

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of	)	
	)	Docket No. 50-426-OLA
Dominion Nuclear Connecticut, Inc.	)	
(Millstone Power Station, Unit 3)	)	ASLBP No. 08-862-01-OLA
	)	

**DOMINION NUCLEAR CONNECTICUT'S BRIEF IN OPPOSITION TO  
APPEAL OF CONNECTICUT COALITION AGAINST MILLSTONE  
AND NANCY BURTON**

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**DOMINION NUCLEAR CONNECTICUT’S BRIEF IN OPPOSITION TO  
APPEAL OF CONNECTICUT COALITION AGAINST MILLSTONE  
AND NANCY BURTON**

Pursuant to 10 C.F.R. §§ 2.311(b) and 2.341(c)(2), Dominion Nuclear Connecticut, Inc. (“Dominion”) submits this Brief in opposition to the appeal filed by the Connecticut Coalition Against Millstone and Nancy Burton (“Petitioners”) in the Millstone Nuclear Power Station, Unit 3 (“Millstone Unit 3” or “MPS3”) power uprate proceeding.<sup>1</sup> Petitioners seek review of the Atomic Safety and Licensing Board (“Board”)’s June 4, 2008 Memorandum and Order<sup>2</sup> denying Petitioners’ petition to intervene and hearing request.<sup>3</sup> The Board properly denied the Petition because none of the contentions proffered by Petitioners was admissible under the standards in 10 C.F.R. § 2.309(f)(1). Indeed, Petitioners’ contentions uniformly failed to challenge the analyses in Dominion’s uprate application. Since no admissible contention was raised, the Petition was properly dismissed. 10 C.F.R. § 2.309(a).

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<sup>1</sup> Notice of Appeal (June 16, 2008) (“Pet. Br.”).

<sup>2</sup> Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), Memorandum and Order (Ruling on Petition to Intervene and Request for Hearing), LBP-08-09, 67 N.R.C. \_\_ (June 4, 2008) (“LBP-08-09”).

<sup>3</sup> Connecticut Coalition Against Millstone and Nancy Burton Petition to Intervene and Request for Hearing (Mar. 17, 2008) (“Petition”).

The Commission should affirm the Board's decision because (1) Petitioners have failed to identify any error of fact or law in that decision, and have not charged the Board with any procedural errors that might warrant Commission review; (2) none of Petitioners' contentions challenges Dominion's uprate application or is admissible; and (3) the Board's decision was clearly correct. For the most part Petitioners simply repeat previous claims without any meaningful discussion of the Board's rulings, or advance claims not made in the original petition.

### **STATEMENT OF THE CASE**

On July 13, 2007, Dominion submitted its application requesting approval of amendments to Operating License No. NPF-49 for Millstone Unit 3 to increase the maximum authorized power level from 3411 megawatts thermal ("MWt") to 3650 MWt,<sup>4</sup> approximately a 7% increase.

On January 15, 2008, the Commission published a Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations ("Notice"), 73 Fed. Reg. 2,546 (Jan. 15, 2008). The Notice authorized any person whose interest may be affected by the proposed amendment to the Millstone Unit 3 license to file a request for a hearing and petition for leave to intervene within 60 days of the Notice. *Id.* at 2,547, 2,549-50. It directed that any petition must set forth with particularity the specific contentions sought to be litigated, and stated:

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or

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<sup>4</sup> The License Amendment Request ("LAR") is available in the NRC ADAMS system at Accession No. ML072000386. The LAR was supplemented on July 13, September 12, November 19, December 13, and December 17, 2007.

expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Id. at 2,547, 2,556.

On March 17, 2008, Petitioners submitted their Petition, proposing nine contentions. Both Dominion and the NRC Staff submitted answers on April 11, 2008. Dominion Nuclear Connecticut's Response to Connecticut Coalition Against Millstone and Nancy Burton's Petition to Intervene and Request for Hearing (Apr. 11, 2008) ("Dominion Answer"); NRC Staff Answer to Request to Intervene and for Hearing of the Connecticut Coalition Against Millstone and Nancy Burton (Apr. 11, 2008) ("NRC Staff Answer"). Both Dominion and the NRC Staff opposed the admission of Petitioners' contentions on the grounds that they demonstrated no genuine material dispute with the LAR and otherwise failed to meet the standards in 10 C.F.R. § 2.309(f)(1).

Petitioners filed their Reply to the Dominion and NRC Staff Answers on 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 (Apr. 22, 2008) ("Petitioners' Reply"). Petitioners' Reply attempted to raise a number of entirely new issues, claims and arguments not found in the Petition. Thus, on May 1, 2008, Dominion filed a Motion to Strike those portions of Petitioners' Reply that raised new issues, claims, and

arguments. Dominion Nuclear Connecticut's Motion to Strike Portions of Connecticut Coalition Against Millstone and Nancy Burton's Reply to Responses to Petition to Intervene (May 1, 2008). Petitioners filed a reply to Dominion's Motion to Strike on May 12, 2008. The Board did not rule on Dominion's Motion to Strike holding that, in light of its denial of the Petition, the matter was moot. LBP-08-09, slip op. at 34 n.154.

