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ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	**: Docket No. 50-423**
Dominion Nuclear Connecticut, Inc.	**:**
(Millstone Nuclear Power Station, Unit 3)	**: May 12, 2008**

CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON'S ANSWER TO DOMINION NUCLEAR CONNECTICUT, INC.'S MOTION TO STRIKE

Pursuant to 10 C.F.R. §2.323(c), the Connecticut Coalition Against Millstone and Nancy Burton (collectively, "CCAM") hereby answer and object to the filing of Dominion Nuclear Connecticut, Inc.'s ("Dominion's) "Motion to Strike Portions of Connecticut Coalition Against Millstone and Nancy Burton's Reply to Responses to Petition to Intervene" dated May 1, 2008.

Dominion's Motion to Strike asserts as follows:

"The Reply raises entirely new issues, claims and arguments not found in the original Petition to Intervene and request for Hearing ("Petition"). These new issues, claims and arguments are asserted without any attempt to satisfy the standards for late-filed amendments to contentions set forth in 10 C.F.R. §§2.309(c) and (f)(2). Accordingly, the portions of the Reply containing new, late-filed claims must be stricken, together with the new exhibits offered in their support. . . . On April 22, 2008, Petitioners filed their Reply. In it, Petitioners do not limit themselves to defending the adequacy of their contentions as pled in the Petition. Rather, the Reply makes new allegations to bolster the contentions and attaches five new documents raising issues and claims nowhere to be found in the Petition. As discussed below, Petitioners' attempt to provide new claims and arguments in their Reply is clearly impermissible under the Commission's well-established rules of practice and controlling NRC case law, and seeks to gain an unfair advantage over Dominion and the NRC Staff, who have not had an opportunity to address these new claims. For these reasons, Dominion requests that the Board strike the offending portions of the Reply."[1]

In objection to the Motion to Strike, CCAM asserts that its Reply and insertion of exhibits was proper and within the Commission's well-established rules of practice and controlling NRC case law. Furthermore, contrary to Dominion's assertions, CCAM's Reply neither presents new nor amended contentions. Furthermore, the information provided in CCAM's Reply was properly submitted as responsive to the NRC Staff's[2] and Dominion's answers to the Petition to Intervene. The information is drawn from information available to the NRC Staff and Dominion, is pertinent to the contentions submitted in CCAM's Petition to Intervene, and will aid the Atomic Safety and Licensing Board in its adjudication of this matter. Therefore, Dominion's Motion to

[1] Dominion Motion to Strike at pages 5-6.
[2] The NRC Staff did not file a motion to strike any portion of CCAM's Reply.

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Strike is without merit and must be denied.

CCAM responds to the issues set forth in Dominion's Motion to Strike *ad seriatim* as follows:

(1) CCAM request for Subpart G Hearing Procedures

The Motion to Strike asserts that 10 C.F.R. §2.309(g) mandates that a request for Subpart G procedures be set forth in the initial petition to intervene, "not raised for the first time in a reply."

However, Dominion misstates the rule.

10 C.F.R. §2.309(g) provides as follows:

"A request for hearing and/or petition for leave to intervene may also address the section of hearing procedures."

Thus, the clear language of 10 C.F.R. §2.309(g) provides that a petitioner may *but is not required to* address the issue of hearing procedures in its initial Petition to Intervene. Indeed, the rule does not require that the petitioner address the issue of hearing procedures at any particular time. The rule allows the Atomic Safety and Licensing Board to elicit from the petitioner, NRC Staff and applicant, their hearing procedure preferences at any time after the filing of the petition. Thus, Dominion's assertion that CCAM's statement regarding hearing procedures is "belated" is incorrect.

CCAM has chosen for good cause to request that Subpart G procedures be invoked in these proceedings in its Reply. For example, CCAM asserts that issues related to Dominion's historical practice of exceeding power limits, as set forth in Contention 3, and that issues related to the structural integrity of the Millstone Unit 3 containment, as set forth in Contention 4, require resolution and adjudication in a Subpart G proceeding. Dominion's Motion to Strike seeks to strike these passages from CCAM's Reply as well as others relating to pertinent historical practices at Millstone. With regard to Dominion's attempt to strike these passages, the motion is without merit .

(2) Contention 1

Dominion's Motion to Strikes seeks to delete from CCAM's Reply the following passage:

"the problematical operational and managerial history of the Millstone Nuclear Power Station."[3]

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[3] CCAM attaches hereto Exhibit A, a copy of its Reply with the passages sought by Dominion to be stricken highlighted in bold-faced type as an aid to the ASLB panel.

In Contention 1, CCAM asserts that the proposed power level for which Dominion has applied to uprate Millstone Nuclear Power Station Unit 3 exceeds the NRC's SPU regulatory "criteria"; furthermore, the petition asserts that various factors peculiar to Millstone Unit 3 make it necessary for the NRC to reject the current SPU application and conduct the more thorough and intensive Extended Power Uprate ("EPU") review. These include historical factors unique to Millstone Unit 3 which take it out of the category of "typical," a categorization which might otherwise support consideration of the proposed uprate as a "stretch" power uprate, putting aside the fact that the application seeks a power increase in excess of 7 per cent. In the more thorough and intensive review which would be afforded under the EPU, the problematical operational and managerial history of Millstone Unit 3 would necessarily have to be considered.

Significantly, Dominion does not dispute that the Millstone Nuclear Power Station suffers from a "problematical operational and managerial history."

(3) Contention 3

Dominion's Motion to Strikes seeks to delete from CCAM's Reply the following passage:

"history of operational deficiencies"

In Contention 3, CCAM asserts *inter alia* that Dominion has historically exceeded Millstone Unit 3's licensed power level.[4] This phenomenon resulted from operational deficiencies at Millstone Unit 3. Significantly, Dominion does not dispute the history of operational deficiencies as cited by CCAM in its Petition to Intervene. Therefore, Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(4) Contention 4

In Contention 4, CCAM asserts that 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.

Dominion's Motion to Strikes seeks to delete from CCAM's Reply the following passages:

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[4] See Gundersen Declaration (CCAM Petition to Intervene Exhibit A) at ¶44C.

(A) Passage sought by Dominion to be stricken:

"However, Dominion neglects to mention the results of the NRC's Office of the Inspector General audit in September 2007 which found *inter alia* examples of NRC Staff comments mirroring statements, uncritically, presented by Dominion in its License Renewal Application. The OIG audit, which was far from a painstakingly thorough audit but rather a random-sample audit, cannot be disregarded as providing a basis of support for CCAM's Contention 4."

CCAM Objection: Dominion, in both its application to the NRC for Millstone Unit 3 uprate and in its answer to CCAM's Petition to Intervene,[5] touts the fact that the NRC granted Dominion's application to extend the operating license of Millstone Unit 3 for an additional period of twenty years as providing support for its instant license amendment. Thus, it is a matter of fair comment for CCAM to respond in its Reply that the NRC's Office of Inspector General found particular fault with the NRC Staff's review of the Millstone Unit 3 license extension application for mirroring Dominion's statements, apparently without conducting independent analysis to verify the accuracy of such statements. Therefore, Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(B) Passage sought by Dominion to be stricken:

"NRC's unwillingness to adequately review Mr. Gundersen's Nuclear Safety Engineering Analysis and Assessment is a matter of record. Please note that in May 1993, Former NRC Commissioner and Chairman Ivan Selin publicly commended Mr. Gundersen to the U.S. Senate noting: "It is true...everything Mr. Gundersen said was absolutely right; he performed quite a service." These comments by former NRC Chairman Ivan Selin were made to the U.S. Senate regarding the NRC staff cover-up of safety issues. Mr. Gundersen's allegations of a cozy relationship between the nuclear industry and its NRC regulators was clearly substantiated by NRC Inspector David Williams in 1993. Mr. Gundersen's technical resume has once again been attached herewith in order to refresh NRC staff memory regarding Mr. Gundersen's credentials.

