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Via Federal Express
December 30, 2009

Catherine O'Hagan Wolfe, Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Nancy Burton v. United States of America, United States Nuclear
Regulatory Commission, and Dominion Nuclear Connecticut, Inc.,
No. 09-1901-ag

Dear Ms. Wolfe:

Pursuant to Federal Rule of Appellate Procedure No. 27 and Local Rule 27, please find enclosed an original and four (4) copies of the "Response of Dominion Nuclear Connecticut, Inc. in Opposition to Nancy Burton's Motion to Reinstate Appeal and for Leave to File Documents *Nunc Pro Tunc*" in the above referenced matter. Pursuant to Interim Local Rule 25.1, Intervenor-Respondent Dominion Nuclear Connecticut, Inc. has also submitted its response electronically in PDF format.

Also enclosed is an additional copy of this letter. Please date stamp this copy to reflect receipt and return it in the enclosed self-addressed, postage pre-paid envelope.

Respectfully submitted,

David R. Lewis
Counsel for Intervenor-Respondent Dominion Nuclear Connecticut, Inc.

Enclosures: As stated

cc: Service List

I. Background

On May 1, 2009, Ms. Burton filed a Petition for Review of two orders of the U.S. Nuclear Regulatory Commission, which had denied a hearing request by Ms. Burton because of her failure to meet NRC pleading standards. On July 29, 2009, this Court issued its scheduling order, which required Ms. Burton to file her brief on or before August 28, 2009. At that point, Ms. Burton had already had three months to begin preparing her brief.

On August 25, 2009, Ms. Burton filed a motion requesting a one-month extension of that deadline. This Court granted Ms. Burton's motion, extending her deadline to September 28, 2009.

On September 24, 2009, Ms. Burton filed a second motion for an extension, this time requesting an additional week because "other professional commitments" prevented her from completing the brief on time. This Court again granted Ms. Burton's motion, extending her deadline to October 5, 2009.

On October 5, 2009, Ms. Burton sent an email informing the Clerk that she would file her brief and appendix one day late because of car trouble and would include a motion to file the documents *nunc pro tunc*.

On October 6, 2009, Ms. Burton filed her late brief with no motion requesting leave to do so. She also failed to file the appendix (in hard copy or on

CD); submitted the brief with an improper cover and incorrect caption; and failed to include a certification providing the required word count.¹ In addition, Ms. Burton failed to serve the appendix.²

On October 26, 2006, the Court provided a Notice of Defective Filing, identifying all of the errors discussed above and requiring Ms. Burton to resubmit the brief and appendix no later than November 2, 2009. The Notice cautioned Ms. Burton that failure to cure the defects by the specified date may result in dismissal. Ms. Burton ignored this Notice.

On November 3, 2009, the Court issued an Order requiring Ms. Burton to show cause why the proceeding should not be dismissed on default due to her failure to file the brief and requisite copies of the appendix by October 5, 2009 as required by the scheduling order in this proceeding. The Order directed Ms. Burton to file with the Court by November 17, 2009: (1) a corrected brief and ten copies of the appendices, or (2) a motion requesting a short extension supported by an explanation why the extension is necessary and demonstrating good cause for

¹ In addition, after all the extensions, her brief did little more than cut and paste sections from the prior briefs on administrative appeal before the Nuclear Regulatory Commission.

² About a week after Ms. Burton filed her brief, Dominion received by overnight mail Volume 2 of the appendix, but not Volume 1. Dominion did receive copies of each volume of appendix in separate email messages on October 6, but understands that the NRC did not. Because the file size of the two volumes was 14 megabytes and 11 megabytes respectively, Dominion surmises that Ms. Burton's electronic transmissions were unsuccessful. Under these circumstances, Ms. Burton would have received a delivery error, but apparently made no attempt to correct the problem.

the default. The Order to Show Cause counseled that if Ms. Burton failed to comply, the proceeding would be dismissed. Ms. Burton ignored this deadline.

On November 18, 2009, because Ms. Burton had failed to file any additional copies or appendices, the Court issued an Order dismissing the proceeding.

Dominion understands that subsequent to the dismissal, Deputy Clerk Brenda Mojica spoke with Ms. Burton and informed her that (1) if she wanted any further filings to be accepted, she would have to file a motion to reinstate, and (2) mandate would issue on December 18, 2009. On December 18, not having received anything from Ms. Burton, the Court issued its mandate. Later that night, Ms. Burton filed the Motion to Reinstate now before this Court.

II. Argument

Ms. Burton has a long history of disregarding procedural rules. She has repeatedly ignored the Nuclear Regulatory Commission's requirements,³ and her efforts to follow the rules of this Court have been similarly lacking. From the deadline originally set out in the scheduling order to the deadline in the Order to Show Cause, this Court gave Ms. Burton an additional 81 days to properly file her brief and appendices, and she still failed to comply. While Dominion is sorry to

³ See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 643-44 (2004); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 N.R.C. 32, 38 (2006); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-08-17, 68 N.R.C. 231, 234-35 (2008). Further, Ms. Burton has been disbarred in her State of residence and by reciprocal order of this Court. Burton v. Mottolose, 835 A.2d 998 (Conn. 2003), cert. denied, 541 U.S. 1073 (2004); In re Nancy Burton, No. 04-8301 (2d Cir. Sept. 28, 2004) (Order).

hear of the personal circumstances outlined in the Motion to Reinstate, Dominion submits that 81 days is already an incredibly generous extension. Further, after failing to meet the final deadline on November 17, 2009 and learning from the Deputy Clerk that mandate would issue on December 18, 2009, a full 112 days after Ms. Burton's original filing deadline, Ms. Burton still did not complete her filing until late afternoon on December 18, 2009 – after the mandate had already issued. Although she has been given numerous chances, Ms. Burton has continued to disregard this Court's rules. Ms. Burton has done nothing to demonstrate that she would follow the rules in the future were this proceeding to be reinstated.

Nor is there any validity to Ms. Burton's claim that this is an important and meritorious appeal alleging a serious error and supported by experts. Ms. Burton's hearing requests were denied by the U.S. Nuclear Regulatory Commission because of her persistent failure to meet the Commission's procedural rules for pleading contentions.⁴ In fact, on two prior occasions, this Court has affirmed the Commission's denial of hearing requests by Ms. Burton on just such grounds.⁵

⁴ See Millstone, CLI-08-17, 68 N.R.C. at 234-35; Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 124-26 (2009).

⁵ See Burton v. U.S., No. 09-0005-ag, 2009 WL 4019411 (2d Cir. Nov. 23, 2009); Connecticut Coalition Against Millstone v. NRC, 114 Fed. Appx. 36 (2d Cir. 2004).

Wherefore, Dominion requests that this Court deny the Motion to Reinstate.

Respectfully Submitted,



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Dated: December 30, 2009

CERTIFICATE OF SERVICE

I, David R. Lewis, hereby certify that on December 30, 2009, copies of this Response of Dominion Nuclear Connecticut, Inc. in Opposition to Nancy Burton's Motion to Reinstate Appeal and for Leave to File Documents *Nunc Pro Tunc* were served on the following parties by electronic mail and United States first class mail, postage prepaid:

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ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: Burton v. United States of America

DOCKET NUMBER: 09-1901-ag

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(Your Signature) David R Lewis

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Law Firm, Phone Number - 202-642-2474, Use of Public e-mail address @patburylaw.com
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