UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Dale E. Klein, Chairman
Gregory B. Jaczko
Peter B. Lyons
Kristine L. Svinicki

DOCKETED 8/13/08

SERVED 8/13/08

In the Matter of	)	
DOMINION NUCLEAR CONNECTICUT, INC.	)	Docket No. 50-423-OLA
(Millstone Power Station, Unit 3)	)	

CLI-08-17

MEMORANDUM AND ORDER

This proceeding concerns the application of Dominion Nuclear Connecticut, Inc. (Dominion) for an amendment to its operating license for Millstone Power Station, Unit 3, in Waterford, Connecticut.[1] The amendment will increase the unit's authorized core power level from 3,411 to 3,650 megawatts thermal. Before us is an appeal by the Connecticut Coalition Against Millstone and Nancy Burton (collectively, CCAM or Petitioners). CCAM appeals LBP-08-09, an Atomic Safety and Licensing Board decision that denied CCAM's petition to intervene and request for hearing.[2] The Board found that Petitioners had standing to intervene, but had not submitted any admissible contention for hearing. Both the NRC Staff and Dominion oppose CCAM's appeal. We

[1] Dominion's License Amendment Request (LAR) package is available in the NRC's ADAMS database under ADAMS accession number ML072000384. The NRC Staff approved the uprate on August 12, 2008.

[2] Memorandum and Order (Ruling on Petition to Intervene and Request for Hearing), LBP-08-09, 67 NRC ___ (June 4, 2008)(slip op.)(LBP-08-09).

affirm the Board's decision, for the reasons the Board itself has given, and for the additional reasons we give below.

I. BACKGROUND

Power Uprates

Reactor operating licenses specify the maximum power level of operation, and NRC approval is required to amend a facility operating license to increase the licensed power level. Increasing the power level at a nuclear plant involves what is referred to as a "power uprate."[3] The NRC labels or classifies power uprates based on the relative magnitude of the power increase and the methods used to achieve the increase.[4] A "measurement uncertainty recapture power uprate" typically involves a power level increase of less than 2 percent, achieved by enhanced techniques for calculating reactor power. A "stretch power uprate" typically results in power level increases up to 7 percent and generally does not involve major plant modifications. An "extended power uprate" usually requires significant modifications to major plant equipment, and may be for power level increases as high as 20 percent. A request for a power uprate requires an amendment to the facility's operating license, and therefore must meet the NRC's regulatory requirements for issuance of a license amendment.[5]

Standards Governing Contention Admissibility

To intervene as a party in an adjudicatory proceeding, a petitioner must offer at least one admissible contention.[6] The specific requirements for an admissible

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[3] *See* RS-001, Revision 0, Review Standard for Extended Power Uprates (Dec. 2003) at Background (ADAMS ML033640024)(Review Standard RS-001).

[4] *Id.*

[5] *See* 10 C.F.R. §§ 50.90; 50.92.

[6] 10 C.F.R. § 2.309(a).

contention are outlined in detail in the Board's decision, and we need not repeat them here.[7] The Commission has explained in several earlier decisions why the contention rule, revised in 1989, was made "strict by design."[8] The contention standards assure that those admitted to our hearings bring "actual knowledge of safety and environmental issues that bear" on the licensing decision, and therefore can litigate issues meaningfully.[9] Threshold contention standards are imposed to avoid circumstances the NRC regularly encountered prior to the 1989 contention rule revision, when licensing boards admitted contentions based on little more than speculation, creating serious delays of months and even years, "as licensing boards . . . sifted through poorly defined or supported contentions," and admitted intervenors who "often had negligible knowledge of nuclear power issues."[10] Contention standards also help assure that our hearing process will be appropriately focused upon disputes that can be resolved in the adjudication. Accordingly, a petitioner cannot seek to use a specific adjudicatory proceeding to attack generic NRC regulations and requirements, or "express generalized grievances about NRC policies."[11]

Whether or not any contentions are admitted for hearing, the NRC Staff conducts a full safety review of every license amendment application, and may not approve a proposed amendment until all necessary public health and safety findings have been made.

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[7] *See* LBP-08-09, slip op. at 8-14; 10 C.F.R. § 2.309(f)(1)(i)-(vi).

[8] *See*, *e.g.*, *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358-59 (2001); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999).

[9] *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 482 (2006).

