

August 8, 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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 ANSWER
OPPOSING JULY 31, 2008 MOTION OF
CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON**

I. Introduction

Dominion Nuclear Connecticut (“Dominion”) hereby answers and opposes the July 31, 2008 Motion¹ of the Connecticut Coalition Against Millstone (“CCAM”) and Nancy Burton (collectively, “Petitioners”), which in essence seeks an indefinite exemption from the Commission’s rules governing proper filing and service of pleadings, to be applied retroactively to previously improperly filed pleadings.² Petitioners’ Motion should be denied because Petitioners have on two prior occasions assured the NRC that they would take the steps

¹ 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 (July 31, 2008) (“Motion”). On August 5, 2008, the NRC Office of the Secretary referred this Motion to the Atomic Safety and Licensing Board (“Board”) for consideration and appropriate action.

² Petitioners seek to have this waiver apply retrospectively to their July 18, 2008 Motion for Leave to File New and/or Amended Contentions Based on Receipt of New Information (“July 18 Motion”), which the Secretary rejected as improperly filed, and to their June 16, 2008 Notice of Appeal, which Petitioners also submitted improperly. Motion at 1 & n.1. These requests are untimely. See 10 C.F.R. § 2.323(a). Because Petitioners’ July 18, 2008 Motion has been rejected and therefore is not properly before the Commission or Board, Dominion limits this Answer to Petitioners’ request for an exemption from electronic filing requirements. If the Board grants the exemption requested by Petitioners and applies it retroactively to the July 18 Motion, Dominion will file an answer to the July 18 Motion at that time. Further, on August 7, 2008, Petitioners submitted (by email) Connecticut Coalition Against Millstone and Nancy Burton Revised Motion for Leave to File Their New and/or Amended Contentions Based on Receipt of New Information (Aug. 7, 2008). This revised motion seeks leave to file new contentions within 30 days of July 28, 2008. Thus, Petitioners’ July 18 Motion, which sought leave to file new contentions within 10 days of the release of ACRS transcripts, appears moot.

necessary to utilize the electronic filing system, but still have not done so. Petitioners have had months in which comply with the NRC's filing and service rules. Their continual failure to do so suggests a lack of any real intention to comply with the NRC rules, and a lack of any ability to fulfill the obligations of a party in an adjudication.

Further, the Secretary's rejection of Petitioners' July 18 Motion followed the Commission's specific directions for handling pleadings by CCAM and Ms. Burton that ignore the NRC rules. In a 2006 Order in the Millstone license renewal proceeding, the Commission admonished Petitioners for their disregard of the NRC rules, and stated:

This is not the first Millstone proceeding where CCAM, acting through its representative (or counsel), Nancy Burton, has not followed established Commission procedures. *See* CLI-04-36, 60 NRC at 643-44. We previously warned Ms. Burton that "further disregard of our practices and procedures" would result in disciplinary action. CLI-04-36, 60 NRC at 644. Hence, today we order the Office of the Secretary to screen all filings bearing Ms. Burton's signature and not to accept or docket them unless they meet all procedural requirements. We direct the Secretary to reject summarily any nonconforming pleadings without referring them to the Atomic Safety and Licensing Board Panel or the Commission.

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 N.R.C. 32, 38-39 (2006) (citation omitted). Granting the continuing waiver requested by Petitioners and applying it retroactively to their July 18 Motion would be inconsistent with the Commission's prior instructions and would simply condone Petitioners' persistent disregard for the NRC's rules and procedure.

II. Discussion

On January 15, 2008, the Commission published a Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, which provided the notice of opportunity for hearing on Dominion's application for a stretch

power uprate for Millstone Unit 3. 73 Fed. Reg. 2,546, 2,549-50 (Jan. 15, 2008). That Notice stated that any person who wishes to participate in the proceeding “must file a written request via electronic submission through the NRC E-filing system. . . .” Id. at 2,547. The Notice provided instructions on how to file and serve documents electronically, and provided contact information for any person needing assistance. Id. at 2,547-48. Thus, Petitioners have had over six months in which to obtain assistance and perfect their ability to comply with the NRC rules.

Two months after the hearing notice, Petitioners submitted (by email) Connecticut Coalition Against Millstone and Nancy Burton Request for Exemption from “E-Filing” Requirements (Mar. 17, 2008). Therein, Petitioners stated that “CCAM is unable to devote more time, prior to filing its petition to intervene, to this potentially slow and painstaking process [to achieve E-filing capability] . . .” and therefore requested leave to file its petition to intervene by email. Id. at ¶¶ 12, 14. Petitioners assured the Commission that:

CCAM does look forward to availing itself of the technical assistance offered by the Office of the Secretary to enable it to achieve “E-filing” capability for future filings in this matter, once it meets the current filing deadline.

Id. at ¶ 13. The Secretary subsequently “allowed an exception this time to meet the filing deadline” and specifically stated:

[T]he Office to 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.

Memorandum from A. Bates, Acting Secretary, to E. Roy Hawkens, Chief Administrative Judge, “Request for Hearing Submitted by The Connecticut Coalition Against Millstone and Nancy Burton (Mar. 24, 2008) (emphasis added).

A month after its first exemption request, Petitioners submitted (again by email) “Connecticut Coalition Against Millstone and Nancy Burton Second Request for Exemption

from “E-Filing” Requirements (April 15, 2008). Petitioners’ second request repeated verbatim the claims made in their first exemption request, and added:

Apparently, it is necessary for participants to install new computer software needed at a cost of more than \$500 prior to continuing to take additional steps to achieve the ability to participate in the NRC’s electronic filing system.

