RAS 3858

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Dominion Nuclear Connecticut, Inc.	)	Docket Nos. 50-336
	)	50-423
(Millstone Nuclear Power Station,	)	
Units 2 and 3)	)	

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

I. INTRODUCTION

On December 17, 2001, the Connecticut Coalition Against Millstone ("CCAM") and the STAR Foundation ("STAR") (collectively, "Petitioners") filed with the Nuclear Regulatory Commission ("Commission") a Petition for Reconsideration ("Reconsideration Petition") of the Commission's recent decision in this matter, CLI-01-24.[1] Consistent with 10 C.F.R. § 2.771(b), Dominion Nuclear Connecticut, Inc. ("DNC") herein responds to and opposes the Reconsideration Petition. CCAM and STAR fail to show any error in the Commission's decision that would warrant reconsideration. Accordingly, the Reconsideration Petition should be denied.

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[1] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 53 NRC ___ (2001).

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II. BACKGROUND

The NRC Staff issued the amendment at issue in this proceeding, and a Final Determination of No Significant Hazards Consideration, on November 28, 2000. 65 Fed. Reg. 75737 (2000). As part of a Technical Specifications improvement initiative, the amendment allowed relocating of selected Radiological Effluent Technical Specifications ("RETS"), and the associated Bases, to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual ("REMODCM"), a licensee-controlled document. The amendment itself does not involve any change to radiological monitoring instrumentation or radiological effluents from the nuclear units, nor does it impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way in which the plant is operated. The amendment was implemented at Millstone Units 2 and 3 on January 25, 2001.

In requesting a hearing on the amendment, CCAM and STAR proposed only one contention for litigation. The contention suggested that the amendment would deprive the Petitioners of hearing opportunities on future changes to the requirements formerly located in the RETS, and that this could lead to offsite adverse health effects. The sole proposed contention, as amended, included an unsigned "declaration" of Joseph Mangano as support for the alleged offsite health effects of low level radiological releases. The Atomic Safety and Licensing Board ("Licensing Board") subsequently issued a Memorandum and Order in which, by a two-to-one majority, it concluded that the Petitioners had not proffered an admissible contention. *Northeast Nuclear Energy Company* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273 (2001).

On April 9, 2001, CCAM and STAR filed an appeal of LBP-01-10 (styled as a "Petition for Review"). On April 23, 2001, DNC filed its brief in response ("DNC Brief"). The

NRC Staff filed a response the following day. The Commission issued CLI-01-24 on December 5, 2001. In affirming the Licensing Board's decision in LBP-01-10, the Commission found:

> The petitioners have not provided the necessary minimal factual or legal basis to suggest that either (a) the effluent monitoring procedures at issue are of such safety significance that technical specifications must continue to include them, or (b) that this licensee in particular — because, for example, of particular license conditions or deficiencies in its effluent monitoring program — should be required to retain the effluent procedures in its license.

CLI-01-24, slip op. at 15. CCAM and STAR filed their Reconsideration Petition on December 17, 2001.

III. DISCUSSION

It is well-established that reconsideration petitions must establish an error in a Commission decision, based on an elaboration or refinement of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification. *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); *Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 NRC 355, 357 (1992). Mere repetition of arguments previously presented is *not* a basis for reconsideration. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-88-03, 28 NRC 1, 3-4 (1988); *Nuclear Engineering Company Inc.* (Sheffield, Illinois Low-level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980).

In their Reconsideration Petition, CCAM and STAR assert that the Commission's decision in CLI-01-24 is "erroneous" for several reasons, including the Commission's supposed failure to consider Millstone "realities." Reconsideration Petition at 5-9. As discussed below, however, CCAM and STAR have failed to show any error in the Commission's decision. The

Petitioners rehash past arguments with no discernable understanding of the Commission's discussion or decision. The Petitioners also offer an entirely new unsigned "statement" from a Dr. Christopher Busby which purportedly provides more basis for the proposed contention. In focusing on alleged offsite health effects, however, it is similar and cumulative to the unsigned Mangano declaration previously submitted, and does not support an argument that the RETS meet the criteria of 10 C.F.R. § 50.36 and must therefore remain in Technical Specifications.

In the Reconsideration Petition, the Petitioners list (at 4-5), in conclusory fashion, seven alleged "errors" in the Commission's decision. However, thereafter the Petitioners argue only three points. DNC responds to each of the three points below and demonstrates that the Reconsideration Petition must be denied.

