

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

☐ APPLICATION FOR ENFORCEMENT

☒ PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

CAPTION: Nancy Burton, Petitioner v. United States of America, United States Nuclear Regulatory Comm- mission, Dominion Nuclear Energy Inc., Respondents		AGENCY NAME: U.S. Nuclear Regulatory Commission	AGENCY NO.:
		DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW: March 5, 2009	ALIEN NO.: (Immigration Only)
		DATE THE PETITION OR APPLICATION WAS FILED: May 4, 2009	Is this a cross-petition for review / cross-application for enforcement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Contact Information for Petitioner(s) Attorney:	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Nancy Burton 147 Cross Highway, Redding Ridge CT 06876 Tel. 203-938-3952 Fax 203-938-3952 Email NancyBurtonCT@aol.com		
Contact Information for Respondent(s) Attorney:	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Please see attached.		
JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section): 28 USC §2342	APPROX. NUMBER OF PAGES IN THE RECORD: 500	APPROX. NUMBER OF EXHIBITS IN THE RECORD: 0	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)
ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.			
ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.			
PART A: STANDING AND VENUE			
<p align="center"><u>STANDING</u></p> PETITIONER / APPLICANT IS: <input type="checkbox"/> AGENCY <input checked="" type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING):		<p align="center"><u>VENUE</u></p> COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED: Petitioner resides in the state of Connecticut (28 USC §2343)	

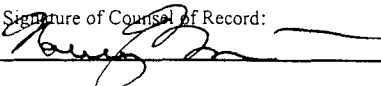
IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

<input checked="checked" type="checkbox"/>	ADMINISTRATIVE REGULATION/ RULEMAKING	<input type="checkbox"/>	IMMIGRATION-includes denial of an asylum claim
<input type="checkbox"/>	BENEFITS REVIEW	<input type="checkbox"/>	IMMIGRATION-does NOT include denial of an asylum claim
<input type="checkbox"/>	UNFAIR LABOR	<input type="checkbox"/>	TARIFFS
<input type="checkbox"/>	HEALTH & SAFETY	<input type="checkbox"/>	OTHER:
<input type="checkbox"/>	COMMERCE		(SPECIFY)
<input type="checkbox"/>	ENERGY		

1. Is any matter relative to this petition or application still pending below? <input type="checkbox"/> Yes, specify: _____ <input checked="checked" type="checkbox"/> No			
2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:			
(A) Arises from substantially the same case or controversy as this petition or application ?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
(B) Involves an issue that is substantially similar or related to an issue in this petition or application ?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, state whether <input type="checkbox"/> "A," or <input type="checkbox"/> "B," or <input type="checkbox"/> both are applicable, and provide in the spaces below the following information on the <i>other</i> action(s):			
Case Name:	Docket No.	Citation:	Court or Agency:
Name of Petitioner or Applicant:			

Date: May 11, 2009	Signature of Counsel of Record: 
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NOTICE TO COUNSEL

Once you have filed your Petition for Review or Application for Enforcement, you have only ten (10) calendar days in which to complete the following important steps:

1. Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file an original and one copy with the Clerk of the Second Circuit.
2. Pay the \$450 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN TEN (10) CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. SEE THE CIVIL APPEALS MANAGEMENT PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Addendum "A"

(1) Nature of the Action

The proceedings below concern the application to the respondent, U.S. Nuclear Regulatory Commission ("NRC"), by Dominion Nuclear Connecticut, Inc. ("Dominion") on July 13, 2007 to amend the license for its Millstone Nuclear Power Station Unit 3 nuclear reactor located in Waterford, Connecticut, to allow for a 7+ per cent electrical power generation "uprate."

The petitioner, an individual residing in Redding, Connecticut, on her own behalf and on behalf of the Connecticut Coalition Against Millstone, petitioned the NRC to become an intervening party to the proceedings on March 17, 2008, pursuant to 10 C.F.R. §2.309, and for a hearing on nine proposed contentions, which alleged with the support of declarations of two expert witnesses that Dominion's license renewal application posed "grave potential to increase safety risks and diminish safety margins at Millstone Unit 3."

The Atomic Safety and Licensing Board ("ASLB") established by the NRC to consider all challenges to the Dominion license renewal application rejected the petition to intervene and request for a hearing by Memorandum and Order entered on June 4, 2008 (attached hereto).

The petitioner filed an appeal of the ASLB's decisions with the NRC. By Memorandum and Order (CLI-08-17) dated August 13, 2008 (attached hereto), the NRC affirmed the ASLB decision and dismissed petitioner's petition to intervene and request for hearing.

While the proceedings remained pending, the petitioner submitted additional contentions based on newly-discovered information revealed at a conference of the NRC's Advisory Committee on Reactor Safeguards on July 8, 2008. By Memorandum and Order issued on October 27, 2008 (attached hereto), the ASLB rejected the motions. The NRC affirmed the ASLB Memorandum and Order at an affirmation session on March 5, 2009 (SECY-09-0008)(attached hereto).

(2) The Result Below

The agency, affirming the decisions of the Atomic Safety and Licensing Board, dismissed the Petitioner's Petition to Intervene and Request for Hearing and motions to submit new contentions based on newly-discovered information.

(3) Copy of All Relevant Opinions/Orders Forming the Basis for this Petition for Review

- A. SECY-09-0008 (March 5, 2009)
- B. Memorandum and Order (October 27, 2008)
- C. Memorandum and Order (CLI-08-17)(August 13, 2008)
- D. Memorandum and Order (June 4, 2008)

Addendum "B"

(1) The Relief Requested

The petitioner prays that her petition be sustained; that her petition be found to present admissible contentions pursuant to 10 C.F.R. § 2.309; that her motions to submit new contentions based on newly-discovered information be granted; and that this matter be remanded to the agency for a hearing on the merits of said petition.

(2) List of the Proposed Issues

A. Did the Commission err in dismissing the Petition to Intervene and Request for Hearing for failure to proffer admissible contentions?

B. Did the Commission err in dismissing the petitioner's motions to submit new contentions based on newly-discovered information?

(3) Applicable Appellate Standard of Review for Each Proposed Issue

With regard to both issues, the standard for review is whether, based on the record developed to date, the agency's action was unlawful and should be set aside because it was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with laws, was in excess of its statutory authority, or was unsupported by substantial evidence.

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