways: basing it either upon the interest of at least one of its members who has authorized the organization to represent him or her (*i.e.*, representational standing) or upon the licensing action's effect upon the interest of the petitioning organization itself (*i.e.*, organizational standing). See *Yankee Rowe*, CLI-98-21, 48 NRC at 195. When an organization asserts a right to represent the interests of its members, judicial concepts of standing require a showing that: (1) its member(s) would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit. See *Private Fuel Storage*, CLI-99-10, 49 NRC at 323, citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977).

The Commission also requires that the organization: (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show that at least one of its members has authorized it to represent the member's interest. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354, *aff'd in part, rev'd in part*, CLI-98-21, 48 NRC 185 (1998). An organization seeking to intervene in its own right (*i.e.*, based on organizational standing) must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or the NEPA. See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-

94-3, 39 NRC 95, 102 n.1 0 (1994); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 528-30 (1991).

C. Proximity to the Facility

In addition, the Commission has recognized standing based on a petitioner's proximity to the facility at issue. See *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15,23 (2002). This recognition "presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *Id.*, citing *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01 -6, 53 NRC 138,146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001). In construction permit and operating license proceedings, the presumption generally applies to petitioners residing within fifty miles of a reactor. See *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994).

In an operating license amendment proceeding, a petitioner cannot base his or her standing on proximity unless the proposed action quite "obvious[ly]" entails an increased potential for offsite consequences. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 191 (1999), *pet. for rev. denied sub nom. Dienethal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000). To determine whether the petitioner is within the potential zone of harm of the proposed action, the nature of the proposed action and the significance of the radioactive source must be examined. See *Sequoyah/Watts Bar*, LBP-02-14, 56 NRC at 23. This demonstration must be determined on a case-by-case basis by examining the significance of the radioactive source in relation to the distance involved and the type of action proposed.

See *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12,42 NRC 111, 116-17, citing *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 n.22.

II. Legal Standards Governing the Admission of Contentions

To gain admission to a proceeding as a party, a petitioner must submit at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f). This regulation provides:

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted, . . . ;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under 10 C.F.R. § 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief;...

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that its rules on contention admissibility establish an evidentiary threshold more demanding than a mere pleading requirement and are "strict by design." *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for dismissing a contention. See *PFS*, CLI-99-10, 49 NRC at 325.

The contentions should refer to the specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contentions. *Millstone*, CLI-01-24, 54 NRC at 358, citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328,333 (1999).

The petitioner must submit more than "bald or conclusory allegation[s]" of a dispute with the applicant. *Id.* Finally, "it has been recognized that '[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.'" *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277 (Aug. 6, 2004), citing *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-899, 28 NRC 93, 97 (1998), *aff'd sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28,56 NRC 373, 379 (2002).

Additionally, contentions alleging an error or omission in an application must establish some significant link between the claimed deficiency and protection of the health and safety of the public or the environment.⁵ Furthermore, an allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is

⁵ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89, *aff'd*, CLI-04-36, 60 NRC 631 (2004).

supported by facts and a reasoned statement of why the application is unacceptable in some material respect.⁶

III. Standing of CCAM and Ms. Nancy Burton

A. CCAM

Connecticut Coalition Against Millstone seeks to establish representational standing based on the standing of its individual member, Cynthia M. Besade. Petition Besade Declaration at 51. Ms. Besade filed a Declaration, under penalty and perjury, in which she states that she resides in Uncasville, CT, and provides her street address; which she states is within 10 miles north of Millstone. She further states that she is a member of CCAM, that she has concerns about the safety and health impacts of Millstone under the license amendment, and she authorizes CCAM and Nancy Burton to represent her interests in this proceeding. Petition at page 54.

Based on the location of Ms Besade's residence within 10 miles of Millstone, the proximity presumption applies. Based on Ms. Besade's authorization for CCAM to represent her in this proceeding, it appears that CCAM has established its representational standing to intervene. *See Int'l Uranium (USA) Corp. (White Mesa Uranium Mill)*, LBP-97-14, 46 NRC at 56; *Yankee Rowe*, LBP-98-12, 47 NRC at 354-55. Accordingly, based on the proximity presumption, the Staff does not contest CCAM's representational standing.