[10] *Millstone*, CLI-01-24, 54 NRC at 358.

[11] *Oconee*, CLI-99-11, 49 NRC at 334.

II. ANALYSIS

Petitioners jointly submitted nine contentions challenging Dominion's request for a power uprate license amendment.[12] The Board found none admissible, and therefore denied their hearing request. NRC regulations permit appeal of a Board decision denying a petition to intervene.[13] Petitioners' appeal argues that all nine of their contentions were admissible and should have been admitted for hearing.

The Commission gives substantial deference to Board conclusions on standing and contention admissibility unless the appeal points to an error of law or abuse of discretion.[14] As discussed below, CCAM's appeal identifies no error of law or abuse of discretion in the Board's decision, and we discern no other reason to reverse the Board's conclusion that all nine contentions lack the necessary minimal factual or legal support. Moreover, as we note repeatedly below, Petitioners' appeal raises numerous new arguments never presented as part of their hearing petition. Petitioners may not seek to skirt our contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the Board.[15]

Regarding petitioners CCAM and Nancy Burton, an additional point bears mention. CCAM, acting through its representative Nancy Burton, has had extensive

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[12] *Connecticut Coalition Against Millstone and Nancy Burton Petition to Intervene and Request for Hearing* (Mar. 17, 2008)(Petition). The Petition was filed with pages unnumbered. An electronic version is available on ADAMS at accession number ML080840527.

[13] 10 C.F.R. § 2.311(b).

[14] *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104 (2007); *see also AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111,121 (2006).

[15] *See, e.g., USEC*, CLI-06-10, 63 NRC at 458; *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622-23 (2004); s*ee also* 10 C.F.R. § 2.309(f)(2).

experience with the NRC's adjudicatory process and its procedural rules, but has had a history of failing to comply with our rules of practice.[16] Because of Ms. Burton's recurring disregard of NRC regulations, the Commission in an earlier proceeding advised her that filings bearing her name that do not meet our procedural requirements would be summarily rejected by the Office of the Secretary and not accepted for docketing.[17] In filing this appeal, Ms. Burton neither followed NRC electronic filing requirements nor sought a timely exemption from those requirements.[18] Accordingly, we might have rejected her appeal summarily for violating NRC procedural regulations.[19] But to make sure Petitioners' already-filed contentions receive a full airing, and given that all participants have filed extensive appellate briefs, we have decided to exercise our discretion to overlook Ms. Burton's mistake and to examine this appeal on the merits.[20]

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[16] *See, e.g. Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38 (2006) (and cases cited therein).

[17] *Id.*

[18] *See Dominion Nuclear Connecticut's Brief in Opposition to Appeal of CCAM and Nancy Burton* (June 26, 2008)(Dominion Brief) at 4 n.5; *see also* Memorandum from A. Bates to E. Hawkens, "Request for Hearing Submitted by the Connecticut Coalition Against Millstone and Nancy Burton (Mar. 24, 2008)(noting Ms. Burton's assurance that the exception to E-filing procedures would only be for the hearing petition); Dominion Nuclear Connecticut, Inc., Establishment of Atomic Safety and Licensing Board, 73 Fed. Reg. 18,010 (Apr. 2, 2008)(citing E-filing rule); Order (granting second request for E-filing exemption, but directing that all future filings adhere to regulations)(Apr. 16, 2008)(unpublished). *See generally* 10 C.F.R. §§ 2.304, 2.305. It was not until an unrelated filing currently pending before the Board, submitted over a month after its Appeal, that Petitioners belatedly requested an exemption from the E-filing rule to be applied to its Appeal, "if necessary." *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), at 4 (July 31 Motion).

We note, further, that the appeal also did not comply with the formatting requirements set forth in 10 C.F.R. §§ 2.311(a) and 2.341(c)(2).

[19] In their July 31 Motion (at 3), Petitioners state, "[A]pparently, the [Commission] does not mandate E-filing," given that we accepted the Appeal for consideration. That is not the case. 10 C.F.R. § 2.302(a).

[20] Petitioners may not, however, continue to ignore our filing requirements. Recently, in fact, the Office of the Secretary rejected summarily Petitioners' motion to file late contentions in this proceeding, given their failure either to comply with our electronic filing requirements or to seek a waiver. *See* E-mail from Hearing Docket to Nancy Burton (July 21, 2008 15:48 EST).

