

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

October 27, 2008

**MEMORANDUM AND ORDER**

(Ruling on Motions to File New or Amended Contentions)

Currently before the Board are four interrelated pleadings by Connecticut Coalition Against Millstone and Nancy Burton (CCAM) that essentially seek leave to file new and/or amended contentions in this proceeding,<sup>1</sup> as well as Answers from Dominion Nuclear Connecticut, Inc. (Dominion) and the NRC Staff opposing CCAM's request.<sup>2</sup> All pleadings

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<sup>1</sup> [CCAM] New Contentions and Request for Leave to Submit New Contentions Based on Receipt of New information and Request for Continuing Waiver of E-Filing Requirements (Aug. 27, 2008) [hereinafter August 27 Motion]; [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) [hereinafter August 7 Motion]; [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].

<sup>2</sup> [Dominion's] Answer Opposing July 31, 2008 Motion of [CCAM] (Aug. 8, 2008) [hereinafter Dominion's August 8 Answer]; 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) [hereinafter NRC Staff's August 11 Answer]; NRC Staff's Answer to [CCAM's] New Contentions and Request for Leave to Submit New Contentions Based on Receipt of New

discussed herein were filed after this Board issued its Memorandum and Order denying the CCAM petition to intervene in the NRC proceeding regarding Dominion's application for an amendment to its Operating License NPF-49 for Millstone Power Station Unit 3 (Millstone) in Waterford, Connecticut.<sup>3</sup>

## I. PROCEDURAL BACKGROUND

On July 13, 2007, pursuant to 10 C.F.R. § 50.90, Dominion requested an amendment to its NRC Operating License NPF-49 for Millstone Power Station Unit 3.<sup>4</sup> The Dominion License Amendment Request (LAR) was for a proposed Stretch Power Uprate (SPU). This LAR would increase the unit's authorized core power level from 3411 megawatts thermal (MWt) to 3650 MWt, and make necessary changes to Technical Specifications to support operation at the stretch power level.<sup>5</sup>

On March 17, 2008, CCAM filed a petition to intervene and request for hearing.<sup>6</sup> The petition contained nine proposed contentions and requested that the LAR be rejected.

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Information and Request for Continuing Waiver of E-filing Requirements (Sept. 22, 2008) [hereinafter NRC Staff's September 22 Answer].

<sup>3</sup> See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-08-09, 67 NRC \_\_ (slip op.) (June 4, 2008).

<sup>4</sup> The License Amendment Request was subsequently supplemented on July 13, September 12, November 19, December 13, and December 17, 2007. 73 Fed. Reg. 2546, 2549 (Jan. 15, 2008).

<sup>5</sup> Id. at 2549.

<sup>6</sup> [CCAM] Petition to Intervene and Request for Hearing (Mar. 17, 2008).

Following the designation of this Licensing Board,<sup>7</sup> Dominion<sup>8</sup> and the NRC Staff<sup>9</sup> filed Answers on April 11, 2008 to CCAM's petition to intervene and request for hearing. Dominion and the NRC Staff argued that CCAM had not proffered an admissible contention. CCAM filed a Reply on April 22, 2008.<sup>10</sup>

On June 4, 2008, the Board issued its Memorandum and Order, LBP-08-09,<sup>11</sup> granting CCAM standing but denying all contentions as inadmissible and terminating the proceeding.<sup>12</sup> CCAM appealed the Board's decision to the Commission on June 16, 2008.<sup>13</sup>

The NRC Staff approved Dominion's request for a stretch power uprate and issued the license amendment on August 12, 2008.<sup>14</sup>

The Commission issued its Memorandum and Order, CLI-08-17,<sup>15</sup> finding CCAM's nine contentions inadmissible, denying the appeal, and affirming the Board's actions in all respects on August 13, 2008.<sup>16</sup>

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<sup>7</sup> Dominion Nuclear Connecticut, Inc.; Establishment of Atomic Safety and Licensing Board, 73 Fed. Reg. 18,010 (Apr. 2, 2008).

<sup>8</sup> [Dominion's] Response to [CCAM's] Petition to Intervene and Request for Hearing (Apr. 11, 2008).

