August 25, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Dominion Nuclear Connecticut, Inc.	)	Docket No. 50-426-OLA
	)	
(Millstone Power Station, Unit 3)	)	ASLB No. 08-862-01-OLA-BD01
	)	

DOMINION NUCLEAR CONNECTICUT'S BRIEF IN RESPONSE TO CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON'S REVISED MOTION FOR LEAVE TO FILE NEW CONTENTIONS

I. INTRODUCTION AND SUMMARY

In accordance with the instructions of the Atomic Safety and Licensing Board ("Board") in the above captioned proceeding, see Memorandum and Order (Requesting Legal Briefs from CCAM, Dominion, and the NRC Staff) (August 14, 2008) ("Board Order"), Dominion Nuclear Connecticut, Inc. ("Dominion") hereby answers and opposes the "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 and for Continuing Waiver of Electronic Filing" ("Motion"), which Connecticut Coalition Against Millstone and Nancy Burton ("Petitioners") transmitted by electronic mail on August 7, 2008. The Motion should be denied because there is no longer a proceeding in which Petitioners may intervene. Even if there were such a proceeding, the Motion should be denied because it was improperly filed and served, is

defective in not meeting applicable standards for reopening a closed proceeding, and does not satisfy the criteria for late intervention.[1]

Dominion's application for license amendments to approve a stretch power uprate for Millstone Power Station, Unit 3 ("MPS3") ("Application") was filed over a year ago on July 13, 2007, and Petitioners' contentions were due in this proceeding on March 17, 2008. See 73 Fed. Reg. 2,546, 2,547, 2,549-50 (Jan. 15, 2008). The Board denied Petitioners' initial Petition to Intervene filed on that date and terminated the adjudicatory proceeding (LBP-08-09, slip op. at 34), in large measure because Petitioners failed to address or challenge the Application. See, LBP-08-09, slip op. at 18, 19, 21-22, 24, 25-26, 30-31, 32. On August 12, 2008, the NRC Staff issued the license amendments approving the uprate. The following day, the Commission denied Petitioners' appeal of LBP-08-09. CLI-08-17, 68 N.R.C. __ (Aug. 13, 2008). Consequently, all aspects of the uprate proceeding have been terminated.

Through their Motion, Petitioners seek to restart the hearing process, ostensibly because they have now learned (principally from attending an ACRS subcommittee meeting on July 8, 2008) information of which they claim they were previously unaware. Petitioners, however, do not proffer any new contentions, but instead seek an additional month so that their consultant, Mr. Gundersen (who Petitioners state has other commitments), may conduct a technical review, and to enable them to engage a marine life expert. Motion at 2-3, 15.

Petitioners' attempt to reopen and restart the now terminated license uprate proceeding lacks a legal basis. The adjudicatory proceeding on the license amendment has been terminated,

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[1] Petitioners also improperly submitted this Motion to the Board, which no longer has jurisdiction to entertain the Motion after previously denying Petitioners' Petition for Leave to Intervene and Request for Hearing (March 17, 2008) ("Petition to Intervene") and terminating this proceeding (LBP-08-09, 67 N.R.C. __, slip op. at 34-35 (June 4, 2008). See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 N.R.C. 32, 35-36 (2006). However, by Order dated August 11, 2008, the Commission referred the Motion to the Board for any action it deems appropriate, and directed that any further pleadings related to the Motion should be directed to the Board.

the license amendments have been issued, and Petitioners' appeal of the Board's decision has been denied. Accordingly, there is no longer a proceeding in which Petitioners may intervene.

Even if there were an existing proceeding in which Petitioners could intervene, Petitioners have made no attempt to address the standards required to reopen a closed record in an adjudicatory proceeding or the standards for late intervention.

Finally, if the ACRS subcommittee meeting on July 8, 2008 had indeed been the source of material new information – which it was not – Petitioners should have filed promptly their Motion and included new contentions based on such information. Petitioners have already had over a month to prepare their Motion and develop their new contentions. That Mr. Gundersen has other unspecified commitments, and that Petitioners are only now seeking to retain a marine life expert are not valid excuses for Petitioners' tardiness.

In sum, even if late filing of new contentions were still possible, Petitioners have provided no grounds to reopen this closed proceeding and have such contentions entertained. Their Motion should be denied.

II. DISCUSSION

In its Order, the Board asked the parties to address four 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)?

Board Order, slip op. at 2. The discussion that follows is organized so as to address these four issues, as well as others that arise from the Motion.

