

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBEFORE THE COMMISSION

In the Matter of	)	
	)	
DOMINION NUCLEAR CONNECTICUT, INC.	)	Docket Nos. 50-336-LA
	)	50-423-LA
(Millstone Nuclear Power Station,	)	
Units 2 and 3)	)	

NRC STAFF'S RESPONSE IN OPPOSITION TO  
CONNECTICUT COALITION AGAINST MILLSTONE AND STAR FOUNDATION'S  
PETITION FOR RECONSIDERATION OF CLI-01-24

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INTRODUCTION

Pursuant to 10 C.F.R § 2.771(b), the NRC staff ("Staff") submits its brief in response to "Connecticut Coalition Against Millstone and STAR Foundation's Petition For Reconsideration of CLI-01-24," December 17, 2001. For the reasons set forth below, the Commission should deny the petition.

BACKGROUND

The background of the proceeding that resulted in the issuance of CLI-01-24 is set forth at length in CLI -01-24, in which the Commission affirmed LBP-01-10, the Licensing Board decision that denied Connecticut Coalition Against Millstone ("CCAM") and STAR Foundation's petition to intervene and request for hearing. That background is repeated here only as context to the instant petition for reconsideration.

On March 29, 2001, the Licensing Board, in LBP-01-10, 53 NRC 273, denied Petitioners' petition for leave to intervene in this proceeding on the grounds that they had not proffered a contention that was admissible in a proceeding on the licensee's request to remove the radiological effluent technical specifications from the Technical Specifications included in the licenses for the Millstone Units 2 and 3 reactors to a licensee-controlled document. The Licensing Board Chairman

dissented. In her view, Petitioner Connecticut Coalition Against Millstone had demonstrated standing but Petitioner STAR had not. In addition, she would have admitted the single contention proposed by CCAM.

As noted above, CCAM and STAR Foundation filed an appeal of LBP-01-10 on April 9, 2001, pursuant to 10 C.F.R. § 2.714a. Both the licensee and the Staff opposed the appeal.<sup>1</sup> On December 5, 2001, the Commission issued CLI-01-24, in which it affirmed LBP-01-10, and, on December 17, 2001, CCAM and STAR Foundation filed the instant Petition for Reconsideration.

### DISCUSSION

Petitions for reconsideration of a final decision must “state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the petition and the relief sought.” 10 C.F.R. § 2.771(b). A movant seeking reconsideration of a final decision must do so on the basis of an elaboration upon, or refinement of, arguments previously advanced, generally on the basis of information not previously available. See *Central Electric Power Cooperative, Inc.* (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981); *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-418, 6 NRC 1, 2 (1977). A reconsideration request is not an occasion for advancing an entirely new thesis or for simply reiterating arguments previously proffered and rejected. See *Summer*, CLI-81-26, 14 NRC at 790; *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-88-03, 28 NRC 1, 3-4

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<sup>1</sup> Dominion Nuclear Connecticut, Inc. Brief in Opposition to Appeal by Connecticut Coalition Against Millstone and STAR Foundation of LBP-01-10, April 23, 2001; NRC Staff Response in Opposition to Connecticut Coalition Against Millstone and STAR Foundation’s Appeal of LBP-01-10, April 24, 2001.

(1988).<sup>2</sup> For purposes of 10 C.F.R. § 2.771(b), CLI-01-24 is a final decision in that it finally disposes of the petitioners' hearing request.

A. Petitioners' Claims That The Decision Is Erroneous

Petitioners assert that the Commission's decision is erroneous in failing to find that:

A. The amended petition presents a legally sufficient contention; B. There is a significant safety justification that radiological effluent procedures be maintained in the Millstone Technical Specifications; C. The potential for undetected and potentially preventable releases of radiation to the environment is a significant safety issue; D. The decision assumes releases of radiation to the environment are safe if within the NRC's "allowable limits"; E. Both North[east] Nuclear Energy Company and Dominion Resources, Inc. suffer from histories of providing false information to the NRC; F. The decision disregards evidence of high cancer incidence in area[s] surrounding Millstone; and G. The license amendment promotes a higher risk of failure to detect and prevent a radiation emission that might exceed NRC standards.

Petition at 4-5. Although it appears that Petitioners have attempted to comply with 10 C.F.R. § 2.771(b) by listing the respects in which they believe the decision to be in error, their list consists, for the most part, of findings that they previously urged but that were not accepted by the Commission in its decision. Petitioners do not point to findings in CLI-01-24 that they believe to be erroneous, nor have they provided any information that should cause the Commission to reconsider its decision.