Because we find the Board's decision comprehensive and well-reasoned, we need not repeat the details of the Board's reasoning, but rather cite to relevant portions of the Board's decision. We consider each of CCAM's nine contentions below.

Contention 1: The proposed power level for which Dominion has applied to uprate Millstone Nuclear Power Station Unit 3 exceeds the NRC's SPU [stretch power uprate] 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).[21]

In a nutshell, this contention claims that the power uprate that Dominion requested in its license amendment must be considered and reviewed as an extended power uprate (EPU), and not a stretch power uprate (SPU). Petitioners claim that the "NRC has set the power limit for a SPU at 7 [percent]," but that the "application proposes a power uprate that exceeds 7 [percent] and hence is disqualified" from consideration as a stretch power uprate.[22] Petitioners' expert noted that a precise 7% increase over Millstone Unit 3's currently authorized output of 3411 thermal megawatts (MWt) would be 3649.7 MWt, but that Dominion had rounded the proposed power level to 3650 MWt.[23] In short, the contention challenges the label or classification of the proposed power uprate, and suggests that there would be a more "rigorous" review of the licensing action if it were classified as an EPU.[24]

First, Petitioners are flatly wrong in claiming that the NRC has established a precise regulatory limit or ceiling on power uprates to differentiate between a stretch power uprate and an extended power uprate. NRC guidance – *not* regulations –

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[21] Petition at 7.

[22] *Id.*;*see also id.* at 7-11.

[23] *Id.*, Exhibit A, Arnold Gundersen Declaration at ¶ 14.

[24] Petition at 8.

discusses how power uprates are characterized, but even this guidance outlines several factors and does not limit a stretch power uprate to a precise seven percent increase:

> **Stretch power uprates** are *typically* up to 7 percent and are within the design capacity of the plant. The actual value for percentage increase in power a plant can achieve and stay within the stretch power uprate category is plant-specific and depends on the operating margins included in the design of a particular plant. Stretch power uprates involve changes to instrumentation setpoints but do not involve major plant modifications.
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> **Extended power uprates** are greater than stretch power uprates and have been approved for increases as high as 20 percent. These uprates require significant modifications to major balance-of-plant equipment such as the high pressure turbines, condensate pumps and motors, main generators, and/or transformers.[25]

More importantly, as the Board noted, Petitioners nowhere indicate why "the fact that the requested power level increase rises 0.3 MWt above the 3649.7 MWt level (which would represent a seven percent increase in power) is in any way material to the findings the NRC must make,"[26] or to the adequacy of the analyses in Dominion's application. Further, in preparing its uprate amendment application, Dominion largely utilized RS-001, the NRC review standard for *extended power uprates*.[27] Therefore, it is

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[25] *See* NRC Website www.nrc.gov/reactors/operating/licensing/power-uprates.html, under Types of Power Uprates (emphasis added); *see also* Review Standard RS-001, at Background. In accepting Dominion's amendment application, the NRC staff stated that the application was appropriately characterized as a stretch power uprate because the "power increase is approximately 7 percent," and only "limited plant modifications" would be required to support the uprate. *See* Letter from Harold Chernoff, NRC, to David Christian, Dominion (Oct. 15, 2007) at 1, ML072670216.

[26] LBP-08-09, slip op. at 18.

[27] *See, e.g.*, LAR, transmittal letter from Gerald Bischof (July 13, 2007) at 1; LAR, Attachment 5, SPU Licensing Report at 1-1(noting that Dominion utilized "to the extent possible," RS-001, the extended power uprate guidance); LAR, Attachment 1 at 13. In outlining available NRC guidance for SPUs and EPUs, the NRC website section on power uprates notes that because only a limited number of SPUs are expected in the future, the NRC has not developed guidance dedicated to SPUs, and therefore uses RS-001 and previously approved stretch power uprates for guidance. *See* www.nrc.gov/reactors/operating/licensing/power-uprates.html.