On June 4, 2008, the Board issued its Memorandum and Order denying the Petition and terminating the proceeding on the grounds that Petitioners had not submitted any admissible contentions. LBP-08-09, slip op. at 1. Petitioners filed their Notice of Appeal on June 16, 2008.<sup>5</sup>

## ARGUMENT

### I. PETITIONERS FAIL TO IDENTIFY ERRORS IN THE BOARD'S DECISION

The Commission should affirm the Board's decision because Petitioners have failed to identify any error of law or fact, procedural error, or abuse of discretion by the Board. Instead, Petitioners primarily repeat arguments from prior pleadings and launch impermissible challenges to the NRC regulations and regulatory process.

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<sup>5</sup> Petitioners Notice of Appeal was not served via the e-filing system required by 10 C.F.R. § 2.305. This non-compliance is recurring. In the proceedings below, Petitioners were twice granted exemptions from the Commission's e-filing requirements. In each instance, the exemption was limited to specific pleadings. See Memorandum from A. Bates to E. Hawkins, "Request for Hearing Submitted By the Connecticut Coalition Against Millstone and Nancy Burton" (Mar. 24, 2008) ("the Office of the Secretary was assured by Ms. Burton on behalf of CCAM and herself that the exception to the e-filing rules would only be for this one time"); Order (Granting CCAM and Nancy Burton Request for E-Filing Exemption) (Apr. 16, 2008) at 2 ("this extension is limited to the filing of Petitioners' replies . . . . The Board expects that all future filings in this proceeding will be filed and served via the e-filing system as required by NRC regulations.") (internal citation omitted).

In addition to ignoring the NRC's service rules, Petitioners' Notice of Appeal does not comply with the NRC's briefing requirements. See 10 C.F.R. § 2.341(c)(2) (requiring that briefs in excess of ten pages include a table of contents and table of cases, cited statutes, regulations, and other authorities). Unfortunately, this is not the first time that Petitioners have flouted NRC rules. See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 643 (2004) ("We join the Licensing Board in expressing displeasure at the [Petitioners'] consistent disregard for our procedural rules.").

Licensing board rulings are affirmed where the “brief on appeal points to no error of law or abuse of discretion that might serve as grounds for reversal of the Board’s decision.” Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-21, 52 N.R.C. 261, 265 (2000) (citation omitted); Millstone, CLI-04-36, 60 N.R.C. at 637. A “failure to illuminate the bases” for an exception to the Board’s decision is “sufficient grounds to reject it as a basis for appeal.” Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 N.R.C. 285, 297 (1994), aff’d, Advanced Med. Sys., Inc. v. NRC, 61 F.3d 903 (6th Cir. 1995) (Table). In that decision, the Commission stated:

The appellant bears the responsibility of clearly identifying the errors in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for the appellant’s claims.

39 N.R.C. at 297, citing General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 N.R.C. 1, 9 (1990) and Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 N.R.C. 277, 278 (1982). “A mere recitation of an appellant’s prior positions in a proceeding or a statement of his or her general disagreement with a decision’s result ‘is no substitute for a brief that identifies and explains the errors of the Licensing Board in the order below.’” Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 N.R.C. 192, 198 (1993) (footnote omitted).

## **II. PETITIONERS FAIL TO CHALLENGE THE LICENSE AMENDMENT REQUEST**

The Commission should affirm the Board’s decision because none of Petitioners’ contentions challenged the LAR. In fact, in rejecting every contention, the Board made the determination that each failed to challenge the applicable portions of the LAR. See LBP-08-09,

slip op. at 17-18 (Contention 1); 19 (Contention 2); 21 (Contention 3); 24 (Contention 4); 25-26 (Contention 5); 28 (Contention 6); 29 (Contention 7); 30 (Contention 8); and 32 (Contention 9).

In order for a contention to be admissible, it must include “[s]ufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” which showing 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)(vi). As the Board explained: “Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed.” LBP-08-09, slip op. at 14 (citing Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 247-48 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994)).

Because each of Petitioners’ contentions failed to identify the specific portions of the LAR that the Petitioners challenged and to demonstrate the existence a genuine dispute on a material fact, the Board appropriately rejected each contention and denied the Petition. As the Commission has held, “[i]f any of the requirements in [10 C.F.R. § 2.309(f)(1)] is not met, a contention must be rejected.” Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted). Since each of Petitioners’ contentions essentially ignored the LAR, the Board’s rejection of those contentions must be affirmed.

