

2002 MAR 26 AM 11:35

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION**

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of:	:	Docket No. 50-423-LA-2
DOMINION NUCLEAR	:	ASLBP No. 00-771-01-LA
CONNECTICUT, INC.	:	
(Millstone Nuclear Power Station,	:	
Unit No. 3; Facility Operating	:	
License NPF-49)	:	March 18, 2002

**CONNECTICUT COALITION AGAINST MILLSTONE AND  
LONG ISLAND COALITION AGAINST MILLSTONE  
RESPONSE TO NRC STAFF MOTION TO STRIKE**

On March 12, 2002, Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone (collectively "CCAM/CAM") filed a single brief in reply to initial briefs filed by Dominion Nuclear Corporation ("DNC") and the Nuclear Regulatory Commission ("NRC") Staff in response to CLI-02-05, the Commission's Memorandum and Order of February 6, 2002.<sup>1</sup> CCAM/CAM's Reply Brief was 27 pages in length.

The Nuclear Regulatory Commission ("NRC") Staff has moved to strike the brief in its entirety, on the ground that CCAM/CAM exceeded the 20-page limit established in CLI-02-05 without first obtaining the Commission's consent. NRC Staff's Motion to

---

<sup>1</sup> See Connecticut Coalition Against Millstone And Long Island Coalition Reply Brief Regarding NEPA Requirement To Admit Contention Regarding Environmental Impacts Of Destructive Acts Of Malice And Insanity ("Reply Brief"); Brief of Dominion Nuclear Connecticut Inc. in Response to Commission Memorandum and Order CLI-02-

Strike Reply Brief Filed By CCAM/CAM (March 15, 2002). The motion is without merit, and should be denied.

CLI-02-05 established page limits of 40 pages for initial briefs and 20 pages for reply briefs. *Id.*, slip op. at 2. The NRC Staff apparently interprets the order to require that parties must file a single 20-page reply brief in response to all opposing briefs. However, there is no such language in CLI-02-05. Instead, the order simply states that “[r]eply briefs should be submitted no later than March 12, 2002, and shall not exceed 20 pages in length.” *Id.* As stated in CCAM/CAM’s Reply Brief, CCAM/CAM interpreted this language to allow separate reply briefs in response to DNC and the NRC Staff. *See* Reply Brief, footnote 1 at page 1. For efficiency’s sake, CCAM/CAM filed a single 27-page reply brief in response to both parties, rather than filing two separate briefs.

CCAM/CAM submit that they reasonably interpreted the Commission’s order to allow them to file separate reply briefs in response to DNC and the NRC Staff. Indeed, it would have been extremely unfair to CCAM/CAM to interpret the order as the NRC Staff suggests. The Staff’s interpretation of CLI-02-05 would have allowed CCAM/CAM 20 pages to reply to 49 pages of argument by the Staff and DNC, while giving the Staff and DNC a combined total of 40 pages to respond to 27 pages of argument by CCAM/CAM. CCAM/CAM do not believe the Commission could have intended such an unfair outcome.

---

05 (February 27, 2002) (“DNC Brief”); NRC Staff Brief in Response to CLI-02-05 (February 27, 2002) (“NRC Staff Brief”).

If for some reason the Commission finds CCAM/CAM's interpretation of its order to be unreasonable, then CCAM/CAM respectfully asks the Commission to consider its brief in any case. Several factors weigh in favor of considering the brief. First, in response to CLI-02-06, in the license renewal case for the Catawba and McGuire nuclear plants, Duke Energy Corporation and the NRC Staff filed initial briefs that were virtually identical to the initial briefs filed by DNC and the Staff. *See Nuclear Information And Resource Service Reply Brief Regarding Admissibility of NEPA Issues Relating To Terrorism And Sabotage (March 12, 2002)*. Therefore, rather than reprising reply arguments made in CCAM/CAM's Reply Brief, NIRS filed a two-page Reply Brief and reference its reliance on CCAM/CAM's arguments. Had NIRS and CCAM/CAM divided up the arguments between them, their briefs would have been well within the 20-page limit.