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<sup>2</sup> A licensing board recently set forth the standards for a motion for reconsideration: A properly supported reconsideration motion is one that does not rely upon (1) entirely new theses or arguments, except to the extent it attempts to address a presiding officer's ruling that could not reasonably have been anticipated, or (2) previously presented arguments that have been rejected. Instead, the movant must identify errors or deficiencies in the presiding officer's determination indicating the questioned ruling overlooked or misapprehended (1) some legal principle that should have controlling effect; or (2) some critical factual information. Reconsideration also may be appropriately sought to have the presiding officer correct what appear to be inharmonious rulings in the same decision.

*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-17, 48 NRC 69, 73-74 (1998) (citations omitted).

B. Grounds For The Petition

Although, as noted above, Petitioners list seven respects in which they believe CLI-01-24 to be erroneous, they identify only three grounds for the petition: “A. The contention is legally sufficient”; “D. The technical specifications are required to remain in the technical specifications because they are safety significant”; and “E. The decision errs in failing to address Millstone realities.” Petition at 5-9. As discussed below, none of these three grounds raises any matter that was not raised in their brief on appeal and that was not addressed in CLI-01-24.

The argument entitled “A. The contention is legally sufficient” is repeated almost verbatim from the Petitioners’ brief on appeal, where that argument is entitled “The Board erred in rejecting petitioners’ contention.” Petitioners’ Appeal Brief at 5-6. The Staff addressed the matter in its response in opposition to the appeal, stating, with regard to Petitioners’ claim that the Board majority had found that its contention met the requirements of 10 C.F.R. § 2.714(b)(2) concerning specificity, that the Board had noted Petitioners’ “attempt” to satisfy the specificity requirements but had made no finding that the attempt was successful. Staff Response at 11, citing LBP-01-10, slip op. at 9. The instant petition provides nothing new that would warrant reconsideration.

With regard to the information required by 10 C.F.R. § 2.714(b)(2)(i)(ii) and (iii), Petitioners reiterate the assertion made in their brief on appeal, that they did provide such information in the second paragraph of their contention and that the Board had agreed that they had attempted to comply with requirements. Petition at 6. Again, the Staff addressed the matter in its response to the appeal brief where the Staff pointed out that the Board had not indicated that Petitioners’ attempt to address the matter was successful. Staff Response at 11, citing LBP-01-10, slip op. at 10. The Commission addressed the standards for contentions, CLI-01-24, slip op. at 12-13, and agreed with the Licensing Board that the contention lacked the necessary minimal factual or legal basis for believing that removal of the technical specifications at issue would significantly increase

the public health and safety risk. CLI-01-24, slip op. at 14. Again, the instant petition offers nothing new that would warrant reconsideration.

The second ground that Petitioners invoke as a basis for reconsideration is that “the technical specifications are required to remain in the technical specifications because they are safety significant.” Petition at 6. As discussed below, this argument is nothing more than a reiteration of Petitioners’ argument on appeal. The Commission rejected the argument, stating that petitioners had not provided the necessary minimal factual or legal basis to suggest that either (a) the effluent monitoring procedures at issue were of such safety significance that technical specifications must continue to include them, or (b) that this licensee in particular should be required to retain the effluent procedures in its license. CLI-01-24, slip op. at 15.

Petitioners repeat their argument on appeal, which in their appeal brief is entitled “The petitioners have established a genuine dispute on a material issue and are entitled to a hearing.” Appeal Brief at 6-7. They argue in the instant petition that “Because the license amendment involves the potential for increased risk of undetected and preventable releases of radiation to the environment, such as might exceed allowable limits, they are legally required to remain in Technical Specifications.” Petition at 6. Petitioners ignore the Commission’s explanation of the rationale for relocating certain details out of technical specifications; see CLI-01-24, slip op. at 4-9: “These amendments involve only the monitoring of . . . low level radioactive effluent releases” (*Id.* at 4); and “Even before these license amendments, the licensee already had the authority to adjust monitor setpoints as needed. (*Id.* at 9). Thus, the Commission made it clear that the amendments do not introduce the potential for increased risk of undetected and preventable releases of radiation to the environment. Petitioners have not provided any new information which would warrant reconsideration.