### **III. THE BOARD'S REJECTION OF EACH OF PETITIONERS' CONTENTIONS WAS CORRECT**

#### **A. CONTENTION 1 WAS UNSUPPORTED, IMMATERIAL, AND OUTSIDE THE SCOPE OF THE PROCEEDING**

Contention 1 alleged that the uprate for which Dominion has applied is in reality an Extended Power Urate (“EPU”), not a Stretch Power Urate (“SPU”), and must be reviewed by the NRC Staff as such. The Board ruled, however, that “[t]here is no different legal standard for an applicant wishing to upgrade its operating power by more than seven percent than for one requesting an increase of less than seven percent; i.e., there is no distinction between the legal requirements for a SPU and an EPU.” LBP-08-09, slip op. at 17. Further, the Board found that, in Contention 1, “no challenge to the Millstone Unit 3 power uprate LAR was presented,” and even if it had challenged the LAR, Petitioners “presented no indication that the fact that the requested power level increase [is more than seven percent] is in any way material to the findings the NRC must make.” Id. at 18, citing 10 C.F.R. § 2.309(f)(1)(iv).

On appeal, Petitioners identify no error in the Board’s ruling. They merely assert that the Board “disavows” information on the NRC website and in Review Standard RS-001. Pet. Br. at 7. In reality, the Board stated that the legal standards that apply to power uprates are those found in 10 C.F.R. §§ 50.90 to 50.92. LBP-08-09, slip op. at 16. Information on the NRC website and the guidelines in RS-001 “are only guidance prepared by the Staff to indicate to an applicant the matters it should address.” Id.

Moreover, RS-001 was in fact used in preparing the LAR. As the LAR states, “. . . DNC developed this LAR utilizing the guidelines in NRC review Standard, RS-001, ‘Review Standard for Extended Power Urates.’”<sup>6</sup> Thus, Petitioners never made a showing that classifying the

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<sup>6</sup> LAR, transmittal letter at 1.

uprate as an SPU is in any way material to whether the LAR should be approved. Petitioners now argue that the LAR followed RS-001 “with a small number of exceptions” (Pet. Br. at 4) – a claim that was not advanced in the original Contention but was asserted only in Petitioners’ Reply. However, as the Board observed, Petitioners have never identified any particular section of the LAR that fails to comply with the RS-001 guidance. LBP-08-09, slip op. at 17-18. Under the NRC rules, a contention is required to provide “references to the specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes . . . .” 10 C.F.R. § 2.309(f)(1)(vi). Petitioners made no attempt to compare the LAR against the criteria in RS-001, and no attempt to identify any material dispute with a specific section or any specific material omission from the LAR. In short, Contention 1 never demonstrated – indeed, never even suggested – that there was any material error or omission in the LAR.

**B. CONTENTION 2 WAS UNSUPPORTED, ERRONEOUS, IMMATERIAL, AND OUTSIDE THE SCOPE OF THE PROCEEDING**

Petitioners claimed in Contention 2 that “Dominion’s application entirely fails to consider the significant reduction in structural operating margins already in place at Millstone 3 prior to the present application for power uprate.” Petition at 12. The Board found that no such failure existed “because the effects of the requested power uprate upon containment pressure, and therefore upon the structural operating margins, are discussed in Attachment 5 to the LAR.”<sup>7</sup>

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<sup>7</sup> Section 2.6 of the safety analysis, LAR Attachment 5, § 2.6, describes the analyses performed by Dominion which demonstrate that the SPU does not adversely impact containment performance. After describing and evaluating various accident scenarios, the LAR concludes:

DNC [Dominion Nuclear Connecticut] has reviewed the containment pressure and temperature transient and concludes that it adequately accounts for the increase of mass and energy that would result from the proposed SPU. Table 2.6.1.3 compares the current containment analysis results based upon the S&W LOCTIC methodology to those calculated with the Dominion methodology at SPU conditions. DNC further concludes that containment systems will continue to provide sufficient pressure and temperature mitigation capability to ensure that containment integrity is

LBP-08-09, slip op. at 19. The Board further held that “Contention 2 fails to challenge any specific portion of the LAR or to raise a genuine issue regarding any material fact . . . .” Id. Finally, the Board dismissed Petitioners’ assertions regarding previous changes to the containment structure by stating that “[t]hese are all challenges to the current operating license and are outside the scope of matters challengeable in a power uprate application . . . .” Id. at 20-21.