A. Not Only Is the Record Closed but All Aspects of This Proceeding Have Been Terminated

While closure of the record in an adjudicatory proceeding typically occurs after evidence has been received in a hearing on admitted contentions, NRC case law indicates that the record is also considered closed where the petitioners or intervenors have been dismissed. Thus, in Millstone, CLI-06-4, the Commission applied the factors in 10 C.F.R. § 2.326(a) when CCAM sought to introduce new contentions after its initial petition to intervene had been denied. See Millstone, CLI-06-4, 63 N.R.C. at 35, 37. Similarly, in Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 N.R.C. 1 (1992), the Commission applied the factors in 10 C.F.R. § 2.734 (which is now 10 C.F.R. § 2.326) to a request to introduce new contentions after the Licensing Board had dismissed the adjudicatory proceedings pursuant to a settlement. See Comanche Peak, CLI-92-1, 35 N.R.C. at 3, 7.

In the Millstone uprate proceeding, the adjudicatory record is clearly closed. In LPB-08-09, the Board "terminate[d] this [adjudicatory] proceeding" (LPB-08-09, slip op. at 34), and in CLI-08-17, the Commission affirmed this decision.

Moreover, the opportunity to reopen a closed adjudicatory proceeding expires when the NRC Staff issues the license or amendments in the case. Where the NRC staff has issued to license or amendments in a case, "that action has closed out the Notice of Opportunity for Hearing. . . ." See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 N.R.C. 62, 67(1992). In essence, "these proceedings are no longer available to them." Id.

Here, the Staff issued the license amendments approving the uprate on August 12, 2008. See CLI-08-17, slip op. at 1 n.1. Thus, not only is the adjudicatory proceeding closed, but there is no longer any licensing proceeding in which Petitioners may intervene.

B. Even If There Were Still a Proceeding in Which Petitioners Could Participate, Petitioners Would Be Required to Satisfy Both the Standards for a Late Intervention Petition, and the Standards for Reopening a Closed Record

As the Commission has made clear, a motion to reopen a closed proceeding is available only to parties that have been admitted to the proceeding. Comanche Peak, CLI-92-1, 35 N.R.C. at 5; Comanche Peak, CLI-92-12, 36 N.R.C. at 3. Thus, to reopen a closed proceeding, a non-party (such as Petitioners) must satisfy both the standards for late intervention (to become a party) and the standards to reopen a closed proceeding. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-01, 37 N.R.C. 1, 3 (1993); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 N.R.C. 156, 161 (1993) ("when the record is closed, as in this case, a potential intevenor must 'satisfy [both] the late intervention and reopening criteria'"). The Commission has recommended that these standards be addressed in the same pleading. CLI-93-4, 37 N.R.C. at 162.

10 C.F.R. § 2.326(d) also compels Petitioners to address not only the standards for reopening a closed record but also the standards for late intervention. 10 C.F.R. § 2.326(d) states:

> (d) A motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in § 2.309(c).

In turn, 10 C.F.R. § 2.309(c) provides:

> (c) Nontimely filings. (1) Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be

> granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:
>
> (i) Good cause, if any, for the failure to file on time;
>
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
>
> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
>
> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
>
> (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
>
> (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
>
> (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.
>
> (2) The requestor/petitioner shall address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.

Thus, under the NRC rules, where a motion to reopen relates to a contention not previously in controversy, it must satisfy the requirements for nontimely contentions in 10 C.F.R. § 2.309(c). Millstone, CLI-06-04, 63 N.R.C. at 37-38.

Here, Petitioners are not and have never been parties to the uprate proceeding. In addition, they are seeking to reopen the adjudicatory proceeding to consider new contentions. For both these reasons, even if there were still a proceeding in which Petitioners could participate (which as previously discussed, there is not), Petitioners could do so only by meeting the criteria in both 10 C.F.R. § 2.309(c) and 10 C.F.R. § 2.326.

Petitioners have not addressed any of these criteria. First, they have not made any attempt to satisfy the criteria for late intervention in 10 C.F.R. § 2.309(c). The failure to address

these criteria by itself warrants denial of the Motion.[2] Moreover, Petitioners should be well aware of the obligations, as they have attempted this before. As the Commission held under these same circumstances, "[q]uite simply, if a party seeks to reopen a closed record and, in the process raises an issue that was not an admitted contention in the initial proceeding, it must demonstrate that raising this issue satisfies the requirements for a nontimely or 'late-filed' contention. As with all other procedural requirements for reopening a closed proceeding, CCAM completely ignores this requirement. . . . Our procedural rules exist for a reason. We cannot consider a last-second reopening of an adjudication and a restart of Licensing Board proceedings based on a pleading that is defective on its face." Millstone, CLI-06-04, 63 N.R.C. at 38.