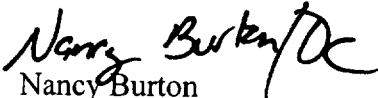
Second, CCAM/CAM's Reply Brief also takes some space to respond to an amicus brief filed by the Nuclear Energy Institute. *See Amicus Brief of Nuclear Energy Institute in Response to the Commission's Memorandum and Orders Dated February 6, 2002, Regarding the Commission's Consideration of Potential Intentional Malevolent Acts (February 27, 2002) ("NEI Brief")*. Although NEI's Amicus Brief was accompanied by a motion for leave to file it, NEI did not attempt to obtain the Commission's prior consent before submitting the brief. Because no party objected to the motion for leave to file NEI's brief, CCAM/CAM thought it reasonable and efficient to go ahead and reply to it.

Finally, if CCAM/CAM erred, they did so based on a good faith interpretation of the Commission's order, of which they notified the Commission in their Reply Brief. CCAM/CAM should not be sanctioned for such an error. CCAM/CAM respectfully submit that the arguments and information presented in their Reply Brief will assist the Commission in reaching a reasoned decision on the matter of whether it is required to consider the environmental impacts of destructive acts of malice or insanity in its reviews under the National Environmental Policy Act. Therefore, the brief should be considered in its entirety.

Respectfully submitted,



Diane Curran  
Harmon, Curran, Spielberg & Eisenberg, L.L.P.  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
202/328-3500  
[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)



Nancy Burton  
147 Cross Highway  
Redding Ridge, CT 06876  
[nancyburtonesq@hotmail.com](mailto:nancyburtonesq@hotmail.com)

March 18, 2002

## **CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2002, copies of "CONNECTICUT COALITION AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE RESPONSE TO NRC STAFF'S MOTION TO STRIKE" were served by E-Mail and first class mail on the individuals listed below:

Charles Bechhoefer, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
(E-Mail copy to [CVB@NRC.GOV](mailto:CVB@NRC.GOV))

Dr. Richard F. Cole  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
(E-Mail copy to [RFC1@NRC.GOV](mailto:RFC1@NRC.GOV))

Dr. Charles N. Kelber  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
(E-Mail copy to [CNK@NRC.GOV](mailto:CNK@NRC.GOV))

Office of the Secretary  
ATTN: Rulemaking and Adjudication Staff  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
(E-Mail copy to: [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV))

David A. Repka, Esq.  
Winston & Strawn  
1400 L Street NW  
Washington DC 20005-3502  
(E-Mail copy to: [drepka@winston.com](mailto:drepka@winston.com))

Ann P. Hodgdon, Esq.  
Office of General Counsel  
U.S. Nuclear Regulatory Commission  
Washington DC 10555-0001  
(E-Mail copy to: [aph@nrc.gov](mailto:aph@nrc.gov))

Richard A. Meserve, Chairman  
U.S. Nuclear Regulatory Commission  
Washington DC 20555  
(E-Mail copy to: [cmrmeserve@nrc.gov](mailto:cmrmeserve@nrc.gov))

Edward McGaffigan, Jr., Commissioner  
U.S. Nuclear Regulatory Commission  
Washington DC 20555  
(E-Mail copy to: [cmrmcgaffigan@nrc.gov](mailto:cmrmcgaffigan@nrc.gov))

Jeffrey S. Merrifield, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington DC 20555  
(E-Mail copy to: [commerrifield@nrc.gov](mailto:commerrifield@nrc.gov))

Greta J. Dicus, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington DC 20555  
(E-Mail copy to: [comrdicus@nrc.gov](mailto:comrdicus@nrc.gov))

Nils J. Diaz, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington DC 20555  
(E-Mail copy to: [cmrdiaz@nrc.gov](mailto:cmrdiaz@nrc.gov))

A handwritten signature in black ink, appearing to read "Diaz", is written over a horizontal line.