On appeal, Petitioners assert that there is a dispute on a material issue of fact because Petitioners “disagree with [Dominion’s containment analysis in the LAR] and find [the analysis] inadequate to provide an appropriate assurances [sic] that implementation of the proposed power uprate will not significantly reduce already-reduced safety margins.” Pet. Br. at 10. As the Board pointed out, Petitioners did not challenge any specific analyses or results in the LAR. LBP-08-09, slip op. at 19. Petitioners’ Contention did not mention the containment analysis in the LAR, and indeed gave no indication that the Petitioners had even read the analysis. At no point in this proceeding have Petitioners ever explained why the containment analysis is wrong or inadequate. Petitioners’ bald assertion on appeal that they “disagree” with the LAR – a matter never raised in the original contention – provides no grounds to reverse the Board’s decision.

**C. CONTENTION 3 WAS UNSUPPORTED AND OUTSIDE THE SCOPE OF THE PROCEEDING**

Contention 3 argued that Millstone Unit 3 is an “outlier” or “anomaly” in that, while Dominion’s proposed uprate is the largest percent power uprate for a Westinghouse reactor,

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maintained. DNC also concludes that the containment systems and instrumentation will continue to be adequate for monitoring containment parameters and release of radioactivity during normal and accident conditions and will continue to meet the requirements of GDCs -13, -16, -38, -50, and -64 following implementation of the proposed SPU. Therefore, DNC finds the proposed SPU acceptable with respect to containment functional design.

LAR Attachment 5, Section 2.6.1.3 at 2.6-15 to 2.6-16. The LAR further shows that the bounding containment accident pressures and temperatures for SPU operating conditions are within design limits, with margin. Id. at 2.6-30.

Millstone Unit 3 also has the smallest containment for any Westinghouse reactor of roughly comparable output. The Licensing Board found that “Contention 3 makes only general allegations concerning the Millstone Unit 3 containment, but never addresses specific sections of the LAR or challenges any analysis or conclusions set out in the LAR.” LBP-08-09, slip op. at 21. This ruling is manifestly correct. Petitioners never mentioned or identified any error in the sections of the LAR demonstrating that the Millstone Unit 3 containment has a design limit well in excess of the calculated peak containment pressure. See Dominion Answer at 18-19.

On appeal, Petitioners allege – without elaboration – that the Board “misconstrues” this contention. Pet. Br. at 11-12. In fact, Petitioners do nothing more than quote from their Petition. Id. The mere recitation of Petitioners’ previous arguments identifies no errors in the Board’s decision.

**D. CONTENTION 4 WAS UNSUPPORTED AND OUTSIDE THE SCOPE OF THE PROCEEDING**

The Licensing Board properly rejected Contention 4, which alleged that initial operation of the containment at high temperature, low pressure, low specific humidity conditions places stress calculations “in uncharted analytical areas” (Petition at 23), because the Contention did not challenge any of the containment analyses in the LAR, and also provided no support for the assertions. LBP-08-09, slip op. at 24. As the Board observed,

the LAR contains an analysis of the peak pressure and temperature loads imparted on the Millstone Unit 3 containment during design basis accidents and finds those loads are within design limits. Petitioners do not present any indication that these studies are flawed, provide no factual materials to support their assertions, and fail to provide any analyses, references or sources indicating that these alleged conditions could have an adverse effect on the structural integrity of the containment concrete.

Id. (footnote omitted).

On appeal, Petitioners do not contest this aspect of the Board’s ruling, but claim solely that the Board erred in stating that certain “matters that occurred in the 1970s [when Millstone Unit 3 was under construction] . . . are now part of the Millstone Unit 3 current licensing basis (CLB).” Pet. Br. at 12. This statement relates to certain statements made by Petitioners’ witness Gundersen relating to alleged difficulties during construction of the Millstone Unit 3 containment. With respect to these allegations, the Board held:

Petitioners make no connection of these potential issues to the requested power uprate LAR. Their argument provides no factual challenges to any specific portion of the LAR nor raises any genuine dispute with the Applicant over any fact material to the findings the NRC must make.

LBP-08-09, slip op. at 23. While Petitioners’ attempt to litigate the adequacy of the original plant construction was clearly far beyond the scope of the proceeding, the Board’s rejection of this Contention did not depend on its characterization of these matters as part of the CLB. Petitioners’ Contention 4 was rejected because it made no attempt to address or identify any specific deficiencies in the LAR. Petitioners identify no error with the ruling.

Moreover, as discussed in Dominion’s Answer, Mr. Gundersen did not claim that these asserted “challenges” actually resulted in uncorrected construction deficiencies. See Dominion’s Answer at 23. Indeed, he acknowledged that the procedure used to pour concrete “was qualified and construction workers were trained . . . .” *Id.* at 23-24, quoting Gundersen Decl. ¶ 48F.<sup>8</sup> In the same vein, Mr. Gundersen did not cite any inspection report, condition report, or other document indicating any construction or quality assurance deficiency. Nor did Mr. Gundersen identify any deficiency with the containment structure integrity test, which pressure tested the

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<sup>8</sup> Declaration of Arnold Gundersen Supporting [CCAM] in Its Petition for Leave to Intervene, Request for Hearing, and Contentions (Mar. 15, 2008) (“Gundersen Decl.”).

containment at 51.8 psig (1.15 x design pressure)<sup>9</sup> to provide assurance that the containment, as built, has adequate margin. *Id.* Thus, these claims were nothing more than speculative and unsupported concerns. Therefore, the rejection of Contention 4 should also be upheld on the additional grounds, advanced before the Board, that such vague concerns failed to demonstrate the existence of any genuine dispute on a material issue.