A. The Commission Did Not Err in Finding that the Proffered Contention Does Not Meet the Admissibility Requirements of 10 C.F.R. § 2.714(b)

In the Reconsideration Petition, CCAM and STAR first argue that the proposed contention was, contrary to the Commission's decision, legally sufficient:

> Petitioners' contention satisfies the criteria of 10 CFR Section 7.714(b).... The Petitioners' contention does provide a specific statement of the issue of law or fact to be raised or controverted, as required by Section 2.714(b)(2). The specific statement is set forth in the first paragraph of the contention. The majority of the ASLB panel so concluded.
>
> The Petitioners' contention does provide the information required by Sections 2.714(2)(i), (ii) and (iii). The information is provided in the second paragraph of the contention. The Board majority agreed that the second paragraph "sets out the bases for the contention in an attempt to comply" with such requirements.

Reconsideration Petition at 6.

These two paragraphs quoted from the Reconsideration Petition are almost identical to those of the CCAM and STAR April 9 Petition for Review (also at 6); no additional information or clarification is provided. Indeed, the argument now is even more spare than it

was in the Petition for Review. As such, this argument has already been fully addressed by DNC in the April 23 DNC Brief (at 9-17) and by the Commission in CLI-01-24 (slip op., at 13-19). The Petitioners have not elaborated or refined their previous argument, nor have they shown that the Commission committed any factual or legal error in CLI-01-24.

Under the Commission's regulations, a proposed contention must be in the required form, and must also be substantively sufficient to demonstrate a genuine dispute on a material issue. 10 C.F.R. § 2.714(b)(2). Contrary to the Petitioner's suggestion, the Licensing Board majority did not conclude that the "attempt" in the proposed contention to meet 10 C.F.R. § 2.714(b)(2) was successful. The Licensing Board majority found just the opposite.[2] The Commission also correctly concluded that there was no basis provided in the proposed contention — in either law or fact — for the argument that the RETS must be located in Technical Specifications. The proposed contention and basis statement never addressed or even acknowledged the criteria of 10 C.F.R. § 50.36 governing the requirements that must be included in Technical Specifications. Petitioners' repetitive and conclusory argument does not merit reconsideration under 10 C.F.R. § 2.771.

B. The Commission Did Not Err in Finding that the RETS are Not Required to Remain in the Millstone Units 2 and 3 Technical Specifications

With regard to the RETS, the Petitioners next argue — to similar effect as the point above — that "[b]ecause the license amendment involves the potential for increased risk of

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[2] *See Millstone,* LBP-01-10, 53 NRC at 280-86 (2001). For example, the Licensing Board found that: "The Petitioners' contention here, similar to the intervenors' fatal concession in *Perry*, makes no claim that there is a statutory or regulatory requirement that the procedural details and associated bases of the Millstone RETS must remain as specific terms of the Millstone operating licenses. Such a claim is an indispensable element of any contention challenging the relocation of material from a plant's technical specifications to a licensee-controlled document because there can only be a right to a hearing on future changes to such material if there is a statutory or regulatory requirement that such matters be included in the plant's technical specifications in the first place." *Id.* at 282.

undetected and preventable releases of radiation into the environment, such as might exceed allowable limits, they are legally required to remain in Technical Specifications." Petition at 6. This argument is premised upon the reasoning of the dissenting opinion of one member of the Licensing Board. Putting aside whether this argument reflects the proposed contention as initially drafted (it does not), it is clearly a repeat of the Petitioners' April 9 Petition for Review. The remaining five paragraphs of the Reconsideration Petition (at 6-8) on this issue are essentially identical to the argument in the April 9 Petition for Review (also at 6-8).

This argument was fully addressed by DNC in the April 23 DNC Brief (at 17-21). The assertion of highly speculative effects of hypothetical future changes to surveillance intervals for radiation monitoring equipment does not support the argument that the RETS meet the criteria of 10 C.F.R. § 50.36 and therefore must remain in Technical Specifications. Petitioners' argument was explicitly rejected by the Commission in CLI-01-24 (slip op. at 14-19). The Petitioners have not elaborated or refined their previous argument, nor have they shown that the Commission committed any factual or legal error in CLI-01-24. Consequently, this argument does not merit reconsideration under 10 C.F.R. § 2.771.