<sup>9</sup> NRC Staff Answer to Request to Intervene and for Hearing of [CCAM] (Apr. 11, 2008).

<sup>10</sup> [CCAM] Reply to Responses of NRC Staff and [Dominion] to Petition to Intervene and Request for Hearing (Apr. 22, 2008).

<sup>11</sup> Millstone, LBP-08-09, 67 NRC at \_\_ (slip op. at 1).

<sup>12</sup> Id. (slip op. at 34-35).

<sup>13</sup> Notice of Appeal (June 16, 2008).

<sup>14</sup> See Dominion Nuclear Connecticut, Inc.; Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration, 73 Fed. Reg. 49,222 (Aug. 20, 2008).

<sup>15</sup> Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3), CLI-08-17, 68 NRC \_\_, \_\_ (slip op.) (Aug. 13, 2008).

## II. FOUR CCAM PLEADINGS FILED AFTER THE BOARD'S DECISION

Since the issuance of the Board's decision, CCAM filed four pleadings which seek leave to file new and/or amended contentions in this proceeding. The proposed new/amended contentions arise from information gathered at the Advisory Committee on Reactor Safeguards (ACRS) Power Upgrades Subcommittee Meeting on July 8, 2008, at which the Millstone power uprate was discussed.

Each pleading is discussed below.

### A. The July 18, 2008 and July 31, 2008 Motions

#### 1. Background

On July 18, 2008, after the Board had terminated the proceeding and while an appeal was pending before the Commission, CCAM filed a motion before the Board seeking leave to file new or amended contentions, but not addressing any of the criteria set out in section 2.309(f)(1) (the requirements for admission of all contentions), section 2.309(f)(2) (the additional requirements for admission of new or amended contentions), or section 2.326 (the requirements for reopening a record).<sup>17</sup> CCAM represented that the new or amended contentions would be supported by expert declarations within ten days of receiving the transcript of the July 8, 2008 ACRS meeting. The July 18 Motion did provide general information on six "prospective contentions" regarding (1) temperature spikes in the hot legs of the reactor; (2) increase of fluence on the wall of the vessel; (3) use of assumptions relating to accident dose; (4) steam

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<sup>16</sup> Id. at 18.

<sup>17</sup> See generally July 18 Motion. The July 18 Motion merely includes conclusory statements that it meets the requirements of 10 C.F.R. § 2.309(f)(2). See July 18 Motion at 1-2.

generator tube repair; (5) gas accumulation; and (6) pre-seasonal arrival of jellyfish.<sup>18</sup> The July 18 Motion attached an article about jellyfish, but did not contain any expert support.

On July 21, 2008, the Office of the Secretary e-mailed Ms. Burton and the parties, notifying them that the July 18 Motion was not accepted or docketed because the filing failed to meet e-filing procedural requirements.<sup>19</sup> CCAM replied on July 31, 2008, addressing its inadvertent failure to meet the e-filing requirements, making a motion requesting a continuing waiver of e-filing requirements, and requesting that the Board overlook its failure to file according to the NRC's rules of procedure and reinstate the July 18 Motion nunc pro tunc.<sup>20</sup> Dominion and the NRC Staff filed Answers in opposition to the July 31 Motion on August 8, 2008, and August 11, 2008, respectively.<sup>21</sup>

On August 11, 2008, the Secretary of the Commission, pursuant to authority under 10 C.F.R. § 2.346(i), referred the July 31 Motion and any further pleadings related to this motion to the Board.<sup>22</sup>

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<sup>18</sup> Id. at 2.

<sup>19</sup> E-mail from Emile Julian, Assistant for Rulemakings and Adjudications, Office of the Secretary, Nuclear Regulatory Commission, to Nancy Burton (July 21, 2008, 3:48 PM EDT). In an earlier proceeding the Commission directed the Secretary to screen all of Ms. Burton's filings and to reject any that are non-conforming with the Commission's practices and procedures without referring them to the Board or Commission. See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-04, 63 NRC 32, 38-39 (2006).

<sup>20</sup> July 31 Motion at 3-4. In its July 31 Motion, CCAM also requested that the Board apply an e-filing exemption to the appeal that was (at that time) pending before the Commission. Id. at 4. This request is plainly outside of the jurisdiction of the Board.