**E. CONTENTION 5 WAS UNSUPPORTED, ERRONEOUS, AND OUTSIDE THE SCOPE OF THE PROCEEDING**

In Contention 5, Petitioners made allegations relating to the flow-accelerated corrosion (“FAC”) phenomenon, including the assertion that it was not addressed in the LAR. The Licensing Board found that Petitioners’ charge that FAC was not addressed was erroneous: “FAC was indeed analyzed and addressed in [Dominion’s] submittal.” LBP-08-09, slip op. at 25 (citing LAR Attachment 5 § 2.1.8 at 2.1-76 to 2.1-100). The Board went on to hold that “Contention 5 makes no reference to the LAR, identifies no specific deficiencies in the FAC Program described in the LAR, and makes only vague and general statements about FAC and the impact of the SPU on FAC at Millstone Unit 3.” LBP-08-09, slip op. at 25-26. Regarding allegations in the Petition that the LAR does not adequately address NUREG-1800 (the NRC’s Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants), and that the plant lacked management systems and staff to evaluate FAC, the Board ruled that Petitioners had offered no explanation for why these matters should be treated as regulatory requirements for a power uprate LAR, and therefore had not raised a material dispute. *Id.* at 26.

On appeal, Petitioners argue that the LAR does not adequately address NUREG-1800. Pet. Br. at 13-14. The LAR, however, in fact addresses compliance with NUREG-1800 as determined in the prior license renewal proceeding. LAR Attachment 5, at 2.1-86. During the

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<sup>9</sup> FSAR Section 6.2.6.1, Containment Integrated Leakage Rate Test (Type A), at 6.2-82.

plant's license renewal proceeding, the NRC Staff determined that the Millstone Unit 3 FAC Program complies with the requirements of the GALL Report, which NUREG-1800 identifies as providing an acceptable standard. NUREG-1838, Safety Evaluation Report Related to the License Renewal of the Millstone Power Station, Units 1 and 2, Section 3.0.3.2.8. Contention 5 simply ignored this discussion in the LAR and never demonstrated the existence of any genuine material dispute with the application.<sup>10</sup>

Petitioners further speculate that Dominion will not adhere to the NUREG-1800 guidance because it intends to contract on a fixed price basis for the performance of FAC inspections. Pet. Br. at 14. This claim was not part of the original contention and cannot provide grounds to reverse the Board's decision. Further, Petitioners provide no explanation for their bald assertion that a fixed price contract implies that Dominion intends to depart from the NUREG-1800 guidance.<sup>11</sup>

Petitioners also state on appeal that "the [LAR] does not contain an assessment of possible damage which may have occurred when Dominion recently illegally operated at greater-than-authorized power." Pet. Br. at 13. Petitioners do not explain, however, why this statement is material to the Millstone Unit 3 FAC Program or why it suggests a need to modify the program. Neither Petitioners nor Mr. Gundersen's declaration ever provided any explanation or

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<sup>10</sup> Petitioners assert that the uprate was not considered in the Millstone license renewal proceeding. Pet. Br. at 14. This claim was made for the first time on appeal and therefore are improper. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-22, 60 N.R.C. 125, 140 (2004); Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-00-8, 51 N.R.C. 227, 243 (2000); Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 260 & n.19 (1996). In any event, the sections of the LAR addressing FAC – the sections that Contention 5 entirely ignored – discuss the adequacy of the FAC Program in light of the uprate.

<sup>11</sup> In their Reply, Petitioners allege that the award of a fixed price contract to conduct FAC inspections means "that the number of inspectors and inspections following the proposed power increase will be limited to the 2007 Fixed Price inspection level." Petitioners' Reply at 20. Such an allegation is nothing but unfounded speculation.

support indicating how the single power excursion to which they are presumably referring<sup>12</sup> would have any effect on the procedures and methodology used to inspect piping for FAC. Consequently, these vague references clearly failed to demonstrate any genuine, material dispute with the LAR.

**F. CONTENTION 6 WAS UNSUPPORTED AND OUTSIDE THE SCOPE OF THE PROCEEDING**

Contention 6 alleged that the LAR could not be reviewed by the NRC Staff because the NRC has not adopted specific standards or regulatory requirements for SPU applications. Pet. Br. at 14. The Board properly rejected Contention 6 because the issue Petitioners sought to raise was outside the scope of this proceeding and did not challenge the LAR. LBP-08-09, slip op. at 28.

