

RAS 3641

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/10/01

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

In the Matter of

DOMINION NUCLEAR CONNECTICUT, INC.

(Millstone Nuclear Power Station, Unit No. 3;
Facility Operating License NPF-49)

Docket No. 50-423-LA-3

ASLBP No. 00-771-01-LA-R

December 10, 2001

MEMORANDUM AND ORDER

(CCAM/CAM Motion for Leave to Reply to Responses of Licensee and Staff)

On November 1, 2001, the Intervenors, Connecticut Coalition Against Millstone (CCAM) and Long Island Coalition Against Millstone (CAM)(collectively referenced as CCAM/CAM) filed a motion to reopen the record and to admit a late-filed environmental contention dealing with the effects of terrorism ("destructive acts of malice or insanity") against U.S. nuclear facilities, including the spent fuel pool at the Millstone Nuclear Power Station, Unit 3. On November 13, 2001 and November 16, 2001, the Licensee, Dominion Nuclear Connecticut, Inc. (DNC), and the NRC Staff, respectively, filed responses in opposition to admitting the proffered late-filed contention and, in the alternative, seeking certification of the matter to the Commission.

On November 21, CCAM/CAM, pursuant to 10 C.F.R. §§ 2.730 and 2.1117 (which makes § 2.730 applicable in 10 C.F.R. Part 2, Subpart K proceedings such as this one), filed a motion for leave to reply to the Licensee's and Staff's responses to their original motion. CCAM/CAM advised that DNC and the Staff each oppose CCAM/CAM's motion for leave to file a reply. On December 3, 2001, DNC filed such a

response, stating that motions to reply should be accepted “sparingly” and that CCAM/CAM had failed to demonstrate a strong showing of “good cause.” DNC added that CCAM/CAM had already had much more time to draft their motion than DNC had to file its response. For its part, the Staff, through its December 6, 2001 response, likewise opposed CCAM/CAM’s motion, asserting that there was no right to file a reply, that CCAM/CAM had misstated or misunderstood the precedent for filing of a reply, and that none of the opinions relied on by the intervenors has any applicability to a motion filed in the present posture of the proceeding. Both DNC and the Staff acknowledge that replies are governed by 10 C.F.R. § 2.730, as claimed by CCAM/CAM.

Under 10 C.F.R. § 2.730(c), it is clear that CCAM/CAM would have no right to reply, except as permitted by us. The cases relied on by CCAM/CAM do not afford any such right. In the Board’s view, however, the issue presented by CCAM/CAM’s proposed contention is significant—i.e., the extent to which a nuclear facility must be prepared to defend against terrorist acts, and the risks involved if it does not do so. Indeed, the Board may elect to follow the advice provided by both DNC and the Staff, that we certify or refer the question to the Commission so that it might resolve any policy issues attendant to entertaining an issue of this type. Given the importance of the proposed issue, however, and the potential for certifying or referring the issue to the Commission, it is important that the record be as complete as possible.

We recognize that, as set forth by DNC, this Board will be able to analyze legal issues based on the submissions of CCAM/CAM, DNC and the Staff, without the assistance of further clarification. In contrast, however, to enable us to develop the most complete and accurate record prior to ruling on the proposed contention, and to enhance our understanding of the proposal before us, we believe that it is important to permit CCAM/CAM to address any factual errors that they claim exist in the responses

of DNC and the Staff. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 469 (1991)(accepting reply that “contributes to [Commission’s] understanding of Petitioners’ arguments” and, in fact, “presents the Petitioners’ arguments more cogently than the original pleading”). Accordingly, we will permit CCAM/CAM to reply, but only to the alleged factual errors in the other parties’ responses.

Except as set forth below, CCAM/CAM’s reply must be limited to such asserted factual errors. In addition, however, the Licensing Board requests CCAM/CAM, as part of their reply, to address the following matters: (1) the applicability of 10 C.F.R. § 50.13 (together with the Appeal Board decision in Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 697-701 (1985), review declined, CLI-86-5, 23 NRC 125, aff’d sub nom. Limerick Ecology Action Inc. v. NRC, 869 F.2d 719, 744 (3d Cir.1989), applying the rule to NEPA questions; see also Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973)) to our ruling on the acceptability of the proposed environmental contention; and (2) whether, if applicable, the special circumstances raised by the proposed terrorism contention are such that application of 10 C.F.R. § 50.13 and its environmental application would not serve the purposes for which the rule or regulation initially was adopted, within the meaning of 10 C.F.R. § 2.758.

CCAM/CAM shall file its reply, including responses to the questions outlined above, no later than Friday, December 21, 2001, in both paper copy and e-mail. DNC

and the NRC Staff may reply to CCAM/CAM's response to the questions set forth above by no later than Thursday, January 3, 2002.

IT IS SO ORDERED.

For the Atomic Safety and Licensing Board

/RA/

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 10, 2001

[Copies of this Memorandum and Order have been transmitted this date by e-mail to counsel for each of the parties.]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (CCAM/CAM MOTION FOR LEAVE TO REPLY TO RESPONSES OF LICENSEE AND STAFF) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-423-LA-3
LB MEMORANDUM AND ORDER
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TO RESPONSES OF LICENSEE AND STAFF)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of December 2001