

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3078

DOCKETED 05/23/01

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DOMINION NUCLEAR CONNECTICUT, INC.)	Docket No. 50-423-LA-3
)	
(Millstone Nuclear Power Station,)	
Unit No. 3))	

NRC STAFF'S MOTION TO HOLD PROCEEDING IN ABEYANCE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730 of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) moves the Atomic Safety and Licensing Board (Board) in this proceeding for an order temporarily delaying all proceedings in this matter until completion of the Office of Investigation's (OI) ongoing investigation of an allegation concerning Northeast Nuclear Energy Company's (NNECO or the licensee) conduct in a closely related matter.

BACKGROUND

This proceeding involves an application to increase the capacity of the spent fuel pool (SFP) of the Millstone Nuclear Power Station, Unit No. 3 (Millstone-3). The licensee elected to have the hearing conducted under the hybrid hearing procedures of 10 C.F.R. Part 2, Subpart K. The Board admitted three contentions, one of which (Contention 4) concerned whether the administrative controls necessary to implement the amendment would increase the risk of a criticality accident.

On October 26, 2000, the Licensing Board issued LBP-00-26, a Memorandum and Order denying the request of Intervenor, Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone, for an evidentiary hearing in the SFP expansion proceeding and terminating the proceeding based on the Board's determination that there was no genuine and

substantial dispute of fact that needed to be resolved in an evidentiary hearing. LBP-00-26, 52 NRC 181, 197 (2000).

On December 18, 2000, the Intervenor filed a motion to reopen the record on Contention 4 based on newly developed information. This new information consisted of an NRC Weekly Information Report concerning the inability of the licensee to confirm the location of two fuel pins at the Millstone Unit 1 SFP.

On December 21, 2000, the Commission issued CLI-00-25, 52 NRC 355 (2000), remanding the Motion to Reopen to the Licensing Board, noting in its order that the motion should have been filed with the Commission as the matter was before the Commission by virtue of the Intervenor having filed a petition for Commission review of LBP-00-26 on November 13, 2000.

On January 17, 2001, the Commission issued CLI-01-03, 53 NRC 22 (2001), in which the Commission denied review regarding Contention 4. The Commission found that the Licensing Board's fact finding was well grounded in the record and declined further review because the Intervenor in their petition raised no substantial question whether the Board's findings of fact were clearly erroneous and because the Intervenor had provided no substantive evidence regarding human factors. CLI-01-3, 53 NRC 22, 26-27 (2001).

Also on January 17, 2001, the Licensing Board denied the Intervenor's Motion to Reopen. LBP-01-1, 53 NRC 75 (2001). The Board determined that the motion to reopen the record on Contention 4 should be denied because the Intervenor had failed to demonstrate that the new information they proffered would have caused the Board to reach a result different from that reached in LBP-00-26. *Id.* at 80.

On January 29, 2001, the Intervenor filed a motion for reconsideration of the Licensing Board's decision in LBP-01-1. On May 10, 2001, the Board issued LBP-01-17, 53 NRC ____ (2001), in which it granted the Intervenor's motion and reopened the record regarding Contention 4.

DISCUSSION

As set forth in the attached Affidavit of Barry R. Letts, Region 1 Field Office Director, NRC Office of Investigations (OI), OI is conducting an ongoing investigation of an allegation concerning Northeast Nuclear Energy Company's conduct relating to the reporting of missing fuel pins at the Millstone Unit 1 spent fuel pool. This investigation could lead to further action including, but not limited to, referral to the United States Department of Justice (DOJ) for criminal consideration. Mr. Letts further states that this adjudicatory proceeding and OI's ongoing investigation appear to involve, in part, the same factual allegations and that some persons employed by the NRC and/or the licensee are likely to be involved in both this adjudicatory proceeding and OI's investigation. Mr. Letts estimates that OI's investigation and the decision whether to refer the matter to DOJ will be completed by late summer. Further, he states his belief that continuing the NRC adjudicatory proceeding at this time could jeopardize the integrity of OI's investigation.

The Commission's regulations grant the presiding officer all the powers necessary to regulate the course of a hearing. See 10 C.F.R. § 2.718(e). In addition, the Commission has indicated that its adjudicatory proceedings should be conducted in a manner that does not interfere with an ongoing investigation. In *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-95-9, 41 NRC 404 (1995), the Commission was "willing to stay a parallel proceeding if a party shows substantial prejudice, e.g. where discovery in an adjudicatory proceeding would compromise an OI investigation...." *Id.* at 405. Accordingly, the Staff requests that this proceeding be held in abeyance until the completion of OI's investigation. The Staff is prepared to provide the Licensing Board with progress reports on the OI investigation should the Board find this helpful.

CONCLUSION

For the reasons stated above, the Staff requests that the Licensing Board hold this proceeding in abeyance until the conclusion of the Office of Investigation's ongoing investigation.

Respectfully submitted,

/RA/

Norman St. Amour
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of May, 2001