B. Ms. Burton

With respect to Ms. Burton, she filed a Declaration in which she stated that she resides at a given street address in Redding , CT, and at a seasonal address in Mystic, CT, 10 miles downwind of Millstone. Petition Burton Declaration at 48. She also states that she is the

⁶ *See Fla. Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4)*, LBP-90-16, 31 NRC 509, 521, 521 n.12 (1990).

Director of CCAM and is duly authorized to appear on its behalf and on behalf of the membership, further, she expresses her concern over risks to her health and safety posed by operation of the facility, including risks that would be created by an accident.

While Ms. Burton expressed her concerns regarding the risk of an accident or any resulting release of radiation, she did not establish that she has suffered or would suffer any concrete or particularized injury caused by the challenged action that would be redressed by a favorable decision in this proceeding. However, assuming Ms. Burton's seasonal residence at Mystic, Connecticut is valid and her presence there is frequent, then Ms. Burton's individual standing is unopposed.⁷

IV. Proposed Contentions

CONTENTION 1

The proposed power level for which Dominion has applied to uprate Millstone Nuclear Power Station Unit 3 exceeds the NRC's SPU regulatory "criteria." The SPU application fails to satisfy the first NRC "criterion"¹ that the NRC has set the power limit for SPUs at ". . . *up to 7%* . . ." (Emphasis added.)

Petition at 7.

In support of Contention 1, the Petitioners argue that the NRC has set a power uprate limit at 7 per cent and may not be higher. Petition at 7 and 8. The Petitioners' present a general assertion by their expert Mr. Gunderson⁸ discussing the mathematical argument regarding the supposed 7% limit being accurate to two significant figures. Petition at 9. Furthermore, Petitioners provide a table listing the Westinghouse uprates in ascending order. Gunderson Declaration at 9.

⁷ Because Ms. Burton's home residence in Redding, Connecticut is more than 50 miles away and she does not show that she has frequent contacts with the seasonal address given in Mystic, the Board may wish to explore this issue further.

⁸ Gunderson Declaration at 14.

NRC STAFF RESPONSE TO CONTENTION 1

The Staff opposes the admission of Contention 1 on the grounds that it does not raise a material issue, fails to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact and is an apparent attack on the NRC regulatory process. As the Commission has observed, “[t]he dispute at issue is ‘material’ if its resolution would ‘make a difference in the outcome of the licensing proceeding.’”⁹ In this regard, “[e]ach contention must be one that, if proven, would entitle the Petitioner to relief.”¹⁰

Therefore, CCAM Contention 1 is incorrect in that it misstates the plain language of the NRC guidance. Below is the complete quote from the NRC webpage as referenced by the Connecticut Coalition Against Millstone (CCAM):

Stretch power uprates are typically up to 7 percent and are within the design capacity of the plant. The actual value for percentage increase in power a plant can achieve and stay within the stretch power uprate category is plant-specific and depends on the operating margins included in the design of a particular plant. Stretch power uprates usually involve changes to instrumentation setpoints but do not involve major plant modifications.¹¹

CCAM asserts that the limit for stretch power uprates is 7 percent, when in fact, as stated on the NRC website, stretch power uprates are “*typically up to 7 percent.*” NRC regulations and guidance documents do not limit a Stretch power uprate to 7 percent. The power change is not limited to 7 percent uprate. CCAM has incorrectly concluded that the 7 percent referenced on the NRC website as a limit, instead of correctly viewing it as a suggested guideline, along with the no major plant modifications factor.

⁹ *Oconee*, CLI-99-11, 49 NRC at 333-34; see also Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,172.

¹⁰ USEC, Inc. (American Centrifuge Plant), Notice of Receipt of Application for License, 69 Fed. Reg. 61,411, 61,412 (Oct. 18, 2004).

¹¹ <http://www.nrc.gov/reactors/operating/licensing/power-uprates.html>

This is further shown by a letter from the NRC to Licensee, dated October 15, 2007, in which the NRC states the following: "Additionally, the staff has determined that your application meets the criteria for an SPU as the requested power increase is approximately 7 percent, and there are limited plant modifications required to support the update."¹²

In addition to not showing an error or omission, not raising a material issue, and failing to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, Contention 1 has not established any significant link between the claimed deficiency and protection of the health and safety of the public or the environment and it does not directly controvert a position in the application. Furthermore, this contention should be rejected, since it is an apparent attack on the NRC regulatory process in that it seeks to impose a limit not currently in the regulations. It is well established that a Petitioner may not raise contentions that merely attack NRC requirements or regulations.¹³

Therefore, for the reasons stated above, Contention 1 is inadmissible.

