

July 31, 2008 (1:05pm)

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

(ATOMIC SAFETY AND LICENSING BOARD PANEL)

In the Matter of

Docket No. 50-423-OLA

**Dominion Nuclear Connecticut, Inc.
(Millstone Nuclear Power Station,
Unit 3)**

ASLBP No. 862-01-OLA-BD01

July 31, 2008

**CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON MOTION
FOR LEAVE TO FILE THEIR "MOTION FOR LEAVE TO FILE NEW AND/OR
AMENDED CONTENTIONS BASED ON RECEIPT OF NEW INFORMATION"
DATED JULY 18, 2008, *NUNC PRO TUNC*,
AND FOR CONTINUING WAIVER OF ELECTRONIC FILING**

The petitioners, Connecticut Coalition Against Millstone and Nancy Burton (collectively, "petitioners" or "CCAM"),¹ herewith move for leave to file their "Motion for Leave to File New And/Or Amended Contentions Based on Receipt of New Information" dated July 18, 2008, *nunc pro tunc*, and for a continuing waiver of electronic filing requirements in these proceedings.

In accordance with the provisions of 10 C.F.R. § 2.323(b), the undersigned, petitioner Nancy Burton, certifies that the petitioners have made a sincere effort to contact counsel for the applicant, Dominion Nuclear Connecticut, Inc. ("Dominion"), and the staff of the United States Nuclear Regulatory Commission ("NRC") to resolve

¹ By Notice and Order dated June 4, 2008, the Atomic Safety and Licensing Board Panel assigned to this matter dismissed the petition to intervene and request for hearing. ADAMS ML 081560680. The petitioners filed a Notice of Appeal to the U.S. Nuclear Regulatory Commission on June 16, 2008, which appeal is pending. ADAMS ML 081750222. By this motion, CCAM also seeks to have its appeal considered *nunc pro tunc* for the reasons cited herein.

the issues in this motion. The undersigned contacted said counsel by email on July 31, 2008; counsel for both parties have replied that they oppose this motion. Accordingly, the petitioners' efforts to resolve the issues have been unsuccessful.

Factual Background

On July 18, 2008, the petitioners filed their "Motion for Leave to File New and/or Amended Contentions Based on Receipt of New Information." Insofar as the Atomic Safety and Licensing Board Panel had dismissed their petition on June 4, 2008,² the motion was addressed to the U.S. Nuclear Regulatory Commission, before whom the petitioners' Notice of Appeal dated June 16, 2008 was and is pending.³

On July 21, 2008, the petitioners were notified by Emile L. Julian, on behalf of the NRC's Office of the Secretary, Rulemakings and Adjudications Office, by email as follows:

The office of the Secretary is in receipt of the filing submitted by you, on behalf of yourself and CCAM, dated July 18, 2008. However, this filing, submitted by e-mail for docketing in the *Millstone* proceeding, was not submitted via the NRC's E-filing System in use for this proceeding, nor did you request an exemption from the e-filing rules. Therefore, this filing cannot be accepted or docketed, for failure to meet these procedural requirements.

The petitioners previously requested exemption from the E-filing requirements, on March 17, 2008, for purposes of filing their petition to intervene in these proceedings. The exemption was granted.

² See footnote 1 *supra*.

³ The petitioners did not file their Notice of Appeal pursuant to the electronic filing system - although the petitioners did timely submit the appeal by email and hard copy sent via U.S. Mail, postage pre-paid. Apparently, the NRC accepted the filing, notwithstanding that it was not filed pursuant to the electronic filing procedures; the petitioners have not been notified that the NRC rejected the filing.

On April 15, 2008, the petitioners moved for further exemption from E-filing requirements in these proceedings.

The ASLB Panel found good cause to grant the exemption. See Order dated April 16, 2008. However, the Order limited the exemption to the specific filing at hand. The petitioners presently face the same technical and financial obstacles which led to their request for exemption on April 15, 2008.

Despite good-faith efforts, including engaging the assistance of a qualified expert in computer systems during the week of July 21-28, the petitioners are not yet technically able to perform E-filing according to NRC procedures. Moreover, the petitioners, a non-profit, *pro bono*, public advocacy organization, lacks the financial resources to invest the approximately \$500 which is apparently required to obtain an appropriate commercial computer application to enable E-filing performance, which is not otherwise needed for CCAM's functions. The petitioners continue to search diligently for equivalent alternatives.

By inadvertence, the petitioners did not request a specific exemption for their July 18, 2008 filing. No prejudice resulted to the NRC or the ASLB Panel or the applicant or the NRC staff by this inadvertence.

Moreover, insofar as the ASLB Panel had previously dismissed the petitioners' petition to intervene, the July 18, 2008 filing was addressed to the NRC rather than the ASLB Panel; apparently, the NRC does not mandate E-filing, as the petitioners' Notice of Appeal dated June 16, 2008 was apparently accepted and docketed by the NRC.


Having presented good cause, and in the absence of prejudice to the NRC, the ASLB Panel, the applicant and the NRC staff, it is respectfully requested that the

petitioners' July 18, 2008 "Motion for Leave to File New and/or Amended Contentions Based on Receipt of New Information" be accepted forthwith for filing and docketing *nunc pro tunc*, that the petitioners be granted a continuing exemption from E-filing requirements in this proceeding as they continue good-faith and earnest efforts to attain capability to achieve E-filing functionality, and that an exemption to E-filing be applied *nunc pro tunc*, if necessary, to the petitioners' Notice of Appeal dated June 18, 2008.⁴

Respectfully submitted,

**CONNECTICUT COALITION AGAINST
MILLSTONE
NANCY BURTON**

[Signed in
original]


Nancy Burton
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⁴ See footnote 3, *supra*.

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CERTIFICATE OF SERVICE

I certify that copies of the "CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON MOTION FOR LEAVE TO FILE THEIR 'MOTION FOR LEAVE TO FILE NEW AND/OR AMENDED CONTENTIONS BASED ON RECEIPT OF NEW INFORMATION' DATED JULY 18, 2008, *NUNC PRO TUNC*, AND FOR CONTINUING WAIVER OF ELECTRONIC FILING" was transmitted on July 31, 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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