Finally, regarding Mr. Gundersen's testimony as an expert witness, Mr. Gundersen has a superlative record of uncovering flaws in uprate applications. For example, in Mr. Gundersen's Expert Witness Engineering Analysis regarding a power uprate at Entergy Nuclear Vermont Yankee (ENVY), Mr. Gundersen testified to Vermont Public Service Board regarding:

- Weaknesses he noted in ENVY's inspection program (Aging Management) were not addressed and thereby resulted in a transformer fire
- Weaknesses in the steam dryer, which were not addressed and resulted in steam dryer cracks following uprate, as Mr. Gundersen demonstrated would occur by his calculations.
- Weaknesses in the condenser resulted in tube failures, which Mr. Gundersen demonstrated in his analysis of ENVY's calculations.
- Weaknesses in the cooling towers resulted in a structural collapse, which was why Mr. Gundersen had requested a new seismic analysis. He maintained that the current Cooling Towers could not withstand

[5] See Dominion Response at page 23.

the additional torque of the cooling tower fans associated with uprate.
• Finally, Mr. Gundersen identified problems with ENVY's Decommissioning Fund, and its significant under-funding has resulted in a special Vermont State Legislative Review in conjunction with the Vermont State Auditor."

CCAM Objection:

Dominion asserts that CCAM's Reply "expounds upon and resubmits the qualifications of Mr. Gundersen . . . Those qualifications are not responsive to any of the arguments made by Dominion or the Staff in their responses to the Petition."

Dominion neglects to note that the NRC Staff, in its Response to the Petition, asserted incorrectly that Mr. Gundersen "apparently supervised" Millstone Unit 3 containment construction. The above passage therefore was submitted to correct and rectify the NRC Staff's serious error. Thereby, CCAM's Reply served the proper purpose of a reply; hence, Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(5) Contention 5

In Contention 5, CCAM asserts that the impact of flow-accelerated corrosion at Dominion's higher power level for Millstone Unit 3 has not been adequately analyzed nor addressed.

Dominion's Motion to Strikes seeks to delete from CCAM's Reply the following passage:

"Historical recurring failures of mechanical components such as pipes and valves at Millstone Unit 3 and poor engineering in the late 1990s are not addressed in Dominion's application. See Exhibits A and B as illustrations of emergency situations at Millstone Unit 3 created by mechanical failure and/or poor engineering involving water and steam movement."

CCAM Objection:

In its response to CCAM's Petition to Intervene, Dominion submitted an historical document[6] as an exhibit in support of its assertion that its application for Millstone Unit 3 power uprate adequately addresses the impact of the phenomenon of flow-accelerated corrosion at the proposed higher power level.

Significantly, Dominion's motion does not contest the accuracy of the statement which it seeks to strike from CCAM's Reply.

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[6] Dominion's exhibit is identified as "Attachment A-iTi invoice for MPS3 FAC Inspection Services.pdf."

In its Reply, CCAM appropriately responded to Dominion's identification of and its reliance on its historical document by correctly noting Millstone Unit 3's historical recurring failures of mechanical components such as pipes and valves and poor engineering in the 1990s. This issue – ironically, implicitly corroborated by Dominion's historical exhibit as providing evidence of Dominion's intent to limit for cost reasons the quality and extent of its FAC inspections, and thus presumably as well necessary corrective actions, under proposed uprate conditions – further illustrates how Dominion's application does not adequately analyze nor address the impact of flow-accelerated corrosion at the proposed higher power level. Dominion's apparent *modus operandi* under power uprate conditions will perpetuate the historical pattern of recurring historical failures of mechanical components such as pipes and valves at Millstone Unit 3. Under proposed uprate conditions, this is a dangerous prospect which has not been adequately analyzed nor addressed.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(6) Contention 6

In Contention 6, CCAM asserts that Dominion's application for Millstone Unit 3 uprate should not be analyzed as a SPU application insofar as the NRC has not adopted standards nor regulatory requirements for reviewing SPU applications.

Dominion's Motion to Strikes seeks to delete from CCAM's Reply the following passage: "the problematical operational and managerial history of Millstone Nuclear Power Station"

CCAM Objection:

Significantly, Dominion's motion does not contest CCAM's assertion of Millstone's "problematical operational and managerial history."

Rather, Dominion seeks to delete the reference from the Reply. Dominion's request is unavailing. Implicit in the process of NRC's review of the power uprate application is a need to understand what is unique about the physical plant, including its operational history. A trouble-plagued operational history should generate red flags in the review process; however, the SPU review process is without meaningful standards and the serious issues have been overlooked.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(7) Contention 7

In Contention 7, CCAM asserts that Dominion's application is incomplete and inadequate.

Dominion's Motion to Strikes seeks to delete from CCAM's Reply the following passages:

(A) Passage sought by Dominion to be stricken:

"The NRC's letter ("Potential Schedule Change for Proposed Stretch Power Uprate License Amendment Request") states in pertinent part as follows:

The NRC staff schedule, as provided in the acceptance review letter dated October 15, 2007, was predicated on the assumption that all information and analyses would be submitted by the end of January 2008. The final Request for Additional Information (RAI) letter was sent to [Dominion] on December 20, 2007, and [Dominion] agreed to respond within 30 days. The following information and analyses were not received by January 31, 2008:

1. The updated control room fire analysis;
2. Summary of the final results of elastic-plastic analysis;
3. The evaluations of the continued acceptability of the environmental qualification equipment with increased accident temperature in the Main Steam Valve Building and the increased radiation total integrated dose in selected Engineered Safety Features and Auxiliary Building zones.

When your stretch power uprate application was received, the NRC staff scheduled its review activities. Implicit in this scheduling was an expectation that adequate time would be available to allow NRC staff to complete a thorough review of the application and any supplemental information requested by the NRC staff.

The NRC staff endeavors to complete power uprates in a timely manner to support NRC's goals of efficiency and reliability. Based on the above, the current schedule for the completion of the proposed stretch power uprate amendment may be in jeopardy.

On March 27, 2008 via teleconference, Mr. Bill Bartron of your staff stated that the summary of the final results of the elastic-plastic analysis would be sent to the NRC on April 7, 2008.

Please note that if you do not respond to the outstanding summary of the final results of the plastic-elastic analysis by April 7, 2008, we may be required to revise the project schedule or reject your application for amendment under the provisions of Title 10 of the Code of Federal Regulations, Section 2.108.

Apparently, there is a discrepancy between the NRC Staff's expectations regarding Dominion's submission of its "plastic-elastic analysis" results referred to above and Dominion's assertions in its Response that a summary of results to have been provided by February 28, 2008 was provided on February 25, 2008. See Exhibit C."

CCAM Objection:

Dominion wishes to strike the above-cited passage because CCAM did not seek to amend its Petition to reference the NRC Staff's March 28, 2008 letter. Thereby, Dominion seeks to exalt substance over form. Dominion's suggestion, if followed to its logical extent, would mandate a newly amended petition every time the NRC Staff corresponded with Dominion with regard to the pending application, an absurd result. CCAM properly referenced the March 28, 2008 letter as a way of illustrating that Dominion's application was *still* not complete, in the view of the NRC Staff, as of March 28, 2008, eight months after Dominion formally submitted its application and asked for expedited approval to coordinate upgrades with its projected Millstone Unit 3 refueling

outage in the Fall of 2008.

Disturbingly, as of April 29, 2008, Dominion was still submitting technical responses to NRC Staff inquiries, supplementing but also superseding earlier responses in some cases.[7] Nevertheless, necessary plant procedures are yet to be updated.[8] These facts further illustrate why Contention 7 is sound.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(B) Passage sought by Dominion to be stricken:

"Upgrades to our merchant plants are a low cost, high return expansion option. The plant upgrade [sic] at Millstone 3 . . . will allow us to supply additional power in very attractive merchants markets.

Farrell's confidence in the outcome was expressed again in his "2d quarter" teleconference call with investors on August 1, 2007:

Following up on announcements during our last earnings call . . . The Millstone Unit 3 upgrade [sic] will be 75 megawatts and is expected to be online by the end of 2008.