CONTENTION 2

Dominion's application fails to meet the NRC's second "criterion" for a SPU application because Millstone Unit 3 already has had its design margins dramatically and substantially reduced.

Petition at 11.

In support of Contention 2, Petitioners state that the application failed to consider the reduction on structural operating margins already present. Petition at 12 (citing Gundersen Declaration at paragraph 21). The Petitioners present a brief history related to the Millstone Unit 3 containment, including NRC license amendments and the Petitioners' belief as to what

¹² ADAMS Accession No. ML072670216

¹³ *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 334 (1999).

the NRC's concerns were while reviewing historical license amendment requests. Petition at 12-17. Petitioner concludes by noting that an amendment granted in 1990 increased the calculated dose to a person at the "Exclusion Area Boundary" from 16.8 to 19.5 rem. Petition at 17.

NRC STAFF RESPONSE TO CONTENTION 2

The Staff opposes admission of Contention 2 as it fails to meet requirements of 10 C.F.R. § 2.309(f)(1). The Petitioners have failed to provide an explanation as to why the application needs to discuss the changes to the license previously granted, and thus fails to meet 10 C.F.R. § 2.309(f)(1)(ii). The brief history provided by the Petitioners gives no explanation of where or how the application had omitted any discussion of the structural operating margins that is required by NRC regulations.

Furthermore, the Petitioners have failed to explain how the previously-granted amendments cause the application not to meet "the NRC's second 'criterion' for a SPU application." Indeed, the Petitioners make no effort in Contention 2 to explain what the "second criterion" is, nor how it is not met. The petitioner apparently considers the "second criterion" to be that the power uprate is within the design of the plant. Petition at 6-7. Nowhere in Contention 2 do the Petitioners indicate how the requested uprate would be outside of the plant's design. Accordingly, Contention 2 does not meet 2.309(f)(1)(ii) and is inadmissible.

Contention 2 is further inadmissible because it entirely fails to meet the requirement of 10 C.F.R. § 2.309(f)(1)(vi) to provide specific references to specific portions of the application the petitioner disputes, and furthermore Contention 2 fails to identify what information required by law is missing from the application. The proffered support of a discussion of historical licensing actions is not presented as a dispute with the application, nor does the intervenor explain why such a discussion would be required by the regulation in the application. The

Petitioners' discussion does not identify any omission or error in the application, therefore Contention 2 fails to meet 10 C.F.R. § 2.309(f)(1)(vi).

CONTENTION 3

When compared to all other Westinghouse Reactors, Millstone Unit 3 is an "outlier" or "anomaly." Dominion's proposed uprate is the largest per cent power uprate for a Westinghouse reactor, while Millstone Unit 3 also has the smallest containment for any Westinghouse reactor of roughly comparable output.

Petition at 18.

In Support of this Contention, the Petitioners state that this power increase would be the largest uprate for a plant with the smallest volume and that the analytical "tweaking" of the pressure limits and integrity of the concrete containment is of concern and has not been analyzed by the Licensee in its application. Petition at 18-19. The Petitioners use Mr. Gunderson's Declaration¹⁴ in an attempt to support its allegations that Millstone has the smallest power-to-volume reactor in the nation. The Petitioners then discuss the various implications they believe this "tweaking" has on the power uprate.

NRC STAFF RESPONSE TO CONTENTION 3

The Staff opposes the admission of Contention 3 on the grounds that it does not raise a material issue, fails to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, and is not supported by adequate factual information or expert opinion.

The Petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305,

¹⁴ Gundersen at paragraph 36.

vacated in part and remanded on other grounds, CLI-95-10, 42 NRC 1, *affd in part*, CLI-95-12, 42 NRC 111 (1995). CCAM's expert does not provide anything to controvert any error or omission in the application. The expert merely alleges that this is the largest uprate ever with the smallest volume containment. Petition at 19.

The Petitioners do not show a genuine dispute nor material issue since no error exists in the application. The Petitioners do not show any references to specific portions of the application that are deficient, nor give any supporting reasons. Moreover, the petition fails to identify regulatory prohibition that precludes this type of reactor and containment from the proposed power uprate.