The Board's ruling was clearly correct. It is well established that a licensing proceeding is not the proper forum for challenging the NRC Staff's regulatory review process. See, e.g., Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999). Because Contention 6 directly challenged the NRC Staff's lack of specific standards or regulatory requirements for SPU applications, the Board found that this contention "fails to raise an issue within the scope of the proceeding . . . ." LBP-08-09, slip op. at 28. Further, the Board held that Contention 6 "fails to identify any specific deficiencies or omissions in the LAR . . . ." Id.

On appeal, Petitioners provide only three sentences that repeat their challenge to the lack of specific standards for NRC Staff review of SPU applications. Pet. Br. at 15. This challenge is

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<sup>12</sup> Petitioners are presumably referring to a single power excursion during testing that lasted a few minutes and was appropriately responded to by the operators. See Dominion's Answer at 20 n.34, citing Millstone Power Station – NRC Integrated Inspection Report 05000336/2007005 and 05000423/2007005 (Feb. 7, 2008) (ADAMS Accession No. ML080380599) at 20.

legally insufficient and the contention should be rejected on that basis. See Advanced Medical Systems, CLI-94-6, 39 N.R.C. at 297. In addition, Petitioners identify no errors in the Board's ruling or deficiencies or omissions in the LAR.

**G. CONTENTION 7 WAS UNSUPPORTED AND OUTSIDE THE SCOPE OF THE PROCEEDING**

In Contention 7, Petitioners requested that the Board consider the LAR incomplete because the NRC Staff has issued a number of Requests for Additional Information (“RAIs”) to Dominion as part of its review process. Petition at 33-34. The Board held that this contention was inadmissible for three reasons. First, NRC case law holds that “[t]he manner in which the NRC Staff conducts its sufficiency review and whether its decision to accept an application for review was correct are not matters within the purview of an adjudicatory proceeding.” LBP-08-09, slip op. at 29 (citing Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 N.R.C. 232, 242 (1998); Curators of the University of Missouri, CLI-95-8, 41 N.R.C. 386, 395-96 (1995); New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 N.R.C. 271, 280-81 (1978)). Second, “[t]he fact that, at this stage, there are a number of RAIs outstanding does not give rise to an evidentiary hearing.” LBP-08-09, slip op. at 29 (footnote omitted). Third, “Contention 7 fails to identify any specific deficiencies or omissions in the LAR.” Id.

Petitioners brief on appeal devotes a single sentence to this Contention, merely asserting that the NRC Staff has continued to request additional information from Dominion. Pet. Br. at 15. This assertion does not challenge any aspect of the Board's ruling and is thus irrelevant.

## H. CONTENTION 8 WAS UNSUPPORTED AND OUTSIDE THE SCOPE OF THE PROCEEDING

The Board properly rejected Contention 8, which in essence alleged that the increases in radiological releases would endanger the public health and safety, because Petitioners had failed to identify any deficiencies or omissions in the LAR and were in effect impermissibly challenging the NRC regulations. LBP-08-09, slip op. at 30-31. As the Board explained, by alleging increased health risks from increased radionuclide releases, Contention 8 either challenges Millstone Unit 3's compliance with NRC safety standards or challenges the standards themselves. Id. at 30-31. The Board found that Petitioners had not identified any failure of Dominion to comply with the NRC requirements regarding radiological releases or exposures. Id. at 30. As the Board observed, "the LAR shows that radiological releases resulting from the uprate will remain within NRC regulatory dose limits." Id. at 31, citing Dominion Answer at 39-40.<sup>13</sup> The Board continued:

to the extent this contention calls for requirements in excess of those imposed by Commission regulations, it must be rejected as a collateral attack on the regulations. As noted recently by another licensing board: "[W]hen a contention alleges that increases in radioactive releases create higher doses, but does not provide information or expert opinion to dispute the conclusion that the higher doses would still be under NRC regulatory limits, and no evidence has been presented to show that the higher levels will cause harm, sufficient information to show that a material dispute exists has not been provided and the contention making these claims should not be admitted."

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<sup>13</sup> The LAR shows that, with the SPU, the whole body dose to the maximally exposed individual is 0.00261 mrem/year from liquid effluents and 0.0203 mrem/year from gaseous effluents. LAR Attachment 5, at 2.10-22 (Table 2-10.1-2). This represents 0.087% and 0.406%, respectively, of the levels that are considered in the NRC regulations to be "as low as reasonably achievable." See id. (comparing the calculated doses with 10 C.F.R. Part 50, App. I limits). The LAR also shows that the maximum dose from direct radiation is 0.1443 mrem/year, so "the current annual whole body dose from all pathways due to liquid releases, gaseous releases and direct shine is conservatively estimated at 0.17 mrem (i.e., 0.0026 + 0.0203 + 0.1433)." LAR Attachment 5, at 2.10-17. This calculated dose is far below the 100 mrem annual dose limit for members of the public permitted by 10 C.F.R. § 20.1301(a)(1), and is also a small fraction of the annual dose limit of 25 mrem to the whole body of any member of the public beyond the site boundary set forth in 40 C.F.R. § 190.10(a).