Likewise, Petitioners have not addressed the standards in 10 C.F.R. § 2.326, which require:

> (a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:
>
> > (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
> >
> > (2) The motion must address a significant safety or environmental issue; and
> >
> > (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

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[2] Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 347 (1998) ("[T]he Commission has itself summarily dismissed petitioners who failed to address the five factors for a late-filed petition.") (footnote omitted); Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461, 465-66 (1985) ("[G]iven its failure even to address the . . . lateness factors, [a] [late] intervention petition [is] correctly denied because it [is] untimely."). "The burden of persuasion on the lateness factors is on the tardy petitioner and . . . in order to discharge that burden, the petitioner must come to grips with those factors in the petition itself." Id. at 466 (footnote omitted). "Late petitioners properly have a substantial burden in justifying their tardiness." Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273, 275 (1975). "[T]he late petitioner must address each of [the] five factors and affirmatively demonstrate that, on balance, they favor permitting his tardy admission to the proceeding." Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 N.R.C. 350, 352 (1980) (quoting Nuclear Fuel Services, supra).

> (b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

Petitioners have made no attempt to address the criteria in 10 C.F.R. § 2.326(a). Further, they have not provided any affidavits, which are required by 10 C.F.R. § 2.326(b). This failure too warrants denial of the Motion.

C. The Criteria in 10 C.F.R. § 2.309(f)(2) Do Not Obviate Compliance with 10 C.F.R. § 2.326 and 10 C.F.R. § 2.309(c)

The Board's third question is whether the NRC regulations contemplate an opportunity to file new or amended contentions provided that the circumstances under 10 C.F.R. Section 2.309(f)(2) have been met. The answer is yes, but Section 2.309(f)(2) does not obviate compliance with the criteria in sections 2.326 and 2.309(c) under the circumstances present here. As the Commission has held under essentially the same circumstances (indeed, on an earlier an attempt by CCAM to raise a new contention after its petition to intervene in another proceeding had been denied), a motion to reopen a closed proceeding must satisfy the requirements of 10 C.F.R. § 2.326. Millstone, CLI-06-4, 63 N.R.C. at 37. Further, both the precedents previously discussed and 10 C.F.R. § 2.326(b) explicitly require Petitioners to meet the criteria for late intervention.[3]

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[3] While some Licensing Board's have held that the late-filing criteria in 10 C.F.R. § 2.309(c) do not apply where a party has met the timeliness factors for a new or amended contention in 10 C.F.R. § 2.309(f)(2), none of those decisions address the requirements when a proceeding has been terminated. Where a party is seeking to reopen a closed proceeding to litigate a new contention, 10 C.F.R. § 2.326 explicitly requires that the late-filing criteria in 10 C.F.R. § 2.309(c) be addressed.

The last question posed by the Board is: Assuming a 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). The question is based on a premise that does not apply in this case, since as previously discussed, there is no ongoing licensing proceeding with respect to the MPS3 uprate licensing amendments. Assuming, arguendo, that there is an ongoing licensing proceeding, Petitioners would have to satisfy the requirements of 10 C.F.R. § 2.326 for reopening the record and the criteria in 10 C.F.R. § 2.309(c) for late intervention, because (1) the record is closed, (2) Petitioners are not parties, and (3) they seek to introduce new contentions.

In any event, Petitioners do not meet the criteria in 10 C.F.R. § 2.309(f)(2). One of the criteria in 10 C.F.R. § 2.309(f)(2) that must be satisfied to provide good cause for a new or amended contention is that "[t]he amended or new contention has been submitted in a timely fashion . . ." 10 C.F.R. § 2.309(f)(2)(iii) (emphasis added). Thus, NRC rules require submittal of the actual contentions. Here, Petitioners identify only "prospective" contentions, and describe

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Dominion also respectfully submits that those Licensing Board decisions holding that Section 2.309(c) does not apply if the factors in Section 2.309(f)(2) are met have overlooked the Commission's statements in promulgating these rules. In the Supplemental Information accompanying these rules, the Commission stated:

> The Commission also declines to adopt the thrust of the suggestions to allow free amendment and addition of contentions based upon new information such as the SER. . . . The adequacy of the applicant's license application, not the NRC staff's safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the SER are not cognizable in a proceeding. . . . If information in the SER bears upon an existing contention or suggests a new contention, it is appropriate for the Commission to evaluate under § 2.309(c) the possible effect that the admission of amended or new contentions may have on the course of the proceeding.