In the NRC's weekly information report for the week ending October 19, 2007, the NRC tacitly acknowledged it was acceding to Dominion's pressure to expedite review of the application stated as follows:

By application dated July 13, 2007, the licensee requested a 7% SPU for Millstone 3. By letter dated October 15, 2007, the NRC informed the licensee that the licensee provided the necessary information for the staff to begin a detailed technical review, ands that the application meets the criteria for an SPU.

The application requested NRC approval of the amendment by June 30, 2008. However, the NRC stated in its October 15, 2007 letter that the application may require more review time due to the licensee's proposed revisions to the licensing basis for the alternative source term dose consequence analysis, and as a result, the licensee agreed to a new requested completion date of August 15, 2008."

CCAM Objection:

Significantly, Dominion does not dispute that its CEO, Thomas Farrell, made the statements, attributed to him in CCAM's Reply, to the investor community on the dates set forth.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(C) Passage sought by Dominion to be stricken:

"In the NRC's weekly information report for the week ending October 19, 2007, the NRC tacitly acknowledged it was acceding to Dominion's pressure to expedite review of the application stated as follows:

By application dated July 13, 2007, the licensee requested a 7% SPU for Millstone 3. By letter dated October 15, 2007, the NRC informed the licensee that the licensee provided the

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[7] Dominion's April 29, 2008 letter captioned "Response to Request for Additional Information Regarding Stretch Power Uprate License Amendment Request Revised Response to Questions EEEB-007-0052, EEEB-07-0054 and EEEB-07-0055," is available in ADAMS, ML081200643.

[8] Id. at Attachment, page 7 of 16,

necessary information for the staff to begin a detailed technical review, and that the application meets the criteria for an SPU.

The application requested NRC approval of the amendment by June 30, 2008. However, the NRC stated in its October 15, 2007 letter that the application may require more review time due to the licensee's proposed revisions to the licensing basis for the alternative source term dose consequence analysis, and as a result, the licensee agreed to a new requested completion date of August 15, 2008."

CCAM Objection:

Dominion has provided no valid basis to strike this passage, taken from the NRC's website, from CCAM's Reply.

(D) Passage sought to be stricken by Dominion:

"For example, Attachment 1 of the application states at Page 18:
MPS3 has safety-grade pressure-operated relief valves and piping that supports [sic] water relief from the PORVs during an event. The current analysis for an inadvertent ECCS actuation at power documented in FSAR Section 15.1.1 shows that operator action within ten minutes is required to assure at least one PORV is available to prevent water relief from the pressurizer safety valves for which they are not qualified. This operator action time frame will be reduced at the SPU conditions. [Emphasis added.]"

CCAM Objection:

Dominion's sole objection to CCAM's recitation of the cited passage from its LAR is that CCAM did not previously recite the passage.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(8) Contention 8

In Contention 8, CCAM asserts that the Millstone Unit 3 power uprate will result in releases of radionuclides to plant workers and the public at 9 per cent or more higher than current levels with corresponding increases in the risk of harmful health effects including cancer and death.

Passages sought to be stricken by Dominion:

(A)Dominion's Attachment 1 states as follows in pertinent part at Page 52:
7.0 Environmental Evaluation
. . . The proposed license amendment request does not involve a significant adverse change in the types or amount of any effluent that may be released offsite nor does it involve a significant increase in individual or cumulative occupational radiation exposure. [Emphasis added.]

CCAM Response:

Dominion has provided no valid basis to strike this passage, taken from Dominion's LAR, from CCAM's Reply.

(B) [Footnote 25] See, e.g., Comments of Michael Steinberg regarding Connecticut Tumor Registry Statistics, presented to the NRC on May 28, 2008. ADAMS ML041770179.

CCAM Response:

Dominion's motion incorrectly asserts that by referencing Mr. Steinberg's "Comments," it is seeking to "impermissibly expand the bases of Contention 8." CCAM's reference is entirely proper as it was submitted in response to Dominion's Response which referenced proceedings on Dominion's Millstone Unit 3 license extension application, a matter in which Mr. Steinberg's "Comments" are of record.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(C) [Footnote 30] Recent tragedies have included numerous cases of infant deaths in families living within two to five miles of Millstone, including a seven-month old child who died of advanced liver disease within the past year.

CCAM Response:

Dominion incorrectly asserts that the cited passage should be stricken because "the allegation of tragedies in families living near Millstone . . . is raised for the first time in the Reply."

The occurrence of tragedies in families living daily near Millstone is at the heart of Contention 8. Dominion has provided no valid basis to strike this passage from CCAM's Reply. Furthermore, Dominion's objection is itself offensive.

(9) Contention 9

In Contention 9, CCAM asserts that 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.

Passages sought to be stricken by Dominion:

(A) Millstone's NPDES permit was last issued in 1992 for a maximum five-year term under the Clean Water Act; the permit expired in 1997, eleven (11) years ago. There is no valid permit in effect presently; moreover, the Connecticut Department of Environmental Protection has repeatedly violated the Clean Water Act by granting "emergency authorizations" of infinite duration in the absence of notice to the public and an opportunity for hearing. These emergency authorizations have been issued at the request of Dominion and its predecessor owner to allow it to increase levels of water usage and releases of toxic chemicals to the Long Island Sound.

CCAM Objection:

Dominion criticizes CCAM for claiming there is no valid NPDES permit for Millstone. In fact, that is exactly CCAM's position, stated in response to Dominion's Response to its Petition. The case of Fish Unlimited v. Northeast Utilities Service Company, 755 A.2d 860 (Conn. 2000), was not decided on the merits, contrary to the impression generated by Dominion in its motion; the Connecticut Supreme Court found the plaintiff to lack standing to raise the issue, notwithstanding the clear language of Connecticut General Statutes §22a-16, which gives standing to "any person" or organization to bring suit to protect the environment and seek injunctive and declaratory relief. The fact remains that the material facts are in dispute and a hearing is necessary to resolve the dispute.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(B) [Footnote 32] Dominion's predecessor, Northeast Nuclear Energy Company, pleaded guilty in 1997 in the U.S. District Court for the District of Connecticut to committing environmental felonies at Millstone in violation of the 1992 NPDES permit.

CCAM Response:

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(C) CCAM submits a copy of a critique of the Connecticut DEP "Reassessment" report, referenced in Dominion's Response, which was undertaken by nuclear safety engineer and former Northeast Utilities employee at Millstone Paul N. Blanch. The Blanch critique is a scathing indictment of the "DEP Reassessment." For example, Blanch's critique asserts in Item 6 at page 9: "This type of bogus data questions the validity and accuracy of the data in the report."

CCAM Response:

Dominion asserts incorrectly that CCAM's attachment of the "Blanch Critique" to its Reply is a "further attempt to expand the bases for Contention 9." To the contrary, CCAM submitted the "Blanch Critique" properly in response to incorrect statements presented by Dominion in its Response to the Petition to Intervene on the issue of Dominion's reports of excessively high levels of strontium-90 in goat milk sampled five miles north-northeast of Millstone in 2001. In

short, the factual issues at hand are in obvious dispute and can only be resolved in an adjudicatory hearing.

Dominion further states incorrectly that CCAM does not "contest the validity of the environmental impact assessments in the Supplemental Environmental Report." Nothing could be further from the truth. In short, the factual issues at hand are in obvious dispute and can only be resolved in an adjudicatory hearing.

Dominion has provided no valid basis to strike this passage from CCAM's Reply.

(10) Exhibits A, B, C, D and E

Dominion seeks to strike from CCAM's Reply its Exhibits A, B, C, D and E for reasons addressed above.

Dominion has provided no valid basis to strike any of CCAM's exhibits from CCAM's Reply.