<sup>21</sup> Dominion's August 8 Answer; NRC Staff's August 11 Answer.

<sup>22</sup> Commission Order (Aug. 11, 2008) (unpublished). Although both of these motions were captioned as filed before the Atomic Safety and Licensing Board, 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. See Millstone, CLI-06-04, 63 NRC at 35-36. However, on August 5, 2008, the Office of the Secretary of the Commission (SECY) informed the Board and the participants via e-mail

## 2. Board Ruling on July 18 and July 31 Motions

As prior licensing boards and the Commission have advised CCAM on numerous occasions, failure to comply with NRC regulations when submitting a pleading in an adjudication will result in rejection of that pleading.<sup>23</sup> This Board, although it had granted CCAM a waiver of the e-filing requirements for a pleading filed prior to the Board's decision in LBP-08-09, already informed CCAM that the waiver was limited to that pleading.<sup>24</sup> The Board expected that CCAM would thereafter comply with the e-filing requirements.<sup>25</sup>

CCAM's claim of "inadvertence" in its July 31 Motion for failing to meet the e-filing requirements or failing to request a waiver at the time it submitted its July 18 Motion is insufficient to establish good cause such that the Board would grant filing of the July 18 Motion nunc pro tunc. This is especially the case considering CCAM's prior experience in NRC adjudications in general, and with this Board in particular. Therefore, CCAM's motion requesting reinstatement of its July 18 Motion is denied.

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that it was referring the July 31 Motion and any future issues related to it 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 four of CCAM's motions, as well as any further pleadings related to these motions.

<sup>23</sup> See, e.g., Millstone, CLI-08-17, 68 NRC at \_\_\_ (slip op. at 5); Millstone, CLI-06-04, 63 NRC at 38-39; Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 643-44 (2004); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-22, 60 NRC 379, 384 (2004).

<sup>24</sup> See Licensing Board Order (Granting CCAM and Nancy Burton Request for E-Filing Exemption) (Apr. 16, 2008) at 2.

<sup>25</sup> See id.

Nonetheless, we grant CCAM's request in its July 31 Motion for a waiver of the e-filing requirements for the subsequent motions we have received and are ruling on in this Memorandum and Order. CCAM represents that it is still experiencing technical difficulties that prevent it from complying with the e-filing requirements.<sup>26</sup> We find that this is good cause for a waiver and will apply this waiver to CCAM's August 7 and August 27 Motions. However, as we stated before, we expect that all other pleadings filed by CCAM will be e-filed or accompanied by a request for waiver of the e-filing requirements.

#### B. The August 7, 2008 Motion

##### 1. Background

On August 7, 2008, while CCAM's appeal was pending before the Commission, CCAM filed a revised motion before the Board for leave to file, within thirty days of the posting on July 28, 2008 on the NRC website of the official transcript of the July 8, 2008 ACRS meeting (i.e., on or before August 27, 2008), new and/or amended contentions based on receipt of new information.<sup>27</sup>

On August 14, 2008, following the Commission's denial (on August 13) of CCAM's appeal of our decision, and the Agency's issuance of the requested license amendment on August 12, this Licensing Board requested legal briefs from the participants regarding an issue fundamental to consideration of these motions – whether the record need be reopened to

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<sup>26</sup> See July 31 Motion at 3.

<sup>27</sup> August 7 Motion at 1. The August 7 Motion is virtually identical to the July 18 Motion. The August 7 Motion provided general information on six prospective contentions regarding (1) temperature spikes in the hot legs of the reactor; (2) increase of fluence on the wall of the vessel; (3) use of assumptions relating to accident dose; (4) steam generator tube repair; (5) gas accumulation; and (6) pre-seasonal arrival of jellyfish. Id. at 2. Like the July 18 Motion, the August 7, 2008 Motion attached an article about jellyfish, but did not contain any expert support.

accept new or amended contentions.<sup>28</sup> Both the NRC Staff and Dominion presented persuasive arguments for their view that the record had been closed both by this Board's order and by the Commission denial (in its August 13 ruling) of CCAM's appeal and that the reopening standards set out in section 2.326 must be satisfied,<sup>29</sup> while CCAM stated, without support (citing neither NRC case law nor regulatory provision) that a motion to reopen is unnecessary.<sup>30</sup>