This contention is inadmissible and should be rejected since the Petitioners did not provide any technical analyses to support the basis of the contention and fails to show any error or omission in the application.

CONTENTION 4

Construction problems due to the unique sub-atmospheric containment design, coupled with the impact upon the containment concrete by the operation of the containment building at very high temperature, very low pressure and very low specific humidity, place the calculations used to predict stress on that concrete containment in uncharted analytical areas.

Petition at 23.

In support of Contention 4, the Petitioners state that the application fails to adequately address the effect that the power uprate will have on containment due to the high temperature, low pressure and low specific humidity environment and in light of documented construction challenges. Petition at 23. The Petitioners allege that the first four years of operational temperature, pressure, and humidity conditions may have compromised the containment concrete. *Id.* at 24. The Petitioners' expert describes challenges during construction related to

pouring concrete, but does not allege actual knowledge of any currently-existing defect. See Id. at 24-25. The Petitioners' expert believes that an "EPU review" is more appropriate. Id. at 24.

NRC STAFF RESPONSE TO CONTENTION 4

The Staff opposes admission of Contention 4 because, rather than identifying an error or omission in the application, the Petitioners speculate, without any basis, that an unknown flaw might currently exist in the containment. To the extent that petitioners are alleging a current concern with the plant, a petition for action pursuant to 10 C.F.R. § 2.206¹⁵ is more appropriate than a request for hearing under 10 C.F.R. § 2.309.

In Contention 4, the Petitioners have failed to provide an explanation of the basis for the contention by failing to give any explanation about how the stress on the concrete containment is in "uncharted analytical areas," thus the contention fails to meet 10 C.F.R. § 2.309 (f)(1)(ii). The Petitioners make no effort to explain further its suggested analytical limits by, for instance, stating where the current limits end and the "uncharted" areas begin. Moreover, the Petitioners only speculate about historical construction-related issues, while admitting that the construction, apparently supervised by Petitioners' expert, was performed by trained personnel using qualified procedures. Petition at 25. The discussion of a solution to a problem during construction simply provides no basis for contention with this uprate application. Accordingly, Contention 4 fails to meet 10 C.F.R. § 2.309(f)(1)(ii).

In Contention 4, the Petitioners also fail to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact by failing to include references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute. 10 C.F.R. § 2.309 (f)(1)(vii). No mention of any section of the

¹⁵ Pursuant to 10 C.F.R. § 2.206(a), "Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. ..."

application is made in Contention 4, despite the implication that some analyses have entered uncharted areas. Petitioners have further failed to meet 10 C.F.R. § 2.309(f)(1)(vii) by failing to identify and explain what relevant information required by the regulations the application failed to provide. Again, the petitioners provide no supporting reasons or requirements as to why the application has to speculate about vague undiscovered construction defects. Regarding the concern that the Petitioners express about concrete and the temperature, pressure, and humidity affects, the only support proffered is that the Petitioners' witness failed to uncover any licensee documents that studied the issue. Petition at 24. The Petitioners do not state what requirement exists that would prompt the applicant to include such information, and thereby fails to identify an omission pursuant to 10 C.F.R. § 2.309(f)(1)(vii) and is inadmissible.

CONTENTION 5

The impact of flow-accelerated corrosion at Dominion's proposed higher power level for Millstone Unit 3 has not been adequately analyzed nor addressed.

Petition at 26.

In support of this contention, Petitioners allege that the Licensee has not adequately analyzed the impact nor addressed the flow-accelerated corrosion (FAC) of the already worn thin pipes for the power uprate. Petition at 27. The Petitioners' expert, Mr. Gundersen, alleges that the FAC is a significant risk due to the application of 7+ percent uprate and the fact that the plant is in the second half of its engineered design life. Petition at 27 (citing Gundersen Declaration at paragraph 49D). Petitioners further allege that the Licensee's application does not address the Guidance of NUREG 1800 and that the plant has not provided adequate information to determine if the Licensee has the proper management systems and staff to evaluate FAC. Petition at 29 (Citing Gundersen at paragraphs 54 and 55).

NRC STAFF RESPONSE TO CONTENTION 5

The Staff opposes the admission of Contention 5 on the grounds that it does not raise a material issue, fails to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact and it is not supported by adequate factual information or expert opinion.