On appeal, Petitioners point to where Dominion's application states that the extended power uprate guidance (RS-001) was utilized in preparing the amendment application, "with a small number of exceptions." See *Notice of Appeal* (June 16, 2008)(Appeal)(citing LAR, Attachment 1 at 13). Petitioners therefore claim that the application is deficient because it did not identify these instances. But this generalized argument does not point to any material safety issue for litigation;

entirely unclear what Petitioners find incorrect or insufficient about Dominion's amendment application. As Dominion points out, Petitioners made "no attempt to identify any material dispute with a specific section or any specific material omission from the [license amendment request]."[28] As Dominion argues, Petitioners' contention "never ma[kes] a showing that classifying the uprate as an SPU is in any way material to whether the [amendment request] should be approved."[29]

Finally, the focus of a hearing on a proposed licensing action is the adequacy of the application to support the licensing action, not the nature of the NRC Staff's review.[30] And while an extended power uprate likely will be more complex to review (given a more complex proposal generally involving significant modifications to major plant equipment), Petitioners give no reason to suggest that staff review of stretch power uprates is not also sufficiently rigorous. For the reasons given here and in the Board's decision,[31] Contention 1 is inadmissible.

Contention 2: Dominion's application fails to meet the NRC's second 'criterion' for a SPU application because Millstone Unit 3 already has had its design margins dramatically and substantially reduced.[32]

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indeed, RS-001 presents merely guidance and not regulatory requirements. Moreover, this claim was not raised in the hearing petition, but was added as a new claim in Petitioners' reply brief and is therefore impermissibly late. *See, e.g., LES,* CLI-04-35, 60 NRC at 623. In addition, the Staff states that "the application did identify where it differed from RS-001." *See NRC Staff's Brief in Opposition to CCAM and Ms. Burton's Appeal of LBP-08-09* (June 26, 2008)(Staff Brief) at 17 (citing LAR, Attachment 5 at 1-1, where Dominion notes it "has included any differences between the information in the review standard and the [Millstone Unit 3] design bases to enhance the NRC review").

[28] Dominion Brief at 8.

[29] *Id.* at 7-8.

[30] *See Pa'ina Hawaii, LLC*, CLI-08-3, 67 NRC 151, 168 n.73 (2008).

[31] *See* LBP-08-09, slip op. at 15-18.

[32] Petition at 11.

Contention 2 "dispute[s] Dominion's assertions that operating margins in the design of Millstone Unit 3 are adequate to safely achieve the requested 7+ per cent [sic] power uprate, given the significant reduction in structural operating margins already in place at Millstone 3 prior to the present application for power uprate."[33]

We agree with the reasons the Board provided in rejecting this contention.[34] Petitioners nowhere challenge the safety analyses provided in Dominion's application. On appeal, Petitioners state that they are "aware" of those analyses, but "disagree[]" with them, and that their expert is "aware of Dominion's representations and calculations," but "rejects them as inadequate to protect the public health and safety and the environment."[35] The Commission reviewed Mr. Gundersen's declaration, but discerns no specific challenge to any relevant analysis in Dominion's amendment application. Petitioners' appeal points to no error in the Board's decision.

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 [sic] power uprate for a Westinghouse reactor, while Millstone Unit 3 also has the smallest containment for any Westinghouse reactor of roughly comparable output.[36]

Contention 3 challenges the "integrity and adequacy" of the Millstone 3 containment "to function safely with the requested 7+ per cent [sic] power uprate in light of" what Petitioners say are "structural limitations of the containment, concrete shrinkage and Dominion's history of exceeding its licensed power level."[37] Petitioners' appeal

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[33] *Id.* at 18.

[34] LBP-08-09, slip op. at 18-21.

[35] Appeal at 10-11.

[36] Petition at 18.

[37] *Id.* at 22. Dominion states that the "history" of excessive power level operation apparently alluded to in Petitioners' contention was one power excursion instance during testing that lasted a few minutes. *See* Dominion Appeal Brief at 14 n.12.

does not identify any error of law or fact in the Board's analysis.[38] The Board appropriately found Contention 3 inadmissible. We agree fully with the Board's reasoning and conclusion.[39]

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.[40]

Contention 4 claims that Dominion's license amendment request fails to properly "assess the long-term impact a 7+ per cent [sic] power uprate will have on the concrete containment," given the "high temperature, low pressure, and low specific humidity environment and in light of documented construction challenges."[41] Petitioners "dispute Dominion's assertion that the application qualifies for SPU approval," and call for "a more intensive and comprehensive review . . . under EPU standards."[42]