C. *The Commission Did Not Err by Failing to Address Millstone "Realities"*

The Petitioners' third argument states, *inter alia*:

> The NRC decision erroneously accepts on their face NNECO's statements that the application does not involve any change to plant operation, radiation monitoring, or radiological effluent releases. The decision refuses to speculate what the applicant intends to achieve if the application is granted.
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> * * *
>
> Indeed, the desire to make changes without going through the public notice process appears to be a primary motivating factor driving the license application process. Moreover, the NRC decision manifests a complete lack of awareness of Millstone's notoriety as a leading emitter of radionuclides into the environment. The NRC appears to be unaware of

> Millstone's notoriety as the "dirtiest" reactor complex in the United States in terms of its admitted discharges of cesium-127 and cobalt-60.

Reconsideration Petition at 8-9.

Once again the CCAM and STAR argument is nearly identical to that of their April 9 Petition for Review (also at 8-9). Petitioners merely restate their position; they do not elaborate and do not show any Commission error in CLI-01-24. These matters have already been fully addressed by DNC in the April 23 DNC Brief (at 17-21) and by the Commission in CLI-01-24 (slip op. at 19-25).

As one embellishment to this argument, the Petitioners now cite and attach an unsigned "statement" of Dr. Christopher Busby ("Busby Statement"), dated "26th March 2001." Obviously, this attempt to provide a basis for the proposed contention is too late. Moreover, and in any event, it is irrelevant to the argument in this case. The statement still does not acknowledge the criteria of 10 C.F.R. § 50.36 or provide any basis for an argument that the procedural details of the RETS meet those criteria.[3]

Dr. Busby testified for CCAM in an unrelated proceeding before the Superior Court of the State of Connecticut.[4] The Busby Statement now offered here reflects Dr. Busby's views offered in that case on the "likely effects of chemical and radioactive discharges from the Millstone Nuclear Plant ... upon both aquatic and coastal life and human populations living in

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[3] Petitioners' arguments seem to refuse to recognize that 10 C.F.R. § 50.36 is an existing requirement. The Petitioners are not free to argue that, by some other undefined measure, the RETS must be included in Millstone Technical Specifications.

[4] Dr. Busby testified for CCAM and STAR in *Connecticut Coalition Against Millstone v. Arthur Rocque, Commissioner of Department of Environmental Protection.* CCAM and STAR sought to stop the transfer of the environmental permits associated with Millstone from Northeast Nuclear Energy Company to DNC. The case was dismissed at the trial level for lack of subject matter jurisdiction. CCAM has appealed that decision. The case and Dr. Busby's testimony were referred to at length in footnote 1 of Petitioner's April 9 Petition for Review.

areas affected by these discharges." Busby Statement at ¶ 3. Dr. Busby also argues that his "evidence" suggests that Millstone is "particularly dirty." *Id.* at ¶ 21. However, these issues, namely the level and alleged health effects of chemical and radioactive discharges from Millstone, were previously argued in the unsigned Mangano declaration submitted to the Licensing Board with the proposed contention. These arguments were addressed by DNC in the April 23 DNC Brief (at 17-21). Arguments related to health effects of authorized, low level radiation releases from Millstone (or any other plant) do not support a contention that the RETS meet the criteria of 10 C.F.R. § 50.36. These are generic arguments that in effect challenge NRC regulations. Accordingly, they are beyond the scope of this proceeding.

Petitioners' arguments on releases from Millstone and alleged health effects were previously addressed by the Commission in CLI-01-24 (slip op. at 19-22). Therefore, although the Busby Statement may contain more raw information than the April 9 Petition for Review, the Petitioners have not shown the relevance of the information to this matter, and have not shown that the Commission committed any factual or legal error in CLI-01-24. A petition for reconsideration must be denied if a petitioner fails to show that a material error of law or fact has been committed. *International Uranium (USA) Corporation* (White Mesa Uranium Mill), LBP-97-14, 46 NRC 55, 59 (1997). This argument also does not merit reconsideration under 10 C.F.R. § 2.771.

IV. CONCLUSION

For the reasons above, the Commission should deny the Reconsideration Petition.

Respectfully submitted,

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Dated in Washington, D.C.
this 2nd day of January 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "DOMINION NUCLEAR CONNECTICUT'S RESPONSE IN OPPOSITION TO CONNECTICUT COALITION AGAINST MILLSTONE AND STAR FOUNDATION PETITION FOR RECONSIDERATION OF CLI-01-24" in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 2nd day of January 2002. Additional e-mail service has been made this same day as shown below.

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