Petitioners do not show how the impact of the FAC has not been analyzed. The Licensee's submittal¹⁶ dated July 13, 2007 states, "A flow-accelerated corrosion (FAC) Program is employed at MPS3. This program has been developed based upon NRC Bulletin 87-01, "Thinning Pipe Walls in Nuclear Power Plants," Generic Letter 89-08, "Erosion/Corrosion-Induced Pipe Wall Thinning," and the guidelines in EPRI Report NSAC-202L-R1, Recommendations for an Effective Flow-Accelerated Corrosion Program." The FAC Program is designed to ensure that flow-accelerated corrosion does not result in unacceptable degradation of the structural integrity of carbon steel piping systems. Furthermore, the Licensee has reviewed the evaluation of the effect of the proposed SPU on the FAC analysis for the plant and has concluded that changes in the plant operating conditions on the FAC analysis have been adequately addressed. The Licensee further concludes that it has been demonstrated that the updated analyses will predict the loss of material by FAC and will ensure timely repair or replacement of degraded components following implementation of the proposed SPU.

The obligation to make specific reference to relevant facility documentation applies with special force to an applicant's Safety Analysis Report and Environmental Report and a

¹⁶ The Flow Accelerated Corrosion information is contained in the proposed SPU application dated July 13, 2007, Attachment 5, Section 2.1.8, "Flow-Accelerated Corrosion," pages 2.1-76 through 2.1-100. Attachment 5 is a public document contained in ADAMS Accession No. ML072000400. It is part of the proposed SPU application Package No. ML072000384, dated July 13, 2007.

contention should be rejected if it inaccurately describes an applicant's proposed actions or misstates the content of the licensing application documents. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2076 (1982); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-32-107A, 16 NRC 1791, 1804 (1982); *Philadelphia Electric Co.* (Limerick Generating Station Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1504-5 (1982). Regarding Petitioners' claim that applicant did not use NUREG-1800. NUREG-1800 is the NRC's Standard Review Plan for the review of license renewals and not for power uprates.

This contention is inadmissible and should be rejected since FAC was analyzed and addressed in the Licensee's submittal and the Petitioners did not provide any technical analyses for a basis to support the contention. Therefore, it is inadmissible on the grounds that it fails to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact and it is not supported by adequate factual information or expert opinion.

CONTENTION 6

Dominion's application for a Millstone Unit 3 7+ per cent uprate cannot be and should not be analyzed as a SPU application insofar as the NRC has not adopted standards nor regulatory requirements for reviewing SPU applications.

Petition at 31.

In support of Contention 6, the Petitioners observe that the NRC Staff wrote a guidance document for the Staff's use during review of extended power uprates, but did not write a specific guidance document for stretch power uprates. Petitioner at 31-32. The Petitioner also re-asserts that the stretch power uprate should have been written as an extended power uprate. Id. at 32-33.

NRC STAFF RESPONSE TO CONTENTION 6

The Staff opposes admission of Contention 6 in that it is not material to the information that the application must contain. The contention essentially is an attack on the NRC's rules, which do not require the Staff to have a special review document that is specific to stretch power uprates. Furthermore, contrary to the Petitioners' assertion, the NRC Staff does use RS-001 during the review of stretch power uprates.¹⁷

To the extent that Contention 6 repeats the allegation that the SPU is really an EPU, it was previously addressed in the Staff's response to Contention 1 above.

In addition to being incorrect and repetitive, Contention 6 fails to meet elements of 10 C.F.R. § 2.309(f)(1). It fails to demonstrate that the issue is material to any finding the NRC must make, and therefore fails to meet 10 C.F.R. § 2.309(f)(1)(iv). The contention fails to specify any error or omission in the application, and thus fails to meet 10 C.F.R. § 2.309(f)(1)(vi). Accordingly, it is not admissible.

CONTENTION 7

Dominion has neglected to provide all information to the NRC staff as it has requested and therefore its application for Millstone Unit 3 uprate should be considered to be incomplete and inadequate.

Petition at 33-34.

In support of Contention 7 the Petitioners rely on the various Requests for Additional Information (RAI) associated with the power uprate. Petition at 34-37.

¹⁷ The NRC's website makes this clear:

Since many of the available stretch power uprates have already been approved by the NRC, and since only a limited number of stretch power uprate applications are expected in the future, there is no specific guidance for stretch power uprates. The NRC, therefore, uses previously approved stretch power uprates, along with RS-001, for guidance."