LBP-08-09, slip op. at 31 (internal citation omitted), citing Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), LBP-07-03, 65 N.R.C. 237, 266 (2007) (citing Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 N.R.C. 75, 83, 93-94, aff'd, CLI-03-14, 58 N.R.C. 207 (2003)).

On appeal, Petitioners assert that this ruling “raises a red herring” because “there are no limits set on releases of noble gases, nor is Dominion even required to monitor strontium-90 releases to the atmosphere from Millstone.” Pet. Br. at 21. These claims are improperly made for the first time on appeal and therefore provide no basis to overturn the Board’s decision.<sup>14</sup> Further, these new claims are no less of an attack on the sufficiency of the NRC’s radiation protection standards, which is impermissible under 10 C.F.R. § 2.335.

Since Contention 8 did not dispute the portions of the LAR which demonstrated that radiological releases will remain within NRC regulatory dose limits, the allegations by Dr. Ernest J. Sternglass and Ms. Cynthia Besade were simply irrelevant. In any event, those allegations in fact provided no basis demonstrating any genuine, material dispute with the LAR.

Rather than challenging any portion of the LAR, Dr. Sternglass merely quoted the LAR as stating that radiological exposure [from shine] will increase by about 9 percent, and that there will be similar increases in noble gases, particulates, iodine and tritium in the reactor coolant. See Petition at 40; Sternglass Decl. at ¶¶ 4, 5.<sup>15</sup> This presented no dispute with the Application. Dr. Sternglass also alleged that there is a linear relationship between exposure and health effects. Sternglass Decl. at ¶¶ 7-9. This too presented no genuine material dispute. The NRC’s Standards for Protection against Radiation in 10 C.F.R. Part 20 are based on the linear-no-

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<sup>14</sup> See supra, note 10.

<sup>15</sup> Declaration of Ernest J. Sternglass, Ph.D. in Support of [CCAM] and Nancy Burton Petition to Intervene and Request for Hearing (Mar. 15, 2008) (“Sternglass Decl.”).

threshold hypothesis. See 56 Fed. Reg. 23,360 (May 21, 1991); see also Denial of Petition for Rulemaking, 72 Fed. Reg. 71,083, 71,084-85 (Dec. 14, 2007). Thus, Dr. Sternglass' Declaration presented no material issues.

Ms. Besade's allegations enumerated various cancer cases in the residential neighborhoods near Millstone. Petition at 41-43. These anecdotal accounts by a CCAM member with no expert qualifications had no probative value.<sup>16</sup> An admissible contention must be based on more than generalized, unsupported suspicions. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

Petitioners' appeal also repeats the claim from their Petition that the increases in releases "may be even greater than predicted by Dominion because of the new dynamics of plant operations under the uprate which will accelerate the rate of coolant flow and increase heat levels leading and [sic] slow response time by plant personnel." Pet. Br. at 21; Petition at 38. This claim was not supported by Dr. Sternglass' Declaration or anything else. There was no expert opinion or other reference to support this naked claim, as required by 10 C.F.R. § 2.309(f)(1)(v). Such a bald and unsupported claim did not establish the existence of a genuine material dispute. Accordingly, the Board correctly rejected this claim as "unsupported speculation . . . insufficient

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<sup>16</sup> Indeed, these allegations are very similar to the contention that was raised by CCAM and rejected as baseless in the Millstone license renewal proceeding. See Dominion Nuclear Connecticut (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 N.R.C. 81, 91, 94 (2004) (rejecting contentions that operations "have caused death, disease, biological and genetic harm and human suffering on a vast scale" and resulted in "devastating losses"), reconsideration denied, LBP-04-22, 60 N.R.C. 379, aff'd, CLI-04-36, 60 N.R.C. 631 (2004). In that proceeding, the Licensing Board found that CCAM had not provided any specific factual basis or expert opinion to support claims of "cancer clusters" and that none of its declarants "indicate[d] having any basis for their knowledge or any expert knowledge of any kind." Id. at 91 & n.39.

to support an admissible contention. . . .” LBP-08-09, slip op. at 32. Petitioners do not identify any error in this ruling.<sup>17</sup>