Respectfully Submitted,

CONNECTICUT COALITION AGAINST MILLSTONE
NANCY BURTON

Nancy Burton
147 Cross Highway
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Exhibit A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	: Docket No. 50-423
Dominion Nuclear Connecticut, Inc.	:
(Millstone Nuclear Power Station, Unit 3)	: April 22, 2008

CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON REPLY TO RESPONSES OF NRC STAFF AND DOMINION NUCLEAR CONNECTICUT, INC. TO PETITION TO INTERVENE AND REQUEST FOR HEARING

Pursuant to 10 C.F.R. §2.309(h)(2), the Connecticut Coalition Against Millstone ("CCAM") and Nancy Burton ("Ms. Burton")(collectively, "CCAM") hereby reply to the responses by the U.S. Nuclear Regulatory Commission ("NRC") Staff ("NRC Staff Answer to Request to Intervene and for Hearing of the Connecticut Coalition Against Millstone and Nancy Burton")("NRC Staff Answer") and Dominion Nuclear Connecticut, Inc.'s ("Dominion") Response to Connecticut Coalition Against Millstone and Nancy Burton's Petition to Intervene and Request for Hearing")(Dominion Response"), both dated April 11, 2008, to CCAM's Petition to Intervene and Request for Hearing.

Selection of Hearing Procedures

CCAM requests that Subpart G hearing procedures be followed in these proceedings, pursuant to 10 C.F.R. §2.310. Resolution of CCAM's contentions necessitates resolution of issues of material fact including material facts relating to the occurrence of past activities - such as issues related to Dominion's historical practice of exceeding power limits as set forth in Contention 3; the structural integrity of the Millstone Unit 3 containment as set forth in Contention 4; Dominion's failure to detect the evolution of "tin whiskers" in its circuit boards (which are being modified to achieve the proposed power uprate) which led to an unplanned shutdown in April 2005 with unusual releases of radiation to the environment; and historical failures of Dominion and its predecessor, Northeast Nuclear Energy Company, related to recurring valve and other equipment malfunctions and engineering failure and leading to inter alia damage to the Millstone Unit 3 safety systems in March 1998. In each of these matters, the credibility of an eyewitness may reasonably be expected to be at issue and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matters.

Standing

The NRC Staff does not object to CCAM's assertion of standing to obtain a hearing. The NRC Staff does not object to Ms. Burton's assertion of individual standing with certain qualifiers. Dominion does not object to CCAM's standing to seek to obtain a hearing nor does it object to Ms. Burton acting as CCAM's representative. Dominion does object to Ms. Burton's assertion of individual standing. Dominion's Response asserts that Ms. Burton's declaration that she is a "seasonal resident" of Mystic, Connecticut, a locality ten miles downwind from Millstone, is "too vague to demonstrate standing. Where a petitioner claims standing based on visits to the vicinity of a plant, the petitioner must provide sufficient information on their length and nature to establish a bond between the petitioner and the facility's vicinity and 'the likelihood of an ongoing connection and presence,'" citing Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI 98-13, 48 N.R.C. 26, 32 & n.3 (1998); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI 99-10, 49 N.R.C. 318, 324 (1999).)

Ms. Burton maintains that her assertion of "seasonal residency" in Mystic, Connecticut suffices to confer individual standing, as Mystic, Connecticut is indisputably located within approximately ten miles of Millstone. More particularly, Ms. Burton shares frequent spring, summer and fall occupancy of a summer cottage in Mystic with her husband, owner of the cottage, as she has done on a regular basis since 1970 and as she expects to continue to do into the future. Should the ASLB Panel wish further details with

regard to Ms. Burton's occupancy of her husband's Mystic cottage, Ms. Burton will be happy to accommodate the Panel's further inquiry.

Contentions

Both the NRC Staff and Dominion object to the admissibility of all of CCAM's contentions.

As discussed below, their arguments opposing admission of the contentions are without merit. CCAM's contentions satisfy the requirements of 10 C.F.R. §2.309(f) because they provide a specific statement of the issues of law and/or fact to be controverted, identifying the particular aspects of the power uprate application with which CCAM has a dispute. The contentions also show the issues raised by the contentions are material to the NRC's decision on the power uprate application and within the scope of this proceeding. Finally, the contentions are supported by documentation and/or expert opinion sufficient to show that a "genuine dispute exists with the applicant on a material issue of law or fact." 10 C.F.R. §2.309(f)(1)(vi). Where the NRC Staff and/or Dominion in their responses take issue with factual assertions of CCAM and CCAM's experts, CCAM respectfully represents that CCAM and CCAM's experts stand on their factual assertions; factual disputes are to be resolved by the fact-finder, here, the ASLB Panel, during the hearing proceedings.

Statement of Standards for Admissibility of Contentions

To be admissible, a contention need be supported by "a concise statement of the alleged facts or expert opinions which support the requestor's petitioner's position." 64 NRC at 186, citing 10 C.F.R. §2.309(f)(v). Further, at the contention-filing stage, the petitioner "must make a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate. Final Rule, Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,171 (August 11, 1989), (emphasis added) citing Connecticut Bankers Association v. Board of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980).

"To trigger a full adjudicatory hearing, petitioners must be able to 'proffer at least some minimal factual and legal foundation in support of their contentions.'"In the Matter of Florida Light & Power Company (Turkey Point Nuclear Power Plant), 54 NRC 3, (2001), citing Duke Energy Corp. (Oconee Nuclear Stations, Units 1, 2 and 3), 49 NRC 328, 334 (1999). "Hearings should serve the purpose for which they are intended: 'to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors.' Id. (Citing H.R. Rep. No. 97-177, at 151 (1981). "While intervenors need not be technical experts, they must knowledgeably provide some threshold-level factual basis for their contention."

CCAM's Contentions 1, 2, 3, 4, 5, 6, 7, 8 and 9 satisfy the above standards. The NRC Staff and Dominion differ with CCAM as to material facts in dispute. It is for the administrative law board to decide the factual issues through a full administrative hearing under Subpart G procedures.

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" that the NRC has set the power limit for SPUs at ". . . up to 7% . . ." (Emphasis added.)

It is notable that as a result of CCAM's Petition to Intervene, both the NRC Staff and Dominion now agree with CCAM that the proposed Millstone Unit 3 power uprate exceeds 7 per cent.

In mathematics, the concepts of "greater than" and less than" are called "inequalities." These concepts are taught in the eighth grade. According to "Introduction to Mathematics" (Turner and Prouse, 1972, published by Scott, Foresman & Company, page 93):

An inequality is a statement that two expressions are not equal.

Hence, mathematically speaking, the governing law which states that Stretch Power Uprates are less than 7 per cent must be taken on face value; since Millstone Unit 3's proposed uprate exceeds 7 per cent, it cannot be classified as a Stretch Power Uprate and must be re-examined under the more rigorous reviews of the "Extended Power Uprate."

CCAM's Contention 1 is not an "attack" on NRC regulations as suggested by the NRC Staff. Rather, CCAM is pointing out to the NRC that Dominion is in violation of the NRC regulations in the method by which it has filed its application. Moreover, CCAM notes that in response, Dominion has attempted to change the regulation by noting that the NRC's webpage states that stretch power uprates are " . . . typically less than seven per cent." CCAM respectfully submits that this is an issue for the ASLB Panel to hear, as it presents an issue for the "trier of fact." CCAM agrees with the regulation as stated: that Criterion 1 establishes that an SPU uprate application is appropriate for a proposed increase in the nuclear reactor power that is "up to 7 per cent." . CCAM also believes that NRC Staff has erred in its response by attempting to change the focus of the regulation from the rigorous mathematical definition accurately promulgated by NRC in an ostensibly exacting regulatory environment to the use of the single non-mathematical word "typical."

The Cambridge International Dictionary of English defines "typically" as an adverb meaning "showing all the characteristics that you would expect from the stated person, thing or group." Dictionary.com defines "typically" as meaning "of the nature of or serving as a type or representative specimen, conforming to a particular type."

By either of these definitions, CCAM has proven in its Petition to Intervene and through the Declaration of its nuclear safety engineer expert, Arnold Gundersen, through rigorous mathematical analysis that the Millstone 3 power uprate application is anything but "typical" of Stretch Power Uprates. Indeed of all the Westinghouse four-loop plants constructed, CCAM has demonstrated that:

1. Millstone Unit 3 is the only nuclear power station ever built with sub-atmospheric containment.
2. The free volume of Millstone Unit 3 containment is the smallest one in any comparable group by a wide margin.
3. The ratio of its free volume to its initially licensed reactor power is the smallest by a wide margin.
4. The ratio of its free volume to its uprated reactor power is also the smallest in the nation by a wide margin.
5. In addition, finally and most critically, that the containment was already "stretched" in 1990.