NRC STAFF RESPONSE TO CONTENTION 7

Staff opposes the admission of Contention 7 on the grounds that it does not raise a material issue, it fails to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact and it is an impermissible attack on the NRC regulatory process. The Petitioners allege that the application is incomplete since the Licensee has not provided all the responses to the NRC RAI questions, and therefore the NRC Staff has not been able to complete its safety evaluation.

It is typical for the Staff to issue numerous RAI's to the Licensee while performing the Staff's Safety Evaluation. It is done to clarify statements and data that are submitted by the Licensee. The Staff will not issue its Safety Evaluation until all of these matters are satisfactorily clarified. Furthermore, Petitioners' assertion essentially constitutes an impermissible collateral attack on docketing of the uprate application. Petitioners claim that the reason for the requests for information is that the application is incomplete. As provided in 10 C.F.R. § 2.101(a)(3), the determination of whether an application is complete and acceptable for docketing is solely within the authority of the NRC staff. That decision is not subject to challenge by members of the public in a licensing proceeding. As has been held in several other proceedings, members of the public in a licensing proceeding may not challenge the docketing decisions made by the NRC staff.¹⁸

This contention should be rejected since it is an attack on the NRC regulatory process. It is well established that a Petitioner may not raise contentions that merely attack NRC requirements or regulations. *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3)*, CLI-99-11, 49 NRC 328, 334 (1999). "[A] licensing proceeding... is plainly not the proper forum

¹⁸ See, e.g., *Balt. Gas & Elec. Co. (Calvert Cliffs Nuclear Plant, Units 1 and 2)*, LBP-98-26, 48 NRC 232, 242 (1998); *Phila. Elec. Co. (Fulton Generating Station, Units 1 and 2)*, LBP-79-23, 10 NRC 220, 223 (1979); *New Eng. Power Co. (NEP, Units 1 and 2)*, LBP-78-9, 7 NRC 271, 278-80 (1978).

for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process." *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Furthermore, it raises no material issue and fails to show a genuine dispute exists.

Therefore, for the reasons cited above this Contention is inadmissible.

CONTENTION 8

The uprate will result in heightened releases of radionuclides and consequent exposures to plant workers and to the public estimated by Dominion to be 9 per cent but likely in excess of 9 per cent above current levels and such increases will result in corresponding 9 per cent (or more) increases of the risk of harmful health effects. Dominion's application for Millstone 3 uprate makes no provision for new shielding or other techniques to mitigate increased radionuclide release levels.

Petition at 37-38.

In support of Contention 8, the Petitioners state that the application is incomplete because it fails to provide new shielding and to evaluate the cancer incidences among workers and the surrounding community. Petition at 38. The Petition also states that dose increases may be greater than predicted. *Id.* The Petitioners offer the general statement of Dr. Ernest Sternglass to say that increases in dose can increase cancer and the impact on people.

Petition at 39-40. The Petitioners also offer the declaration of Cynthia Beasade, a member of CCAM, who discussed her knowledge of historical cancers and health problems. *Id.* at 41-43

NRC STAFF RESPONSE TO CONTENTION 8

The Staff opposes Contention 8 in that it fails to present a dispute with the application, and it fails to support its requirement for more shielding. The Petitioners discuss the predicted increases in radiation, but fail to frame these discussions in terms of how the change relates to

the controlling regulations on dose or assert that the uprate will exceed any regulatory dose or exposure limit.

To the extent that Petitioners' describes historical cancers and health problems, and their assertion that the applicant's operations are the cause, it appears that a request for current action under 10 C.F.R. § 2.206 is a more appropriate choice than a hearing on a future amendment.

Contention 8 fails to meet elements of 10 C.F.R. § 2.309(f)(1). The proffered support fails to explain why the increase in dose would be "unacceptable" by failing to address its arguments to the NRC's existing acceptance standards for radiation dose or exposure. The support for Contention 8 makes no mention of any actual dose or exposure rates. Accordingly, it fails to meet 10 C.F.R. § 2.309(f)(1)(i).

