

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 08/14/08

ATOMIC SAFETY AND LICENSING BOARD

SERVED 08/14/08

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Paul B. Abramson
Dr. Michael Kennedy

In the Matter of

Dominion Nuclear Connecticut, Inc.
(Millstone Power Station, Unit No. 3)

Docket No. 50-423-OLA

ASLBP No. 08-862-01-OLA-BD01

August 14, 2008

MEMORANDUM AND ORDER

(Requesting Legal Briefs from CCAM, Dominion, and the NRC Staff)

Currently before the Board are three motions by Connecticut Coalition Against Millstone and Nancy Burton (CCAM) that essentially seek leave to file new and/or amended contentions in this proceeding,¹ as well as Answers from Dominion Nuclear Connecticut, Inc. (Dominion) and the NRC Staff opposing CCAM's request for nunc pro tunc relief and continuing waiver of the electronic filing requirements.²

¹ [CCAM] Revised Motion for Leave to File their New and/or Amended Contentions Based on Receipt of New Information and for Continuing Waiver of Electronic Filing (Aug. 7, 2008); [CCAM] 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) [hereinafter July 31 motion]; [CCAM] Motion for Leave to File and/or Amended Contentions Based on Receipt of New Information (July 18, 2008) [hereinafter July 18 motion].

² [Dominion's] Answer Opposing July 31, 2008 Motion of [CCAM] (Aug. 8, 2008); NRC Staff's Answer Opposing Petitioner's Motion Dated July 31, 2008 for Nunc Pro Tunc Relief and Continuing Waiver of Electronic Filing (Aug. 11, 2008).

To assist with its consideration of the motions now before it,³ the Board requests that CCAM, Dominion, and the Staff file legal briefs on the following issues:

1. At what stage in the licensing process does the record close such that a new contention request must also meet the requirements of 10 C.F.R. § 2.326?
2. Is the answer to (1) the same for cases where contentions are admitted rather than cases where there are no admitted contentions? See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32 (2006).
3. Do not the Commission's regulations contemplate an opportunity to file new or amended contentions provided that the circumstances under section 2.309(f)(2) have been met?
4. If the licensing process is ongoing and new or amended contentions arise, under what circumstances would a motion to reopen be required in addition to a motion under 10 C.F.R. § 2.309(f)(2)?

³ Because this Board in LBP-08-09 denied CCAM's initial petition to intervene and request for hearing, and because this decision was appealed to the Commission, the Commission would have jurisdiction over these motions. However, on August 5, 2008, the Office of the Secretary of the Commission (SECY) informed the Board and the participants via e-mail that it was referring the July 31 motion to the Board for consideration and appropriate action, and also attached the July 18 motion for the Board's review. E-mail from Emile Julian, Assistant for Rulemakings and Adjudications, Office of the Secretary, Nuclear Regulatory Commission, to the Millstone Licensing Board (Aug. 5, 2008, 10:17 AM EDT). On August 11, 2008, SECY followed this e-mail with a formal order referring the July 31 motion for the Board to take "any action it deems appropriate." Commission Order (Aug. 11, 2008) (unpublished). The Board views these two referral actions from SECY as delegating jurisdiction to the Board to consider and resolve issues relating to all of the motions enumerated in notes 1 and 2 above, as well as any further pleadings related to these motions.

On August 13, 2008, the Commission affirmed this Board's decision in LBP-08-09 and denied CCAM's appeal. CLI-08-17, 67 NRC ___, ___ (slip op. at 18) (Aug. 13, 2008).

The Board requests that initial briefs on these issues be filed no later than Monday, August 25, 2008 and responsive briefs be filed no later than Tuesday, September 2, 2008.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 14, 2008

⁴ Copies of this order were sent this date by the agency's E-Filing system to counsel for (1) applicant Dominion Nuclear Connecticut, Inc.; (2) the Connecticut Coalition Against Millstone and Nancy Burton; and (3) the NRC Staff. A courtesy copy was also sent to these individuals via e-mail.

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NUCLEAR REGULATORY COMMISSION

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DOMINION NUCLEAR CONNECTICUT, INC.) Docket No. 50-423-OLA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (REQUESTING LEGAL BRIEFS FROM CCAM, DOMINION, AND THE NRC STAFF) have been served upon the following persons by Electronic Information Exchange and on Nancy Burton/CCAM by separate e-mail.

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DOCKET NO. 50-423-OLA
MEMORANDUM AND ORDER (REQUESTING LEGAL BRIEFS FROM CCAM, DOMINION,
AND THE NRC STAFF)

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of August 2008