Petitioners’ third ground for their Petition is that “the decision errs in failing to address Millstone realities.” Petition at 8-9. The argument appears in the brief on appeal as “The majority

erred in failing to address Millstone realities.” Petitioners’ Appeal Brief at 8. This alleged error is in the Petition for Reconsideration attributed to “the NRC decision.” Because there is no citation to CLI-01-24, or for that matter to any other document, it is not possible to understand this argument. However, Petitioners’ brief on appeal included a long footnote that addressed various actions brought by CCAM in State courts to protest the transfer of ownership of Millstone to Dominion Nuclear Connecticut, Inc. Appeal Brief at 1 n.1. The relationship of those actions to the relocation of RETS to licensee-controlled documents was not then, and is not now, apparent. The Commission found such generalized allegations about the licensee not to be relevant to the instant proceeding. CLI-01-24, slip op. at 19-25. Petitioners have now offered an unsigned statement of a Dr. Christopher Busby, who appeared as a witness in one of their State court actions. Petition at 9, n.4. Dr. Busby makes a number of assertions regarding releases of radioactive effluents from Millstone, but nowhere does he claim that those releases exceeded the Commission’s regulatory limits. Thus, Dr. Busby’s statement does not provide a reason for the Commission to reconsider its decision

In CLI-01-24, the Commission addressed Petitioners’ claim that the licensee cannot be trusted to follow regulatory standards, concluding that the Petitioners had made no effort to show how the historical events to which they referred had a direct bearing on the discrete license amendments before the Commission on review of LBP-01-10. CLI-01-24 at 24. The Commission then concluded its discussion of the “Millstone realities” referenced by Petitioners, stating that when character or integrity issues were raised, the Commission expected those issues to be directly germane to the challenged licensing action. Here Petitioners had not established such a link. *Id.*

In addition to Dr. Busby’s statement, which Petitioners provided with their petition, Petitioners reference the testimony of Clarence O. Reynolds, presented at proceedings in Connecticut Coalition Against Millstone v. Department of Public Utility Control, et al., Superior Court

of the State of Connecticut, CV 01 506963, March 12, 2001. Petition at 9, n.5. That action was previously addressed in Petitioners' Appeal Brief, where they identified the action, which was on appeal to the Connecticut Appellate Court, as raising substantive issues regarding the legitimacy of the sale of the Millstone Nuclear Power Station to Dominion Nuclear Connecticut. Appeal Brief at 1 n.1. Petitioners mention specifically the issue of the DPUC's refusal to allow the Millstone Station Employees Association to intervene and participate as a party. *Id.* Presumably, Mr. Reynolds' testimony was offered in Superior Court on that issue. In any event, Petitioners' assertions with regard to Mr. Reynolds' testimony are untimely in that they could have been, and to an extent were, raised earlier. They are also too cryptic to understand, much less to provide a basis for the Commission to reconsider its determination in CLI-01-24 that the "realities" of concern to Petitioners do not appear to relate to the proposed action. See CLI-01-24 at 19-25.

C. Relief Sought

Petitioners ask that the Commission grant their petition for reconsideration, reconsider its ruling, reverse the Licensing Board's decision in LBP-01-10, accept the proffered contention and direct that a hearing be held on the license amendment application. Petition at 10. As discussed above, Petitioners have not provided the Commission with any reason for the Commission to grant the petition. As the Commission stated in *Shoreham*, the opportunity to file for reconsideration should not become a game in which the resources of the Commission and the parties are wasted in endless reiteration of the same arguments. *Shoreham, supra*, CLI-88-03, 28 NRC 1, 34 (1988).

Petitioners here, like the Intervener in *Shoreham*, have merely reiterated the arguments that they had raised earlier and, thus, have not provided any basis to warrant reconsideration.

CONCLUSION

For the reasons discussed above, the Commission should deny the petition.

Respectfully submitted,

**/RA/**

Ann P. Hodgdon  
Counsel for NRC Staff

Dated at Rockville, Maryland  
This 3<sup>rd</sup> day of January, 2002



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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE IN OPPOSITION TO CONNECTICUT COALITION AGAINST MILLSTONE AND STAR FOUNDATION'S PETITION FOR RECONSIDERATION OF CLI-01-24" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by an asterisk by first class mail this 3<sup>rd</sup> day of January 2002. Additional e-mail service has been made this same day as shown below.

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