Clearly, an outlier cannot be regarded as typical: such usage of language create an oxymoron. That Millstone Unit 3's containment design makes it an atypical outlier compared with all the other nuclear reactors in the nation is important to all of CCAM's contentions.

The following NRC statement supports CCAM's "outlier" argument:

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

In performing its stretch power reviews, it is apparent that the NRC relies upon other "previously approved" "typical" reactors that have come before Millstone Unit 3 in the licensing process. Since there is no nuclear power reactor containment in the entire nation like the Millstone Unit 3 containment as discussed above, the NRC's stretch power review cannot be applied according to the NRC's own promulgated regulations. The present application is unprecedented as an SPU application.

Finally, CCAM will address the issue raised in Dominion's Response with regard to the question of mathematical rounding. Dominion's Response asserts in pertinent part:

At the outset, it should be noted that the proposed power increase is a 7.0% increase to the nearest megawatt (i.e., 1.07 x 3411 Mwt=3649.77 Mwt [fn. 14], which has been rounded to 3650 Mwt). Taking the rounding into consideration, the percentage increase is 7.0067% [fn.5]. Specifying the power level to the nearest megawatt is consistent with the method used to specify thermal power in MPS3's "Technical Specifications." [fn. 16] Petitioners and their declarant, Mr. Arnold Gundersen, assert that "mathematical methodology demands that the calculation be rounded down" but provide absolutely no basis for this claim. [fn. 17] Neither the Petitioners nor Mr. Gundersen identify any rule, standard or guidance that "demands" that the calculation be rounded down. In fact, the statement on the NRC website which Petitioners identify [fn. 18] as establishing the 7 per cent criterion does not even make 7 percent a precise limit for an SPU. The full quote, which Petitioners have truncated, states: "Stretch power uprates are typically up to 7 per cent and ware within the design capacity of the plant." [fn. 19]

In its Response, Dominion has stated that CCAM's contention lacked mathematical rigor relating to "rounding off" the megawatt capacity of the plant. This is incorrect. The CCAM report clearly discussed the fact that since "less than seven per cent" used two significant figures, it was inappropriate for Dominion to round down its power level request. The concept of significant figures is taught in eleventh-grade high school physics and need not be elaborated on in detail in this reply unless the ASLB Panel should specifically request such a detailed response. Furthermore, since the eighth-grade concept of mathematical inequality clearly states "less than," it is also mathematically unacceptable for Dominion to round the answer up to "greater than" when conventional mathematics requires just the opposite application for conformance.

CCAM takes this opportunity to refer to two specific notations by Dominion Nuclear Connecticut, Inc.'s Response. Both applicable footnotes are on Page 14 of Dominion's Response.

First, Dominion alleges that CCAM's Petition does not meet statutory requirements by suggesting "that the NRC's review will be adversely affected by the classification of the uprate, their contention would still be inadmissible... the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC Staff performance." (see quoted section below)

"23 If Petitioners intended to suggest that the NRC's review will be adversely affected by the classification of the uprate, their contention would still be inadmissible. It is well established that the manner in which the NRC Staff performs its review is not an appropriate issue in this proceeding or gives rise to an admissible contention. "With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC Staff performance." Final Rule, 54 Fed. Reg. at 33,171 (citing Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 N.R.C. 777, 807, review declined, CLI-83-32, 18 N.R.C. 1309 (1983). An Atomic Safety and Licensing Board has no jurisdiction to review the NRC Staff's review process. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-5, 37 N.R.C. 168, 170 (1993); Northeast Nuclear Energy Co. (Montagne Nuclear Power Station), LBP-75-19, 1 N.R.C. 436, 437 (1975)."

CCAM lauds Dominion for bringing this issue forward, and agree with Dominion's assessment that the application to increase power at Millstone Unit 3 is wrongly classified as a Stretch Power Uprate and does not satisfy NRC regulatory requirement. (Note inserted above, Footnote 23 from page 14 Dominion's Response). Moreover, CCAM continues to contend that Dominion's application should therefore be considered as an EPU application and believes that Dominion's citations also support this contention.

Second, Dominion also contends that CCAM's expert, Arnold Gundersen, allegedly did not accurately account for the 8 percent uprate granted at Beaver Valley Units 1 and 2. Once again, CCAM commends Dominion for alerting NRC staff and the public to its agreement with CCAM's Contention regarding the fact that Dominion's application does not meet NRC regulatory standard for an SPU, and instead should have been classified as an EPU. See quote below:

"24 Petitioners also state that no Westinghouse reactor has been granted an SPU in excess of 7 percent. Since 7 percent is the approximate level used to define an SPU, this statement is meaningless and certainly does not establish any particular deficiency in the application. Moreover, Table 1 in the Petition and Gundersen Declaration purporting to list "Westinghouse Uprates in Ascending Order" is misleading, because it omits the 8 percent uprate granted to Beaver Valley Units 1 and 2. See http://www.nrc.gov/reactors/operating/licensing/power-uprates/approved-applications.html."

By following Dominion's link to the NRC website: http://www.nrc.gov/reactors/operating/licensing/power-uprates/approved-applications.html, one is ultimately taken to NRC documents which once again support CCAM's Contention that Dominion's application does not meet NRC regulatory standard for an SPU, and instead should have been classified as an EPU. According to the NRC document: Beaver Valley Power Station, Unit Nos. 1 And 2 (Bvps-1 And 2) -Issuance Of Amendment Regarding The 8-Percent Extended Power Uprate (Tac Nos. Mc4645 And Mc4646) and other substantiating documents filed regarding Beaver Valley, the Beaver Valley units, which received an 8-percent power increase, were indeed classified as an Extended Power Uprate.

While Beaver Valley Units 1 and 2 are indeed three-loop Westinghouse sub-atmospheric containments and Millstone Point Unit 3 is four-loop Westinghouse sub-atmospheric containment, CCAM's' Expert Arnold Gundersen, did not compare Beaver Valley Units 1 and 2 in his Table precisely because the increased power level at Beaver Valley Units 1 and 2 met the NRC regulatory criteria for an

EXTENDED POWER UPRATE, not a Stretch Power Uprate. CCAM once again contends that Dominion's application does not meet NRC requirements for an SPU, and lauds Dominion for acknowledging the discrepancy in its application to the NRC. Furthermore, CCAM requests that Dominion's application for a power uprate at Millstone Unit 3 be appropriately reclassified as an EPU application like Beaver Valley Units 1 and 2, as Dominion has so appropriately acknowledged in its Response.

Moreover, the chart on the NRC website shows that the highest SPU previously approved by the NRC was a 6% SPU for Kewaunee on February 27, 2004. Moreover, the chart shows that Monticello's 6.3% uprate - although clearly less than 7 per cent - was approved as an Extended Power Uprate in 1998. Of the 62 SPUs granted as identified on the chart, the average percentage increase was 4.28 per cent. Thus, Dominion's application for Millstone Unit 3 power uprate of 7+ per cent is 163 per cent higher than the "typical" SPU granted by the NRC and 117 per cent higher than the next-highest SPU ever granted by the NRC over the course of the past 31 years. These facts - asserted on the NRC's own website - lend clear support to CCAM's contention that the Millstone Unit 3 power uprate application must be reviewed by the NRC under the more exacting standards of an Extended Power Uprate.

Dominion is attempting to have it both ways: it argues that it prepared its application in accordance with Extended Power Uprate standards. (". . .[Review Standard for Extended Power Uprates] was in fact used in preparing the LAR."). However, this statement is belied by Dominion's actual application submission. Attachment 1 to the July 13, 2007 application contains the following acknowledgment at page 13:

While it is concluded that the proposed power level change is classified as a Stretch Power Uprate, the guidelines for an Extended Power Uprate have also been used in the LR with a small number of exceptions. [Emphasis added.]