69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004) (emphasis added) (citations omitted). Thus, sections 2.309(c) and 2.309(f)(2) should not be interpreted as being mutually exclusive. Rather, the timeliness requirements in 10 C.F.R. § 2.309(f)(2) should be interpreted as elaborating upon the showing that must be made to satisfy the good cause criterion in 10 C.F.R. § 2.309(c)(1). Indeed, the provisions in section 2.309(f)(2) merely codify the case law interpreting the good cause prong of the late-filing factors. Compare Comanche Peak, CLI-92-12, 36 N.R.C. at 69-73; Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 N.R.C. 156, 164-65 (1993). Moreover, the Commission's citations in Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 636 n.5 (2004), equate sections 2.309(f)(2) and 2.309(c)(1). Similarly, Florida Power & Light Co. et al., CLI-06-21, 64 N.R.C. 30, 33-34 (2006) suggests that both should be addressed.

in general terms and without specific support certain issues they may choose to raise at a future time. Petitioners declare: "Additional new contentions may be proffered upon review [of the ACRS transcript] by the petitioners and their expert. . . ." Motion at 2. In essence, Petitioners seek an advisory ruling assuring them that later efforts to proffer contentions, which may not be the same as the prospective contentions discussed in the Motion, will be accepted. NRC rules do not allow Petitioners to obtain an advance ruling on the admissibility of prospective contentions, nor to attempt to remedy their untimeliness in a fragmented, piecemeal manner. Nor should Dominion and the NRC Staff be required to address the timeliness of prospective contentions that may change (or indeed, may not be submitted at all). As a practical matter, it is not feasible for Dominion or the Staff to determine whether "the information on which the new or amended contention is based" was not previously available (10 C.F.R. § 2.309(f)(2)(i)) or is materially different than information previously available (10 C.F.R. § 2.309(f)(2)(ii)), when the new or amended contention has not been submitted.

In addition, the three issues that Petitioners identify as "prospective" contentions were all addressed in the Application and could have been raised at the outset of the proceeding. Indeed, with respect to Petitioners' first issue (related to the proposed addition of a filter to the hot leg temperature signal), Petitioners' themselves list three pages of references to the portions of the Application in which this change was discussed. See Motion at 10-12. The second issue, the reduction in projected fluence, was identified in Section 2.1.1.2.4 of the Safety Analysis Report[4] and explained further in a November 19, 2007 response to an NRC request for additional information.[5] With respect to the third issue (Motion at 13), the use of gap release fractions

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[4] Application, Att. 5 at 2.1-6.

[5] Letter from G. Bischof to NRC, "Response to Request for Additional Information Regarding Stretch Power Uprate License Amendment Request" (Nov. 19, 2007) at 3-5, available at ADAMS Accession No. ML073230976.

based on Regulatory Guide 1.25[6] in the analysis of fuel handing accidents is identified in the Safety Analysis Report (Application, Att. 5) at 1-8. Thus, Petitioners make no showing that the information they allegedly learned at the July 8, 2008 ACRS meeting was unavailable or is materially different from that previously available, as required by 10 C.F.R. § 2.309(f)(2)(i)-(ii). That the ACRS meeting may have alerted Petitioners to topics addressed in the Application simply reflects Petitioners' prior failure to review the Application carefully.

Even if one assumes that Petitioners learned of some new information at the July 8, 2008 ACRS meeting, Petitioners failed submit contentions in a timely fashion, as required by 10 C.F.R. § 2.309(f)(2)(iii). 10 C.F.R. § 2.323(a) requires that any motion (such as one to introduce new contentions based on what transpired at the ACRS meeting) be filed within ten days of learning the new information. Petitioners and Mr. Gundersen participated in the July 8, 2008 ACRS subcommittee meeting. Transcript of Meeting of Advisory Committee on Reactor Safeguards, Subcommittee on Uprates (July 8, 2008)[7] at 282. Petitioners and Mr. Gundersen also participated in the full ACRS meeting on July 9, 2008. Transcript of Meeting of Advisory Committee on Reactor Safeguards (July 9, 2008)[8] at 94. Thus, they were fully aware then of the discussions that occurred, yet they have let a month elapse without proffering any new contentions. Clearly, Petitioners' Motion is untimely.

The last three issues cited by Petitioners in support of filing prospective new contentions are unrelated to the discussions before the ACRS. Petitioners' fourth issue (Motion at 13-14) relates to a license amendment application submitted over three months ago (on May 8, 2008) and therefore does not meet the timeliness criterion in 10 C.F.R. § 2.309(f)(2)(iii). Further, this

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[6] Petitioners incorrectly refer to Regulatory Guide 1.82. See Motion at 2, 13.