## 2. Board Ruling on August 7 Motion

CCAM's August 7 Motion merely identifies "prospective" contentions, and describes in general terms and without specific support certain issues it might raise at a future time. For example, CCAM stated that it wished to file new or amended contentions within thirty days of July 28, 2008, when the official transcript of the ACRS meeting was posted on the NRC website.<sup>31</sup> CCAM also stated, "[a]dditional new contentions may be proffered upon review [of the ACRS transcript] by the petitioners and their expert."<sup>32</sup> In essence, CCAM has filed for a "place holder" seeking to file the six contentions or other contentions at a future date. Nothing in the NRC rules permits such an action.

In deciding this matter, we are faced with the unique question of the effectiveness of

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<sup>28</sup> See Licensing Board Order (Requesting Legal Briefs from CCAM, Dominion, and the NRC Staff) (Aug. 14, 2008) (unpublished).

<sup>29</sup> See NRC Staff's Initial Legal Briefing on Board's Questions (Aug. 25, 2008) at 4 [hereinafter NRC Staff August 25 Brief]; [Dominion's] Brief in Response to [CCAM's] Revised Motion for Leave to File New Contentions (Aug. 25, 2008) at 4; NRC Staff's Reply to Petitioner's and Applicant's Legal Briefing on Board's Questions (Sept. 2, 2008) at 4; [Dominion's] Reply to [CCAM's] Response to Board's Request for Legal Briefs (Sept. 2, 2008) at 2.

<sup>30</sup> See [CCAM's] Response to Atomic Safety and Licensing Board Panel's Memorandum and Order Dated August 14, 2008 Requesting Legal Briefs and Request for Continuing Waiver of E-filing Requirements (Aug. 25, 2008) at 2-4.

<sup>31</sup> August 7 Motion at 1.

<sup>32</sup> Id. at 2.

what amounts to a “notice” of intent to file future claims. The question is whether or not that “place holder” served to eliminate the requirement for a motion to reopen the record after the Commission ruled on the appeal (and, for that matter, after the Agency issued the requested License Amendment).

We agree with the NRC Staff when it observed that “[w]here no contention was admitted, the record closes after any appeal to the Commission is denied, and the proceeding is terminated (i.e., no evidence was ever heard).”<sup>33</sup> But that argument begs the question of the effect of CCAM’s place holder motion of August 7, 2008. In the complete absence of legal authority (offered by CCAM or any other party) for such a principle, and, as we observed above, the absence of any express provision for such an action from our regulations, we find that CCAM’s August 7 Motion did not eliminate the requirement for CCAM to file a motion to reopen the record.

Thus, because this Licensing Board has denied CCAM’s intervention petition, a motion to file new or amended contentions must address the motion to reopen standards of 10 C.F.R. § 2.326 (which, for new contentions not previously filed in the proceeding, also include addressing the non-timely balancing factors in section 2.309(c)(1)<sup>34</sup>).<sup>35</sup> In addition, CCAM’s motion must address the criteria for new or amended contentions under 10 C.F.R. § 2.309(f)(2), and as in an initial request for hearing and petition to intervene, the contention admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi). This is the case even though an appeal of that ruling is pending before the Commission.<sup>36</sup> Aside from a conclusory statement that CCAM has met the

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<sup>33</sup> NRC Staff August 25 Brief at 4 (citing Millstone, CLI-06-04, 63 NRC at 35).

<sup>34</sup> See 10 C.F.R. § 2.326(d).

<sup>35</sup> See Millstone, CLI-06-04, 63 NRC at 35-36.

<sup>36</sup> See id. at 35, 37. However, if the appeal is pending before the Commission, the

requirements of 10 C.F.R. § 2.309(f)(2),<sup>37</sup> CCAM addressed none of these matters. Therefore, CCAM's August 7 Motion must be denied.