The "small number of exceptions" wherein the Millstone Unit 3 power uprate application does not conform to the NRC's guidelines for Extended Power Uprate are not identified; nor indeed are specific instances wherein the application assertedly conforms to the NRC's guidelines for Extended Power Uprate identified.

Given the already reduced safety margins, **the problematical operational and managerial history of the Millstone Nuclear Power Station** and Millstone Unit 3's unique containment, it is important for the ASLB Panel to understand exactly which NRC guidelines for Extended Power Uprate the application for license amendment does not conform to, as acknowledged by Dominion - and the reasons why. A full hearing pursuant to Subpart G procedures is necessary to develop these critical facts fully.

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.

CCAM contends that Millstone Unit 3 is not an appropriate candidate for an SPU uprate because it has already had its design margins dramatically and substantially reduced, as demonstrated by CCAM's nuclear safety engineer expert, Arnold Gundersen, in his Declaration. CCAM contends that the NRC does not contemplate SPU uprates for a nuclear power reactor such as Millstone Unit 3 given these limiting conditions.

Both Dominion and the NRC Staff disagree.

Contention 2 presents a substantial factual dispute which can only be resolved through an adjudicatory hearing proceeding.

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.

CCAM incorporates its comments with regard to Contentions 1, 2 and 4: Dominion's application for Millstone Unit 3 power uprate as an SPU is without precedent. Dominion is proposing the highest percentage power uprate ever proposed as a Stretch Power Uprate; the limiting features of its containment, its previous "stretch," **history of operational deficiencies** and incomplete application all dictate that the application be rejected. The NRC has never been presented with an SPU application with these limiting features.

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.

Dominion relies heavily in its opposition to admissibility of Contention 4 on the conclusions reached by NRC Staff on the recent Millstone relicensing application. **However, Dominion neglects to mention the results of the NRC's Office of the Inspector General audit in September 2007 which found inter alia examples of NRC Staff comments mirroring statements, uncritically, presented by Dominion in its License Renewal Application. The OIG audit, which was far from a painstakingly thorough audit but rather a random-sample audit, cannot be disregarded as providing a basis of support for CCAM's Contention 4.**

CCAM notes significant error in the NRC Staff's Answer, page 15, as follows:

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. [Emphasis added.]

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." As an "operating engineer" for Northeast Utilities during the construction phase of Millstone Unit 3, CCAM's Nuclear Safety Expert Witness Arnold Gundersen attested that he sat in on meetings during which the significant operating issues regarding Millstone Unit 3's sub-atmospheric Containment were discussed. At no time was construction "apparently supervised by Petitioners' expert" as NRC alleges. Moreover, once again, NRC Staff misinterprets critical information brought forth by Expert Witness Gundersen. ***NRC's unwillingness to adequately review Mr. Gundersen's Nuclear Safety Engineering Analysis and Assessment is a matter of record. Please note that in May 1993, Former NRC Commissioner and Chairman Ivan Selin publicly commended Mr. Gundersen to the U.S. Senate noting:***

"It is true...everything Mr. Gundersen said was absolutely right; he performed quite a service."

These comments by former NRC Chairman Ivan Selin were made to the U.S. Senate regarding the NRC staff cover-up of safety issues. Mr. Gundersen's allegations of a cozy relationship between the nuclear industry and its NRC regulators was clearly substantiated by NRC Inspector David Williams in 1993. Mr. Gundersen's technical resume has once again been attached herewith in order to refresh NRC staff memory regarding Mr. Gundersen's credentials.

Finally, regarding Mr. Gundersen's testimony as an expert witness, Mr. Gundersen has a superlative record of uncovering flaws in uprate applications. For example, in Mr. Gundersen's Expert Witness Engineering Analysis regarding a power uprate at Entergy Nuclear Vermont Yankee (ENVY), Mr. Gundersen testified to Vermont Public Service Board regarding:

- **Weaknesses he noted in ENVY's inspection program (Aging Management) were not addressed and thereby resulted in a transformer fire**
- **Weaknesses in the steam dryer, which were not addressed and resulted in steam dryer cracks following uprate, as Mr. Gundersen demonstrated would occur by his calculations.**
- **Weaknesses in the condenser resulted in tube failures, which Mr. Gundersen demonstrated in his analysis of ENVY's calculations.**
- **Weaknesses in the cooling towers resulted in a structural collapse, which was why Mr. Gundersen had requested a new seismic analysis. He maintained that the current Cooling Towers could not withstand the additional torque of the cooling tower fans associated with uprate.**
- **Finally, Mr. Gundersen identified problems with ENVY's Decommissioning Fund, and its significant under-funding has resulted in a special Vermont State Legislative Review in conjunction with the Vermont State Auditor.**

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.

CCAM contends that Dominion's application has not adequately addressed the increased corrosion which will be encountered at Millstone Unit 3. When power is increased, the flow of steam and water throughout the facility is increased. As a result of the additional flow, there will be a significant non-linear increase in corrosion within piping due to a higher velocity water or steam. The industry calls this recognized issue Flow Accelerated Corrosion, and the fact that it will be an issue after the proposed power increase is not in dispute among the parties.

Historical recurring failures of mechanical components such as pipes and valves at Millstone Unit 3 and poor engineering in the late 1990s are not addressed in Dominion's application. See Exhibits A and B as illustrations of emergency situations at Millstone Unit 3 created by mechanical failure and/or poor engineering involving water and steam movement.

Dominion has offered "Attachment A-iTi invoice for MPS3 FAC Inspection Services.pdf" as an attachment to its April 11, 2008 Response. With the attached of the aforementioned Invoice, Dominion states that its application has adequately addressed this FAC contention acknowledging that the Invoice (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) from an inspection agency that conducted an inspection of Millstone Unit 3 in 2007 is proof of its attention to the serious problem of Flow Accelerated Corrosion. In response, CCAM disagrees with Dominion's assertion.

Moreover, in juxtaposition, CCAM believes that "Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf" actually supports petitioner's position that Flow Accelerated Corrosion has not been adequately addressed in Dominion's license amendment application for a proposed power increase at Millstone Unit 3.

Likewise, in offering this Invoice: (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) as evidence against CCAM's Contention #5 regarding Flow Accelerated Corrosion, Dominion alleges that this invoice supports its claim that Flow Accelerated Corrosion will be adequately addressed by hiring outside contractors.

Rather, CCAM contends that Invoice: (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) actually suppports CCAM's Contention 5. While it is true that Flow Accelerated Corrosion inspections will be performed, the Invoice: (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) shows that such inspections will be performed on a "Fixed Price" basis.

Thus, Invoice: (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) clearly indicates that the number of inspections will not increase following Dominion's proposed power increase as Dominion claims. Instead, the petitioner finds it of utmost concern that rather than increased inspections under the condition of accelerated flow, such inspections will be limited to the "Fixed Price" levels of the 2007 inspection.

Furthermore, since the Invoice: (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) clearly indicates that all of Flow Accelerated Corrosion testing at Millstone Unit 3 is "Fixed Price," which means that the number of inspectors and inspections following the proposed power increase will be limited to the 2007 Fixed Price inspection level.

Therefore, CCAM reiterates 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.

In conclusion, CCAM also submits Invoice: (Attachment A- iTi Invoice for MPS3 FAC Inspection Services.pdf) as a support document for its claim.

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.

Dominion's Response to Contention 6 asserts that the contention raises no genuine, material dispute with the application. Dominion further asserts:

Further, the absence of guidance specific to an SPU is irrelevant, because RS-001 ["Review Standard for Extended Power Uprates"] was in fact used in preparing the LAR. As the LAR states: . . ."[Dominion] developed this LAR utilizing the guidelines in NRC Review Standard, RS-001, "Review Standard for Extended Power Uprates." Accordingly, this contention raises no genuine, material dispute with the application.

However, in Attachment 1 to the application, Dominion is more candid. At page 13, Dominion states:
While it is concluded that the proposed power level change is classified as a Stretch Power Uprate, the guidelines for an Extended Power Uprate have also been used in the LR with a small number of exceptions. [Emphasis added.]