But again, as the Board correctly notes, the contention simply does not challenge "any of the containment analysis" Dominion provided in support of the power uprate amendment application.[43] It vaguely challenges "calculations used to predict stress" on

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[38] Petitioners' appeal apparently raises a new argument not in the original petition: that the amendment application "omits to address the issue of the integrity of the concrete containment integrity." *See* Appeal at 12. Petitioners cannot seek to revive a contention based on new arguments never presented to the Licensing Board. *See, e.g., USEC,* CLI-06-10, 63 NRC at 460. Nor is it clear what Petitioners mean by this claim. The Board pointed out that Dominion's application provides an analysis of the peak calculated containment pressure following various potential events, to demonstrate that the containment has a design limit in excess of the containment pressure, and that Petitioners never challenged this analysis, which goes to whether the Millstone Unit 3 containment will "perform[] its intended function." *See* LBP-08-09, slip op. at 21-22.

[39] *Id.*, slip op. at 21-22.

[40] Petition at 23.

[41] *Id.*

[42] *Id.* at 26.

[43] LBP-08-09, slip op. at 24.

the containment, without identifying any calculations or giving any factual basis to question calculations. It suggests that temperatures, pressure, and humidity conditions may be excessive for the containment, but provides no analysis, references, calculations, or any other support for this view. Petitioners' expert claims there were a number of difficulties in constructing the Millstone Unit 3 containment, but as the Board noted, Petitioners "make no connection of these potential issues to the requested power uprate" application.[44] Moreover, as the Board also noted, Petitioners' expert provides only speculation that Dominion never evaluated long-term aging impacts to the concrete containment.[45] The contention is vague, unsupported, speculative, and as the Board rightly found, inadmissible.[46]

Contention 5: The impact of flow-accelerated corrosion[47] at Dominion's proposed higher power level for Millstone Unit 3 has not been adequately analyzed or addressed.[48]

In Contention 5, Petitioners claim that because "Dominion exceeded Millstone Unit 3['s] licensed power [level] less than a year ago," they are "concerned that pipe already worn thin by the 7+ per cent [sic] power increase might break when power is increased further and that Dominion has not adequately analyzed nor addressed this issue."[49] The contention further claims that Dominion's application "is silent on the need

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[44] *Id.* at 23.

[45] *Id*. at 24 & n.122 (noting evaluations of concrete strength and aging performed during license renewal review).

[46] *Id.* at 22-25.

[47] "Flow-accelerated corrosion" is a "corrosion mechanism occurring in carbon steel components exposed to flowing" water. *See generally* LAR, Attachment 5, § 2.1.8, at 2.1-76. A flow-accelerated corrosion program therefore addresses potential pipe wall thinning to assure no unacceptable degradation of the integrity of piping systems.

[48] Petition at 26.

[49] *Id.* at 26-27.

to increase Millstone Unit 3's inspection and maintenance staff," and that "[f]low-accelerated corrosion will require increases in staff to undertake more frequent inspection and maintenance of vital systems and components subject to accelerated corrosion."[50] The claimed material dispute is "the sufficiency of Dominion's application to assess the adequacy of any actions Dominion might have to mitigate the consequences of flow accelerated corrosion caused by the power uprate at Millstone Unit 3."[51]

Dominion's application, however, contains an extensive section devoted to flow-accelerated corrosion, outlining its program for selecting piping components for inspection, component re-examination frequency, inspection techniques, scope of inspection of piping systems, criteria for repair/replacement of piping components, description of recent piping component repair/replacement, and a number of other subject areas.[52] The contention does not challenge any specific aspect of the application's flow-accelerated corrosion discussion.

Nor, as the Board noted, does the contention provide sufficient basis for concluding that staffing and maintenance staff increases would be necessary, or for concluding that specifics of staffing need to be addressed in the uprate application.[53] Petitioners rely on nothing more than speculation in claiming on appeal that Dominion is "prepared in advance to NOT adhere to" agency guidance on adequately managing

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[50] *Id.* at 30.

[51] *Id.*

[52] *See generally* LAR, Attachment 5, § 2.1.8, at 2.1-76 to 2.1-100.

[53] *See* LBP-08-09, slip op. at 26.

effects of flow-accelerated corrosion simply because Dominion has a fixed price labor contract for inspections of flow-accelerated corrosion.[54]

Further, as Dominion notes, Petitioners never explained "how the single power excursion to which they . . . presumably refer[] would have any effect on the procedures and methodology used to inspect piping" for flow-accelerated corrosion.[55] For the reasons outlined here and in the Board's decision,[56] Contention 5 is inadmissible.