Id. at ¶ 15. Similar to the previous assurances made by CCAM to the Commission, CCAM assured the Board that it would resolve this problem.

16. At the present time, CCAM . . . is engaging in fundraising to raise adequate funding to take the necessary step to achieve the ability to participate in the NRC’s electronic system.

17. CCAM anticipates that once it concludes such fund-raising it will be in a position to take such further steps as are necessary to achieve the ability to participate in NRC’s electronic filing system.

* * *

33. CCAM does look forward to availing itself of the technical assistance offered by the Office of the Secretary to enable it to achieve “E-Filing” capability for future filings in this matter, once it meets its fundraising objective as aforescribed.

Id. ¶¶ 16-17, 33.³

On April 16, 2008, the Board granted an exemption specifically limited to Petitioners’ replies due on April 18, 2008. Order (Granting CCAM and Nancy Burton Request for E-Filing Exemption) (Apr. 16, 2008) at 2. The Board stated:

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.

Id. (footnote omitted).

Now, two and a half months later, Petitioners seek their third exemption, claiming that they “presently face the same technical and financial obstacles which led to their request for

³ Petitioners have never identified what software is needed, and their claim that such unidentified software would cost \$500 seems questionable.

exemption on April 15, 2008.” Motion at 3. Petitioners repeat the claim previously made in their April 15, 2008 request that \$500 is needed to obtain some unspecified computer application. Id. These claims suggests that Petitioners have done nothing since their last exemption request to obtain the ability to comply with the NRC’s rules, and that their prior, repeated assurances that they would do so have been hollow.

Petitioners make no mention of the fund-raising efforts promised in their last exemption request. If, in the two and a half months since their last request, Petitioners have not been able to raise \$500 for software (assuming arguendo that a purchase of some software is in fact needed), it would appear that they have no ability to meet the demands of an adjudication or to contribute in any meaningful way to this proceeding. In any event, “the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.” Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 454 (1981).

Petitioners also argue that because their Notice of Appeal (June 16, 2008) was not rejected despite also being improperly filed and improperly served, “apparently, the NRC does not mandate E-filing.” Motion at 3. Apparently, Ms. Burton and CCAM believe that since they have successfully ignored the NRC rules in the past,⁴ they may now do so again with impunity. The Board should disabuse Petitioners of this notion.

Finally, Petitioners claim that they did not request an exemption with their July 18, 2008 filing “by inadvertence.” Motion at 3. In light of Petitioners’ prior exemption requests and the direction in the Licensing Board’s April 16, 2008 Order “that all future filings in this proceeding

⁴ In fact, Dominion pointed out this non-compliance in its briefs opposing Petitioners’ appeal. See Dominion Nuclear Connecticut’s Brief in Opposition to Appeal of Connecticut Coalition Against Millstone and Nancy Burton (June 26, 2008) at 4 n.5.

will be filed and served via the e-filing system as required by NRC regulations,” Petitioners’ claim does not seem credible. Indeed, Petitioners have a long history of flouting NRC rules. As the Commission stated in a 2004 Order in the Millstone license renewal proceeding,

Finally, we join the Licensing Board in expressing displeasure at the CCAM attorney’s consistent disregard for our procedural rules. As we noted just last year when criticizing CCAM’s same counsel for similar dereliction, she is “no stranger[] to the NRC adjudicatory process.” This is her fifth NRC adjudication since 1999, so she cannot credibly claim ignorance of our practices and procedures. As the Board’s two orders in this proceeding and our own order today make clear, CCAM’s attorney has repeatedly failed to provide support at the hearing for her client’s contentions, as required under section 2.309(f) of our rules of practice and procedure. Further, the record in this proceeding indicates that CCAM’s attorney has likewise ignored numerous other Commission adjudicatory procedures. Nor has her disregard for our procedures been limited to this proceeding. She has a similar record in four previous *Millstone* proceedings, where she has repeatedly failed to follow basic NRC adjudicatory procedures.

CCAM’s Counsel is informed that any further disregard of our practices and procedures in future adjudications will result in reprimand, censure or suspension pursuant to 10 C.F.R. § 2.314(c)(1) (providing for sanctions against any “representative of a party who refuses to comply with [the Commission’s or the Licensing Board’s] directions”). This ruling applies regardless of whether her representation before the NRC is as an attorney at law or otherwise. If such breaches occur during the threshold or hearing stage of an adjudication, we instruct the Board in that proceeding to exercise its authority under 10 C.F.R. § 2.319(g) and impose what it considers appropriate sanctions. We will do the same for any breach during the appellate stage. This warning does not mean that CCAM or its counsel is unwelcome at future NRC proceedings, but only that they must participate according to our rules.

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 643-44 (2004) (footnotes omitted).

The Commission repeated this admonition in its 2006 Order in the Millstone license renewal proceeding, and instructed the Secretary to reject summarily any nonconforming pleadings by CCAM and Ms. Burton. Millstone, CLI-06-04, 63 N.R.C. at 38-39. The Secretary followed these instructions in rejecting Petitioners’ July 18 Motion. As previously indicated, granting the continuing waiver requested by Petitioners and applying it retroactively to their July

18 Motion would be inconsistent with the Commission's prior instructions and would simply condone Petitioners' persistent disregard for the NRC's rules and procedures.

III. Conclusion

For all of these reasons, Petitioners' Motion should be denied.

Respectfully Submitted,

/Original Signed By David R. Lewis/

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Dated: August 8, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of “Dominion Nuclear Connecticut’s Answer Opposing July 31, 2008 Motion of Connecticut Coalition Against Millstone and Nancy Burton” were served on the persons listed below in accordance with the Commission E-Filing rule, this 8th day of August, 2008.

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