In addition, Contention 8 fails to explain its reason for disputing the application, contrary to 10 C.F.R. § 2.309(f)(1)(vi), when it alleges without explanation that it is more likely that radionuclide release is "more likely" to approach 10 % instead of the application's approximately 9%. See Petition at 39-40. Contention 8 does not explain why the applicant's analysis is incorrect and instead the Petitioners' analysis of "enhanced dynamics" should be used. See *Id.*

Another example of failing to meet 10 C.F.R. § 2.309(f)(1)(vi) is shown by Petitioners' Contention 8 claim that the application omitted provisions for new shielding or other techniques to mitigate radioactive release levels, in that the Petitioners failed to show how this claimed missing information was relevant information required by law. See Petition at 38. To the contrary, the Petitioners admit in Contention 8 that the application has a discussion of the Gaseous Waste system, and Petitioners fail to address how the existing waste disposal system meets (or does not meet) NRC regulations. See *Id.* at 39. Therefore, Contention 8 is inadmissible.

CONTENTION 9

Dominion's application for a 7+ per cent power generation uprate at Millstone Unit 3 will result in significant new releases of radioactive material to the environment and it will result in discharges of significant volumes of water to the Long Island Sound at heightened temperatures, both of which consequences are inadequately addressed in the application.

Petition at 44.

In support of Contention 9, Petitioners allege that the uprate poses significant adverse environmental impacts that have not been adequately analyzed. Petition at 44. The Petitioners allege that the increased radioactive releases will contaminate food air and water. Petition at 44. To support this contention the Petitioners rely on the environmental reports already submitted by the licensee and or its predecessor, Connecticut Department of Environmental Protection and NRC inspection reports and other NRC documents. Petition at 45-46.

NRC STAFF RESPONSE TO CONTENTION 9

The Staff opposes this Contention as inadmissible on the grounds that fails to provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.

The Petitioners rely on the LAR itself for information on the gaseous waste, liquid waste, and thermal discharge changes associated with the amendment request, thereby acknowledging that the application addresses the issues. Petition at 45. The Petitioner lists values for releases, but makes no claim that the applicant's numbers are wrong. See Id. Further, the Petition does not even attempt to show how the values relate to any regulatory requirement or NRC limit, and makes no effort to show that the application would result in exceeding any criteria in NRC regulations. See Id. at 43-44.

The Petitioners further acknowledge that the application contained an assessment of the environmental impact, in which the applicant concluded that the impact would be insignificant.

See Id. at 46. Petitioners make no effort to specify why the applicant's analyses of changes in the release of radioactive material and warm water is inadequate. See Id.. Therefore the Contention 9 is inadmissible as Petitioners have not met the requirement of 10 C.F.R. § 2.309(f)(1)(ii) by providing a brief explanation of the basis for the contention.

Similarly, Petitioners make no effort to identify where or how any of the documents the Petitioners plan on using support their claim. Other than the LAR, the Petitioners do not even present what specific documents they believe support their claim. The Petitioners fail to provide any expert support for their claim. Therefore, Contention 9 is inadmissible because the Petitioners have failed to satisfy the requirement of 10 C.F.R.

§ 2.309(f)(1)(v) to provide a concise statement of the alleged facts or expert opinions together with references to the specific sources and documents on which the Petitioners intend to rely to support their position on the issue.

Furthermore, the Petitioners have entirely failed to meet 10 C.F.R. § 2.309(f)(1)(vi), which requires that they provide sufficient information to show that a genuine dispute exists with the applicant which must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute. There simply is no reason offered at all for the Petitioners' assertions that the applicant's assessment is incorrect.

Accordingly, for the above reasons, Contention 9 is inadmissible.

V. Selection of Hearing Procedures

The Staff oppose admission of all the proffered contentions and therefore oppose a hearing on the LAR. However, if the Board should grant a hearing, the Staff asserts that, in accordance with 10 C.F.R. § 2.310, the hearing should be conducted under subpart L.

CONCLUSION

For the reasons discussed above, CCAM and Nancy Burton have not proffered an admissible contention. Therefore, the Atomic Safety and Licensing Board should deny their Petition.

/Signed (electronically) by/

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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.) Docket No. 50-423-OLA
)
(Millstone Power Station, Unit No. 3)) ASLBP No. 08-862-01-OLA-BD01

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO REQUEST TO INTERVENE AND FOR HEARING OF THE CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON", dated April 11, 2008, have been served upon the following by the Electronic Information Exchange, this 11th day of April, 2008:

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