Contention 6: **Dominion's application for a Millstone Unit 3 7+ per cent [sic] 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.**[57]

Contention 6 claims that "while the NRC holds nuclear reactor licensees seeking EPUs to standards with identified acceptance criteria, SPU applicants need no [sic] demonstrate their applications meet such acceptance criteria."[58] As in Contention 1, Petitioners argue that the power uprate should be considered an EPU, and that "a more intensive and comprehensive review must commence under EPU standards."[59]

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[54] *See* Appeal at 14.

[55] Dominion Brief at 14. While Petitioners themselves never identify the power excursion to which they refer, both Dominion and the Staff describe an event that occurred during control valve testing, where the plant was operated at 102.1% of licensed power for approximately four minutes. *See, e.g.,* Staff Brief at 11 n.5; Dominion Brief at 14 n.12.

Petitioners again impermissibly raise a new claim on appeal – that in the Millstone license renewal proceeding (the renewed license was issued in November 2005), Dominion did not represent that it would seek a seven percent power uprate. *See* Appeal at 14. In any event, as Dominion notes, the license amendment application discusses the flow-accelerated program in light of the proposed uprate. *See* Dominion Brief at 13 n.10. Further, the application addresses the impact of the proposed SPU on renewed plant operating license evaluations and license renewal programs. *See* LAR, Attachment 5, at 2.1-86.

[56] *See* LBP-08-09, slip op. at 25-27.

[57] Petition at 31.

[58] *Id.* at 32.

[59] *Id.* at 33.

As we stated with respect to Contention 1, generic NRC policies and standards and the nature of the NRC Staff's licensing review are not subject to challenge in an adjudicatory hearing.[60] Petitioners identify no error in the Board's reasons for rejecting this contention. For the reasons the Board gave,[61] and for the reasons we give today in connection with Contention 1, Contention 6 is inadmissible.

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.[62]

This contention is based merely on the NRC Staff's requests for additional information (RAIs) regarding the stretch power uprate license amendment request. The mere issuance of RAIs does not mean an application is incomplete for docketing.[63] Petitioners' appeal does not identify any error in the Board's reasoning rejecting this contention, and we agree with that reasoning.[64]

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 [sic] but likely in excess of 9 per cent [sic] above current levels and such increases will result in corresponding 9 per cent [sic] (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 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

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[60] *See, e.g., Pa'ina Hawaii*, CLI-08-3, 67 NRC at 168 n.73; *Oconee*, CLI-99-11, 49 NRC at 334.

[61] *See* LBP-08-09, slip op. at 27-28.

[62] Petition at 33-34.

[63] *See Oconee*, CLI-99-11, 49 NRC at 336-37.

[64] *See* LBP-08-09, slip op. at 28-29.

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.[65]

Contention 8 does not claim that NRC standards for radiological releases will be exceeded because of the power uprate amendment. Instead, it appears to be Petitioners' view that *any* increase in radiological release may cause a significant public health and safety impact. NRC regulations, however, establish what the agency has found to be adequately protective radiological dose limits, and Petitioners may not use an adjudicatory proceeding to challenge this generic regulatory framework.[66] Much of Contention 8 appears rooted in claims that past radiological releases have caused incidences of cancer in the Millstone facility area, and on appeal Petitioners stress that the facility's "radiological releases are poisoning the community."[67] This likewise amounts to a challenge to the adequacy of the NRC's current regulations governing radiological releases to the public. A power uprate amendment adjudication is not the forum to address Petitioners' general concern about NRC's regulatory dose limits or past radiological releases at Millstone.

Contention 8 also claims that Dominion's application has made "no provision for new shielding or other techniques to mitigate increased radionuclide levels." But Petitioners provide no support for the view that any specific mitigation is necessary, nor any challenge to the amendment application's discussions of "shielding adequacy."[68] The contention overall lacks support and impermissibly challenges NRC regulations. For reasons noted here and in the Board's decision,[69] Contention 8 is inadmissible.[70]

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[65] *See* Petition at 37-38.

[66] *See, e.g.*, *Millstone,* CLI-01-24, 54 NRC at 364.