**I. CONTENTION 9 WAS UNSUPPORTED, VAGUE, AND OUTSIDE THE SCOPE OF THE PROCEEDING**

The Licensing Board properly rejected Contention 9, which alleged that the environmental consequences of radioactive releases and thermal discharges from the power uprate are inadequately addressed (Petition at 46), because the issues Petitioners sought to raise lacked specificity and did not challenge the LAR. LBP-08-09, slip op. at 32-33. The Board held that “Petitioners’ concerns are generalized and do not contest any specific portions or conclusions contained in the LAR, nor do they address any part of Dominion’s Supplemental Environmental Report (LAR Attachment 2).” LBP-08-09, slip op. at 32 (footnote omitted). The Board further found that “Petitioners provide no supporting documentation or expert opinion that would support” the allegations in this contention. *Id.* Finally, the Board addresses Petitioners’ assertions regarding the validity of Millstone Unit 3’s National Pollutant Discharge Elimination System (“NPDES”) permit by explaining that whether such a permit is valid “is outside the scope of this uprate proceeding.” *Id.* at 33.

On appeal, Petitioners argue that they did contest the LAR (Pet. Br. at 22), but do not identify any portion of the original Contention that set forth a dispute with specific portions of the LAR. Contention 9 simply ignored the environmental impact assessment regarding the thermal plume contained in the Supplemental Environmental Report (“SER”). LAR Attachment 2. That Report includes an entire section (Section 7.0) analyzing the non-radiological

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<sup>17</sup> Petitioners also claim to have “cited the applicable passages from Dominion’s application stating that levels of radionuclides released to the air and water will increase by nine-fold above current levels . . . .” Pet. Br. at 16 (emphasis added). Dominion’s Application makes no such statement, and Petitioners’ claim is clearly erroneous because the actual increase in releases will be only nine percent. LAR Attachment 5, at 2.10-15 to 2.10-16.

environmental impacts of the uprate and another section (Section 8.0) addressing the radiological environmental impacts. Contention 9 never identified any errors or omissions in these sections. It never challenged the determination in Section 7 of the SER that the temperature of the plant discharges after implementation of the SPU will still be within the limits allowed by the plant's NPDES permit. See LAR Attachment 2, Section 7.2.2 at 24. Indeed, with respect to thermal discharges, Contention 9 simply alleged without support that the uprate would have “devastating environmental consequences.” Petition at 46. Contention 9 was not supported by any expert opinion, document, or reference to another source indicating that the thermal effects of the uprate would have any significant environmental impact. Consequently, the Board's rejection of this Contention on grounds that it did not contest the LAR was clearly correct.

Petitioners also repeat their claim, made for the first time in Petitioners' Reply, that Millstone's NPDES permit is “of no legal effect.” Pet. Br. at 22. This claim ignores both the Board's ruling that the status of the permit is outside the scope of this proceeding and long-standing NRC precedent holding that the NPDES permitting agency's assessment of the environmental impacts of facility releases must be taken at face value and accepted as dispositive in an NRC licensing proceeding. Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 N.R.C. 371, 387-89 (2007).

Finally, on appeal, Petitioners state that “Dominion's application does not address in any way the prospect that the increased radiological emissions will contaminate the human food supply.” Pet. Br. at 22. This allegation is improperly made for the first time on appeal.<sup>18</sup> Contention 9 made no claim that the LAR contained any such omission. Contention 9 did allege vaguely that the uprate “will have devastating environmental consequences, such as ...

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<sup>18</sup> See supra, note 10.

contaminating fruits and vegetables raised locally for sale for human consumption” (Petition at 46), but Petitioners provided no further elaboration on this claim. They did not describe how the radioactive releases from the plant will “contaminate” fruits and vegetables raised locally. They provided no information – no expert opinion, document, reference, or other source – supporting the claim of “devastating environmental consequences.” They likewise provided no information to dispute the dose calculations presented in the LAR, and no information to suggest that the additional fraction of a millirem dose that the maximally exposed individual will incur will result in any significant effect. In short, the sweeping and exaggerated radiological claims in Contention 9 were entirely unsupported.

### **CONCLUSION**

For the reasons stated above, the Commission should affirm the Board’s decision and terminate this proceeding.

Respectfully Submitted,

/Original Signed by Matias F. Travieso-Diaz/  
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Dated: June 26, 2008

Counsel for Dominion Nuclear Connecticut, Inc.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of	)	
	)	
Dominion Nuclear Connecticut, Inc.	)	Docket No. 50-426-OLA
	)	
(Millstone Nuclear Power Station, Unit 3)	)	ASLB No. 08-862-01-OLA
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of “Dominion Nuclear Connecticut’s Brief in Opposition to Appeal of Connecticut Coalition Against Millstone and Nancy Burton” were served on the persons listed below in accordance with the Commission E-Filing rule, which the NRC promulgated in August 2007 (72 Fed. Reg. 49,139), and, where indicated by an asterisk, by e-mail, this 26th day of June, 2008.

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