[7] Available at http://www.nrc.gov/reading-rm/doc-collections/acrs/tr/subcommittee/2008/ and ADAMS Accession No. ML082100191.

[8] Available at http://www.nrc.gov/reading-rm/doc-collections/acrs/tr/fullcommittee/2008/ and ADAMS Accession No. ML082040631.

issue involves a separate proceeding relating to steam generator repairs and is wholly unrelated to, and beyond the scope of, the uprate proceeding, and therefore does not meet the materiality criterion in 10 C.F.R. § 2.309(f)(2)(ii). Petitioners' fifth issue (Motion at 14) relates to an extension request that was documented in docketed correspondence on April 7, 2008[9] – over four months ago – and involves a response to a generic letter that is unrelated to the uprate. Therefore, the fifth issue also does not meet the criteria in 10 C.F.R. § 2.309(f)(2)(i) - (iii). Petitioners' final issue is allegedly prompted by a July 14, 2008 newspaper article about the arrival of jellyfish in the Long Island Sound. Again, more than a month has passed since this article, so the criterion in 10 C.F.R. § 2.309(f)(2)(iii) is not met. Moreover, Petitioners provide no showing that this information is material as required by 10 C.F.R. § 2.309(f)(2)(ii), particularly when the Application shows that discharges will remain within NPDES limits. LBP-08-09, slip op. at 33.

III. THE MOTION WAS IMPROPERLY FILED AND SERVED

The Motion should also be denied because it was not filed and served in accordance with the Commission's E-Filing rule. 10 C.F.R. § 2.302(a) requires that "[d]ocuments filed in Commission adjudicatory proceedings . . . be electronically transmitted through the E-Filing system, unless the Commission or presiding officer grants an exemption . . . ." 10 C.F.R. § 2.305(c) similarly requires that filings must be served electronically through the E-Filing system. See also Final Rule, Use of Electronic Submissions in Agency Hearings, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing rule is not satisfied when a participant files by attaching the

[9] Letter from C. Funderburk to NRC, "Generic Letter 2008-01, Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray System – Schedule Extension for Three Month Response" (Apr. 7, 2008), available at ADAMS Accession No. ML080980543. This letter is identified in the July 8, 2008 correspondence to which Petitioners refer.

document to an e-mail. 72 Fed. Reg. at 49,144. Petitioners are not exempt from the E-Filing requirements, but they have nevertheless disregarded them for every filing in this proceeding.[10]

In its April 16, 2008 Order, this 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.

April 16, 2008 Order at 2 (footnote omitted). While Petitioners have requested a continuing waiver of the E-Filing requirements,[11] that motion has not been granted and should be denied for the reasons stated in Dominion's Answer Opposing July 31, 2008 Motion of Connecticut Coalition Against Millstone and Nancy Burton (Aug. 8, 2008). The Commission's denial of Petitioners' appeal in this proceeding makes special mention of "Ms. Burton's recurring disregard of NRC regulations," and ruled that Petitioners' recurring procedural violations would be sufficient grounds for denying their appeal.[12] CLI-08-17, slip op. at 5. Since the procedural violations relating to the Motion are of the same nature as those prompting the Commission's ruling in CLI-08-07, the Motion should also be denied for failure to comply with the NRC procedural regulations.

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[10] Petitioners were twice granted exemptions from the Commission's E-Filing requirements in this proceeding. In each instance, the exemption was limited to specific pleadings. See Memorandum from A. Bates to E. Roy Hawkens, "Request for Hearing Submitted By the Connecticut Coalition Against Millstone and Nancy Burton" (Mar. 24, 2008) (available at ADAMS Accession No. ML080850937) ("the Office of the Secretary was assured by Ms. Burton on behalf of CCAM and herself that the exception to the efiling 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 [exemption] 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.") (citation and footnote omitted).

[11] 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).

[12] The Commission noted that in an earlier proceeding it had advised Ms. Burton that "filings bearing her name that do not meet [NRC] procedural requirements would be summarily rejected by the Office of the Secretary and not accepted for docketing." CLI-08-17, slip op. at 5 (citing Millstone, CLI-06-4, 63 N.R.C. at 38).

IV. CONCLUSION

For all of the foregoing reasons, the Motion should be denied.

Respectfully Submitted,

/Original Signed by Matias F. Travieso-Diaz/

_____

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Dated: August 25, 2008

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NUCLEAR REGULATORY COMMISSION

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	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Dominion Nuclear Connecticut's Brief in Response to Connecticut Coalition Against Millstone and Nancy Burton Revised Motion for Leave to File New Contentions" 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), this 25th day of August, 2008.

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