The "small number of exceptions" wherein the Millstone Unit 3 power uprate application does not conform to the NRC's guidelines for Extended Power Uprate are not identified; nor indeed are specific instances wherein the application assertedly conforms to the NRC's guidelines for Extended Power Uprate identified.

Given the already reduced safety margins, **the problematical operational and managerial history of the Millstone Nuclear Power Station** and Millstone Unit 3's unique containment, it is important for the ASLB Panel to understand exactly which NRC guidelines for Extended Power Uprate the application for license amendment does not conform to, as acknowledged by Dominion - and the reasons why. A full hearing pursuant to Subpart G procedures is necessary to develop these material disputed critical facts fully.

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.

In Contention 7, CCAM gave examples of Dominion's acknowledgment to the NRC that its application is incomplete and necessary application materials were still being developed or further postponed well after the July 13, 2007 initial submission.

On March 28, 2008 - eleven days after CCAM filed its Petition to Intervene and Request for Hearing - the NRC Staff notified Dominion of even more deficiencies in its application for Millstone Unit 3 power uprate.

The NRC's letter ("Potential Schedule Change for Proposed Stretch Power Uprate License Amendment Request") states in pertinent part as follows:

The NRC staff schedule, as provided in the acceptance review letter dated October 15, 2007, was predicated on the assumption that all information and analyses would be submitted by the end of January 2008. The final Request for Additional Information (RAI) letter was sent to [Dominion] on December 20, 2007, and [Dominion] agreed to respond within 30 days. The following information and analyses were not received by January 31, 2008:

1. The updated control room fire analysis;

2. Summary of the final results of elastic-plastic analysis;

3. The evaluations of the continued acceptability of the environmental qualification equipment with increased accident temperature in the Main Steam Valve Building and the increased radiation total integrated dose in selected Engineered Safety Features and Auxiliary Building zones.

When your stretch power uprate application was received, the NRC staff scheduled its review activities. Implicit in this scheduling was an expectation that adequate time would be available to allow NRC staff to complete a thorough review of the application and any supplemental information requested by the NRC staff.

The NRC staff endeavors to complete power uprates in a timely manner to support NRC's goals of efficiency and reliability. Based on the above, the current schedule for the completion of the proposed stretch power uprate amendment may be in jeopardy.

On March 27, 2008 via teleconference, Mr. Bill Bartron of your staff stated that the summary of the final results of the elastic-plastic analysis would be sent to the NRC on April 7, 2008.

Please note that if you do not respond to the outstanding summary of the final results of the pastic-elastic analysis by April 7, 2008, we may be required to revise the project schedule or reject your application for amendment under the provisions of Title 10 of the Code of Federal Regulations, Section 2.108.

Apparently, there is a discrepancy between the NRC Staff's expectations regarding Dominion's submission of its "plastic-elastic analysis" results referred to above and Dominion's assertions in its Response that a summary of results to have been provided by February 28, 2008 was provided on February 25, 2008. See Exhibit C.

Dominion's failure to adhere to the expedited schedule it itself requested to enable it to implement the anticipated NRC approval of its Millstone Unit 3 power uprate application during the planned Fall 2008 refueling outage supports CCAM's Contention 7 and reinforces CCAM's request that the application be rejected.

Dominion's rush to gain approval - with certainty of the outcome, namely, NRC approval - has been a theme even before Dominion filed its application on July 13, 2007.

Indeed, as early as May 2, 2007- more than two months before Dominion submitted the Millstone Unit 3 power uprate application to the NRC - Thomas Farrell, President and Chief Executive Officer of Dominion Resources, Inc., the applicant's corporate parent, told investors during a "1st quarter" teleconference call:

Upgrades to our merchant plants are a low cost, high return expansion option. The plant upgrade [sic] at Millstone 3 . . . will allow us to supply additional power in very attractive merchants markets.

Farrell's confidence in the outcome was expressed again in his "2d quarter" teleconference call with investors on August 1, 2007:

Following up on announcements during our last earnings call . . . The Millstone Unit 3 upgrade [sic] will be 75 megawatts and is expected to be online by the end of 2008.

In the NRC's weekly information report for the week ending October 19, 2007, the NRC tacitly acknowledged it was acceding to Dominion's pressure to expedite review of the application stated as follows:

By application dated July 13, 2007, the licensee requested a 7% SPU for Millstone 3. By letter dated October 15, 2007, the NRC informed the licensee that the licensee provided the necessary information for the staff to begin a detailed technical review, ands that the application meets the criteria for an SPU.

The application requested NRC approval of the amendment by June 30, 2008. However, the NRC stated in its October 15, 2007 letter that the application may require more review time due to the licensee's proposed revisions to the licensing basis for the alternative source term dose consequence analysis, and as a result, the licensee agreed to a new requested completion date of August 15, 2008.

The NRC Staff erroneously asserts that Contention 7 "is an attack on the NRC regulatory process." In fact, the contention is an affirmation of the NRC regulatory process which requires an applicant for a license amendment to file a complete application and fully respond timely to NRC Staff queries. Dominion's failure to file a complete application, inability to meet filing deadlines and failure to provide adequate responses to NRC Staff queries is itself conduct disrespectful of the NRC and its Staff.

Contention 7 presents an issue material to the application because the application proposes to reduce already razor-thin margins of safety within a containment which was already "stretched" in 1990. **For example, Attachment 1 of the application states at Page 18:**

MPS3 has safety-grade pressure-operated relief valves and piping that supports [sic] water relief from the PORVs during an event. The current analysis for an inadvertent ECCS actuation at power documented in FSAR Sectiotgn 15.1.1 shows that operator action within ten minutes is required to assure at least one PORV is available to prevent water relief from the pressurizer safety valves for which they are not qualified. This operator action time frame will be reduced at the SPU conditions. [Emphasis added.]

CCAM seeks in its Petition to Intervene to persuade the NRC to reject Dominion's SPU application for Millstone Unit 3's proposed 7+ per cent power uprate without prejudice to submission of a complete application for Extended Power Uprate.

The NRC docketed an obviously incomplete SPU application. Dominion has repeatedly failed to provide information timely to the NRC pertinent to the significant safety issues raised by the application. Similarly, CCAM, as a petitioning party, has been deprived of the opportunity to review a complete application; NRC Staff and CCAM review is occurring "piece-meal," an approached decidedly out of favor with the NRC.

In a recent matter involving South Texas Project Nuclear Operating Co. (South Texas Project Units 3 and 4), the NRC on February 13, 2008 issued a notice withdrawing its hearing notice - having the effect of postponing indefinitely the deadline within which petitions to intervene must be filed - because of the NRC's belated recognition, after docketing, of the application's incompleteness.

Pursuant to the NRC's order in South Texas, as well as pursuant to its authority under the provisions

of 10 C.F.R. § 2.108, the ASLB Panel should reject Dominion's application as incomplete, thereby allowing Dominion to submit a complete application for Extended Power Uprate.

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. Since Millstone first went online in 1970, cancer incidences in the communities surrounding Millstone have become the highest in the state for many types of cancer; the Millstone host communities suffer high incidences of fetal distress, stillbirth, premature birth, genetic defects and childhood cancer. Cancer is widespread among current and former Millstone workers. Under these circumstances, Dominion's application is entirely inadequate to assure that the uprate will not endanger plant workers or the public to an unsafe and unacceptable degree. Dominion's application must be rejected.

Neither the NRC Staff nor Dominion disputes that, if Millstone Unit 3 achieves the requested 7+ per cent power uprate, there will be consequential increases in releases of radioactive emissions to the air at least 9 per cent higher than current levels; indeed, this fact is set out unabashedly and with clarity in the application.

The unquestioned dispute is whether and to what extent the additional radiation releases are "significant"; hence, Contention 8 presents a classic contention which requires resolution at an adjudicatory hearing before a trier of fact, the ASLB Panel.

Dominion's Attachment 1 states as follows in pertinent part at Page 52:

7.0 Environmental Evaluation

. . . The proposed license amendment request does not involve a significant adverse change in the types or amount of any effluent that may be released offsite nor does it involve a significant increase in individual or cumulative occupational radiation exposure. [Emphasis added.]