[67] Appeal at 19.

[68] *See* LAR, Attachment 5, at 2.10-4 to 2.10-9.

[69] LBP-08-09, slip op. at 29-32.

Contention 9: Dominion's application for a 7+ per cent [sic] 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.[71]

Contention 9 claims that the power uprate will result in "significant adverse environmental impacts which have not been adequately analyzed."[72] Dominion's Supplemental Environmental Report addresses potential thermal discharge effects, effects on sensitive aquatic species, and other aquatic impacts, as well as radiological environmental effects and offsite dose.[73] Petitioners, however, do not challenge any of these specific analyses, and otherwise provide no support for their claims of significant environmental consequences from the power uprate.

On appeal, Petitioners claim that, contrary to the Board's decision, they did contest the amendment application. Specifically, Petitioners state that they "did contest Dominion's assertion that the higher temperature of the thermal plume would be inconsequential to the marine habitat."[74] But as Dominion states, Contention 9 never referenced or challenged any portion of the Supplemental Environmental Report's

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[70] On appeal, Petitioners again impermissibly raise entirely new claims never presented to the Board, including that the proposed uprate amendment will lead to "unacceptably heightened risks of accident and accident consequences, that "there are no [NRC] limits on noble gases," and that Dominion has not been "required . . . to monitor its strontium-90 releases to the atmosphere from Millstone." *See* Appeal at 21. These claims are unacceptably late, and in any event, without more, provide insufficient support for Contention 8. Further, the NRC Staff points to the "substantial regulatory framework" that "governs release limits on radioactive gases and requires calculations or measurements of radioactive releases." *See* Staff Brief at 16 n.8 (citing 10 C.F.R. § 20.1302). As noted above, NRC regulations are not subject to challenge in an adjudicatory proceeding.

[71] Petition at 44.

[72] *Id.*

[73] *See generally* LAR, Attachment 2, Supplemental Environmental Report.

[74] Appeal at 22.

discussions on impacts of the thermal plume, and otherwise had no support for any claim about impacts to marine life.[75]

Petitioners also claim that they "did contest Dominion's flat-out-wrong assertion that the increased heat released to the Long Island Sound . . . will be within the limits of Millstone's" National Pollutant Discharge Elimination System (NPDES) permit. While Contention 9 itself never raised any such claim, in their reply brief before the Board Petitioners stated that the Millstone NPDES permit had expired, that there was no valid permit in effect, and "that the temperature of the releases will exceed allowable limits of a valid NPDES permit."[76] In addition to being untimely, Petitioners provided no support for this claim. Nor, as the Board found, is the validity of the NPDES permit within the scope of this license amendment proceeding. Indeed, CCAM notes that it is an "intervening party" to the Connecticut Department of Environmental Protection's Millstone NPDES permit renewal proceedings.[77]

For the reasons the Board provided,[78] and those noted here, Contention 9 is inadmissible.

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[75] Dominion Brief at 19-20.

[76] *See 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) at 35-36.

[77] *Id* at 36 n.33. Petitioners for the first time on appeal also raise the claim that Dominion's application lacked an analysis of "the prospect that its increased radiological emissions will contaminate the human food supply." *See* Appeal at 22. Again, the claim is impermissibly late and lacks foundation. To the extent that Petitioners have any basis for claiming that there are current, ongoing excessive radiological releases from the Millstone facility, Petitioners may seek NRC enforcement action under 10 C.F.R. § 2.206. *See, e.g., Millstone*, CLI-06-4, 63 NRC at 37-38.

[78] *See* LBP-08-09, slip op. at 32-33.

III. CONCLUSION

Both for the reasons identified in LBP-08-09, and those in this decision, we find CCAM and Nancy Burton's contentions inadmissible. The appeal is *denied*. The Commission *affirms* LBP-08-09.

IT IS SO ORDERED.

For the Commission

/RA/

_____
Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of August 2008.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
DOMINION NUCLEAR CONNECTICUT, INC.	)	Docket No. 50-423-OLA
	)	
(Millstone Power Station, Unit No. 3)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-08-17) have been served upon the following persons by Electronic Information Exchange and on Nancy Burton/CCAM by separate e-mail.

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Original signed by Nancy Greathead
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Dated at Rockville, Maryland
this 13th day of August 2008