### 3. Further Observations

Even if we were to consider the prospective contentions set out in CCAM's August 7 Motion as properly filed new or amended contentions, we find that they fail to satisfy the plain requirements for contention admissibility. For example, 10 C.F.R. 2.309(f)(1)(v) requires contentions to be supported by "a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue . . . together with references to the specific sources and documents on which [it] intends to rely to support its position."<sup>38</sup> "It is the obligation of the petitioner to present the factual information and expert opinions necessary to support its contention adequately."<sup>39</sup> "[F]ailure to do so requires that the contention be rejected."<sup>40</sup> The August 7 Motion is not supported by any facts or expert opinion, nor does it contain sufficient information for the Board to admit any of CCAM's proposed new or amended contentions. Therefore, the information provided by CCAM in its August 7 Motion does not present an admissible contention.

### C. The August 27, 2008 Motion

#### 1. Background

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motion to reopen must be filed with the Commission, as discussed above. See supra note 22.

<sup>37</sup> See August 7 Motion at 2.

<sup>38</sup> 10 C.F.R. § 2.309(f)(1)(v).

<sup>39</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006).

<sup>40</sup> Id.; Arizona Pub. Serv. Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

On August 27, 2008, after the record of this proceeding had been closed by the Commission's issuance of its August 13 order denying CCAM's appeal of this Board's decision, and after the actual issuance of the requested license amendment by the Agency on August 12, 2008, CCAM filed two new contentions before the Board and included an expert affidavit by Arnold Gundersen in support of its contentions.<sup>41</sup> The August 27 Motion also makes reference to the three pending motions described above.<sup>42</sup>

On September 16, 2008, Dominion notified the Board that it would not file an Answer to CCAM's August 27 Motion.<sup>43</sup> The NRC Staff filed an Answer opposing CCAM's August 27 Motion on September 22, 2008.<sup>44</sup> The Staff argues, and we agree, that the termination of the proceeding and issuance of the license amendment preclude reopening the record to consider new or amended contentions.<sup>45</sup>

## 2. Board Ruling on August 27 Motion

As the Commission stated in Comanche Peak, once the license has been issued, the adjudicatory proceeding has terminated and can no longer be reopened.<sup>46</sup> Instead, the proper remedy for petitioners seeking to challenge the license is through a request to modify, suspend,

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<sup>41</sup> August 27 Motion, Exhibit A, Declaration of Arnold Gundersen Supporting [CCAM] in its Petition for Late Filed Contentions Due to New Information (Aug. 26, 2008) [hereinafter Gundersen Declaration].

<sup>42</sup> August 27 Motion at 1 n.2.

<sup>43</sup> Letter from Counsel for Dominion Nuclear Connecticut, Inc., to Licensing Board (Sept. 16, 2008) at 3.

<sup>44</sup> NRC Staff's September 22 Answer at 1.

<sup>45</sup> See id. at 5-6.

<sup>46</sup> Texas Utils. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 67 (1992).

or revoke a license under 10 C.F.R. § 2.206.<sup>47</sup> Because the NRC Staff had already issued the license amendment, thereby terminating the proceeding prior to CCAM's submittal of the August 27 Motion, CCAM's August 27 Motion must be denied.

### 3. Further Observations

Even if the Board found that it could treat the August 27 Motion under the motion to reopen standards, we would still be required to reject the August 27 Motion because it fails to address the Commission's reopening requirements. The Commission's regulations at 10 C.F.R. § 2.326 require a movant seeking to reopen a closed record to address and satisfy the factors of 10 C.F.R. § 2.326(a).<sup>48</sup> In addition, if the movant raises a contention that was not at issue in the initial proceeding (which is the case for CCAM's newly proffered Contention 1), it must demonstrate that raising this issue satisfies the requirements for filing a non-timely contention under § 2.309(c).<sup>49</sup> CCAM has not addressed any of these factors. Therefore, for this reason alone, had we considered CCAM's motion under the motion to reopen standards, it would have failed.

Even if CCAM had overcome the hurdle of meeting the motion to reopen standards, which it has made no attempt to do, had we considered the contentions themselves, CCAM failed to provide information that would satisfy the plain requirements of our regulations. The two new contentions are allegedly based upon new information not previously available. Contention 1 alleges that "[t]emperature spikes in the hot legs of the Millstone 3 reactor – and

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<sup>47</sup> Id.

<sup>48</sup> 10 C.F.R. § 2.326(b).