Webster's New International Dictionary (2d Ed.) defines "significant" as "deserving to be considered; important."

The antonym of "significant" is "insignificant," defined by Webster's New International Dictionary (2d Ed.) as "empty, meaningless."

Given Dominion's projections of estimates of increases in radiological effluent releases to the air, it is clear that the application proposes a significant new threat to human health, both among the public living and working offsite as well as to plant workers themselves.

As eminent Dr. Ernest J. Sternglass opined in his Declaration supporting CCAM's Petition to Intervene:

8. If Millstone Unit 3 nuclear reactor is permitted to release radionuclides to the environment at levels 9 per cent greater than current levels, it is likely that there will be a closely corresponding increase in adverse effects on human health.

Such a heightened risk to be assumed by the Millstone Nuclear Power Station host community is indeed "deserving to be considered" and "important"; hence, it is significant.

To accept Dominion's argument that the increases in radiological emissions to the air is "insignificant," i.e., "meaningless" or "empty," is to disregard the conclusion of the 2005 National Academy of Sciences report, "Health Risks from Exposure to Low Levels of Ionizing Radiation" (BEIR VII - Phase 2) in which it is stated that there is no safe level or threshold of ionizing radiation exposure and that the smallest dose of low-level ionizing radiation has the potential to cause an increase in health risks to humans.

Moreover, Dominion dismisses the facts asserted in the Declaration of Cynthia M. Besade as "anecdotal accounts . . . [with] no probative value and [which] are flatly contradicted by studies, such as that conducted by the National Cancer Institute in 1991, which have found that there is no general increased risk of death from cancer for people living in 107 counties containing or closely adjacent to 62 nuclear facilities."

Whether Ms. Besade's statements on personal knowledge of high cancer incidences in the Millstone vicinity - most disturbingly, among children - lack or possess probative value is within the exclusive realm of the fact-finder: the ASLB Panel. Dominion's protestations simply demonstrate that these very material facts are indeed in contention.

With regard to the 1991 National Cancer Institute study, it is out of date. In the intervening seventeen (17) years, there has been no epidemiological study of cancer incidences in the Millstone community which has not found markedly heightened incidences.

In remarking that a "similar" contention was rejected by an ASLB Panel in the Millstone relicensing proceedings, Dominion fails to note that NRC's peculiar requirements in relicensing of nuclear power plants deems the health effects of human exposure to plant releases of radiation to be a "generic issue" which may not be considered on a site-specific basis, in accordance with the Generic Environmental Impact Statement ("GEIS") for relicensing of nuclear power plants. No such prohibition applies to these proceedings.

Dominion's irrational aversion to consideration of the health effects of its poisoning of the community through Millstone's routine releases of radiological poisons to the air leads it to make extreme and unsupported statements, such as that

[T]he unsupported allegations in Ms. Besade's declaration[s] all pertain to past operations, not to the effects of the uprate. Consequently, these allegations are beyond the scope of the proceeding.

In fact, Ms. Besade objects to the Millstone Unit 3 uprate proposal precisely because it will, if granted, result in an estimated 9 per cent increase in Millstone Unit 3's radioactive effluent releases to the air she breathes, in addition to subjecting her to unacceptably heightened risks of accident and accident consequences.

Finally, Dominion notes that the NRC disagreed with the evidence presented by Ms. Besade and others during the Millstone relicensing proceedings on the health effects of public and worker exposure to Millstone's ionizing radiation. In fact, the NRC disallowed a hearing on the health contention; the decision was not appealed to the courts.

In the intervening time, the National Academy of Sciences has released its BEIR VII report and cancer incidences, early childhood mortality and other adverse consequences which may be statistically and medically linked to exposure to Millstone radiological effluents have escalated.

It is therefore necessary for the ASLB Panel to convene a hearing on Contention 8 to determine the facts which are in dispute.

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.

It is undisputed that if Millstone Unit 3 achieves the requested 7+ per cent power uprate, there will be consequential increases in releases of radioactive emissions to the air at least 9 per cent higher than current levels; indeed, this fact is set out unabashedly and with clarity in the application.

As argued in Contention 8, such increased releases are "significant."

Similarly, it is undisputed that if Millstone Unit 3 achieves the requested 7+ per cent power generation uprate, cooling water from the plant will enter the Long Island Sound at measurably higher temperatures.

In Contention 9, it is argued that both environmental effects will be "significant," that is, "deserving to be considered" and "important."

Dominion asserts that such effects lack significance. Whether such environmental effects are of significance or are not of significance is a material issue which is in dispute and can only be resolved through an adjudicatory hearing.

Dominion's Response contains statements which are incorrect or simply dubious.

For example, Dominion asserts that the hotter thermal plume discharged from Millstone Unit 3 resulting from implementation of the SPU "will still be within the limits allowed by the plant's National Pollutant Discharge Elimination System (NPDES) permit."

Dominion has no factual basis to make such an assertion which, even if true, in no way discounts the actual deleterious environmental effect to the marine fisheries and their habitat.

Millstone's NPDES permit was last issued in 1992 for a maximum five-year term under the

Clean Water Act; the permit expired in 1997, eleven (11) years ago. There is no valid permit in effect presently; moreover, the Connecticut Department of Environmental Protection has repeatedly violated the Clean Water Act by granting "emergency authorizations" of infinite duration in the absence of notice to the public and an opportunity for hearing. These emergency authorizations have been issued at the request of Dominion and its predecessor owner to allow it to increase levels of water usage and releases of toxic chemicals to the Long Island Sound.

Because Dominion lacks a valid NPDES permit, Dominion is incorrect to assert that CCAM does "not dispute that the temperature of the releases from the plant will be within allowable limits of the NPDES permit." To the contrary, CCAM's position is that the temperature of the releases will exceed allowable limits of a valid NPDES permit.

Dominion devotes discussion to the matter of the Connecticut DEP vis-a-vis the expired NPDES permit. Suffice it to say that insofar as proceedings on the expired permit are ongoing before DEP and therefore Dominion's comments are inoperative; the issues have yet to be determined with finality.

With regard to environmental effects of increased radiological releases attributable to a Millstone Unit 3 power uprate, Dominion feigns ignorance as to how Millstone's increased radioactive releases to the air will "contaminat[e] fruits and vegetables raised locally for human consumption." Dominion's feint is belied by its annual filings with the NRC of its environmental monitoring program, which includes sampling and reporting on its sampling of locally grown vegetation for evidence of radioactive contamination.

With regard to high levels of strontium-90 found in goat milk samples in 2001 within five miles of Millstone - as reported by Dominion to the NRC and the Connecticut DEP - Dominion is incorrect in its statement that the high strontium-90 levels have been determined not to be related to Millstone releases.

CCAM submits a copy of a critique of the Connecticut DEP "Reassessment" report, referenced in Dominion's Response, which was undertaken by nuclear safety engineer and former Northeast Utilities employee at Millstone Paul N. Blanch. The Blanch critique is a scathing indictment of the "DEP Reassessment." For example, Blanch's critique asserts in Item 6 at page 9: "This type of bogus data questions the validity and accuracy of the data in the report."

It is clear that CCAM and Dominion are engaged in a dispute over material facts regarding Contention 9, which dispute can only be resolved through a formal adjudicatory hearing process.

Conclusion

CCAM has submitted nine admissible contentions. Each should be the subject of a Subpart G adjudicatory hearing

Respectfully Submitted,

CONNECTICUT COALITION AGAINST
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of	: Docket No. 50-423
Dominion Nuclear Connecticut, Inc.	:
Millstone Nuclear Power Station Unit 3	:
(License Amendment Request	:
Stretch Power Uprate)	: May 12, 2008

CERTIFICATE OF SERVICE

I certify that copies of the "CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON'S ANSWER TO DOMINION NUCLEAR CONNECTICUT, INC.'S MOTION TO STRIKE" and accompanying Exhibit A were transmitted on May 12, 2008 by email and by U.S. Mail, First Class, postage pre-paid to the individuals and offices as indicated below:

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