RAS 3835

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 01/30/02

COMMISSIONERS:

SERVED 01/30/02

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

CLI-02-01

MEMORANDUM AND ORDER

The Commission has before it a petition filed by the Connecticut Coalition Against Millstone and the STAR ("Standing for Truth About Radiation") Foundation seeking reconsideration of the Commission's decision in CLI-01-24. Both Dominion Nuclear Connecticut, Inc. ("DNC") and the NRC staff oppose the petition. We deny the petition.

As DNC correctly points out, "reconsideration petitions must establish an error in a Commission decision, based upon an elaboration or refinement of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification."[1] See, e.g., Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981); cf., Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-17, 48 NRC 69, 73-74 (1998). Petitions for reconsideration should not be

[1] DNC's Response in Opposition to Connecticut Coalition Against Millstone and STAR Foundation Petition for Reconsideration of CLI-01-24 (Jan. 2, 2002) at 4.

used merely to "re-argue matters that the Commission already [has] considered" but rejected. See Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio), CLI-93-24, 38 NRC 187, 188 (1993); see also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-88-03, 28 NRC 1, 3-4 (1988); Nuclear Eng'g Co. Inc. (Sheffield, Illinois Low-level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980).

Here, the petitioners' reconsideration petition repeats the same claims the Commission rejected in CLI-01-24, which found their sole contention inadmissible. The petitioners' argument is that the radiological effluent monitoring procedures at issue in this proceeding "are legally required to remain in Technical Specifications." See Petition for Reconsideration of CLI-01-24 (12/17/01) at 6. Exactly as before, the petitioners claim that if these procedures are removed from the technical specifications, it is conceivable that: (1) a monitoring requirement might be changed; (2) "something" might "fail," as in "a relatively minor accidental or other failure of equipment;" (3) instrument surveillance may "somehow ... become unduly lax;" and (4) this reduced surveillance may "fail to pick up a release." Id. Again, they rely upon a statement by the licensee's counsel that such a scenario "could not be categorically discounted." Id. at 7.

Yet, as the Commission addressed in greater detail in CLI-01-24, simply because monitoring procedures ultimately bear upon safety does not mean that they must or should remain in technical specifications. It goes without saying that virtually all requirements involving the monitoring of instruments at nuclear power facilities have some connection to safety, but many such safety requirements can be followed and enforced adequately by means of licensee-controlled documents. The test for whether a particular set of safety requirements needs to be retained in the technical specifications is not whether one can conceive of a hypothetical scenario of potential injury, no matter the likelihood of harm or degree of relative significance. Instead, the Commission's policy is to reserve technical specifications for the

most significant safety requirements. To that effect, applicable Commission regulations outline the types of safety items that must remain in the technical specifications. See 10 C.F.R. §§ 50.36, 50.36a.

In short, to argue that particular safety requirements are "legally required" to remain in technical specifications, it is not enough simply to allege that they bear some relation to safety; of course, by their very nature all "safety"-based requirements will. The petitioners needed to show why the monitoring procedures for routine, low-level, radioactive effluent at issue in this proceeding fall among those most critical safety issues that ought to be retained in technical specifications. They must provide some basis for concluding that there is a significant likelihood -- not just a theoretical possibility -- that safety at Millstone will be adversely impacted if the procedures are not kept in the technical specifications. They never did so. Their petition for reconsideration now simply reiterates various earlier claims, ignoring the Commission's analysis and disposition of them. Indeed, the petitioners even repeat misconceptions about these license amendments which the Commission highlighted and corrected in its decision. See CLI-01-24 (slip op.) at 8 -9 & n.6, 21 (regarding "setpoints").

The petitioners also argue that the Commission's decision fails to "address Millstone realities," including "Millstone's notoriety as a leading emitter of radionuclides into the environment." See Petition at 8. They attach an unsigned and apparently incomplete statement by Dr. Christopher Busby, dated March 26, 2001. Dr. Busby believes that methods commonly used for calculating allowable radiological doses are incorrect, and that as a result, "reactors are licensed to release radioisotopes on the basis of erroneous models for radiation risk which significantly understate their true risk." Dr. Busby's views, though, largely reflect a generic objection to commercial nuclear power and to the Commission's regulations on dose limits, issues beyond the scope of these license amendments. His views amount to an

impermissible attack on our reactor safety regulations. See 10 C.F.R. § 2.758. While Dr. Busby claims that "Millstone is particularly dirty," he provides no data indicating any current or ongoing problem with violations of effluent release limits at Millstone. Much of Dr. Busby's -- and the petitioners' -- references to Millstone's "notoriety" appear based upon historical events from several years ago which have not been linked to Millstone's current management or radiological effluent program, and therefore do not relate directly to these discrete license amendments.[2]

In sum, the petitioners have not pointed to any factual or legal error in CLI-01-24. Accordingly, we deny their petition for reconsideration.

Conclusion

For the reasons given in this decision, the petitioners' petition for reconsideration of CLI-01-24 is denied.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of January, 2002.

[2] In a footnote, the petitioners also refer vaguely to the testimony of Mr. Clarence Reynolds, which took place in an unrelated state court proceeding on March 12, 2001. The petitioners, however, did not provide the testimony, and the Commission has no basis to conclude that it has any relevance to the requested license amendments. Moreover, the testimony of Mr. Reynolds could have been raised or submitted at the time of the petitioners' earlier appeal and therefore is untimely and inappropriate as a basis for reconsideration. See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355 (1993).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-02-01) have been served upon the following persons by deposit in the U.S. mail, first class, as indicated by an asterisk (*) or through the Nuclear Regulatory Commission's internal distribution as indicated by double asterisks (**), with copies by electronic mail.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of January 2002