<sup>49</sup> Id. § 2.326(d). As discussed below, Contention 2 is nearly identical to a contention that was proffered in CCAM's initial hearing petition. This Licensing Board found it to be inadmissible and the Commission affirmed the Board's ruling. See infra note 54 and accompanying text.

the use of a new 4-second filter – present critical new and unreviewed safety issues not addressed by the application.”<sup>50</sup> Contention 2 alleges that “[t]he NRC’s review of the Millstone Unit 3 uprate application does not comply with mandatory legal standards set forth in the NRC’s ‘Review Standard for Extended Power Uprates.’”<sup>51</sup> Contention 1 is identical to “prospective contention” 1 in CCAM’s July 18 and August 7 Motions. Contention 2 does not appear in either the July 18 or August 7 Motions.

Neither of the proffered new contentions is based on new information. The first “new” contention raises concerns about the duration of temperature variations in the hot leg. Although discussed at the ACRS meeting, this is not new information merely because CCAM was not aware of it earlier. The fact that temperature spikes were observed, and that Dominion planned to implement a four-second filter to address the spikes, has been available since the original application for the power uprate.<sup>52</sup> If CCAM had a concern that Dominion omitted necessary information about the duration or amplitude of the spikes, or how the temperature variation associated with the spikes impacted the structural integrity of the reactor and attached piping, CCAM should have included that contention in its initial filing. The transcribed inquiry from the ACRS meeting regarding the duration of the spikes, which was quoted by CCAM’s declarant Gundersen,<sup>53</sup> constitutes neither new nor materially different information, and does not support admission under 10 C.F.R. § 2.309(f)(2).

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<sup>50</sup> August 27 Motion at 2.

<sup>51</sup> Id. at 11.

<sup>52</sup> See LAR, Attachment 5, SPU Licensing Report (ADAMS Accession No. ML072000400) at 2.4-10.

<sup>53</sup> See Gundersen Declaration ¶¶ 10.2-10.11.

CCAM's proposed "new" Contention 2 regarding NRC Review Standard RS-001 is essentially a repackaged original Contention 6, which this Board and the Commission have already rejected.<sup>54</sup> In support of Contention 2, CCAM quotes the ACRS transcript for the purpose of discussing what analysis the NRC staff did or did not perform during its review of the Applicant's submittal.<sup>55</sup> It is well established that the issue for a proceeding is the adequacy of the application, not the performance of the NRC Staff during its safety review.<sup>56</sup>

Therefore, had CCAM's August 27 Motion not failed for the reasons described above, neither of these proposed new contentions would have been admissible, since CCAM has not met the standards set forth in section 2.326 governing motions to reopen, or the standards set forth in section 2.309(f) governing contention admissibility.

### III. CONCLUSION

For the foregoing reasons, it is on this 27th day of October 2008, ORDERED that:

1. The motions filed in this docket by CCAM seeking to file new contentions concerning Dominion's Millstone Power Station, Unit 3 on July 18, 2008, August 7, 2008, and August 27, 2008 are denied.

2. The July 31, 2008 motion is denied in part, to the extent it requests nunc pro tunc filing of the July 18, 2008 Motion.

3. The July 31, 2008 motion is granted in part, to the extent it requests continuing waiver of the e-filing requirements only for the subsequent motions discussed in this

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<sup>54</sup> See Millstone, LBP-08-09, 67 NRC at \_\_\_ (slip op. at 27-28); Millstone, CLI-08-17, 68 NRC at \_\_\_ (slip op. at 13-14).

<sup>55</sup> See August 27 Motion at 12 & n.7; Gundersen Declaration ¶¶ 14.1-14.7.

<sup>56</sup> Millstone, CLI-08-17, 68 NRC at \_\_\_ (slip op. at 8).



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (RULING ON MOTIONS TO FILE NEW OR AMENDED CONTENTIONS) have been served upon the following persons by Electronic Information Exchange and on Nancy Burton/CCAM by separate e-mail.

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MEMORANDUM AND ORDER (RULING ON MOTIONS TO FILE NEW OR AMENDED  
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Dated at Rockville, Maryland  
this 27<sup>th</sup> day of October 2008