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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

In the Matter of

Docket No. 50-336-OLA-2

DOMINION NUCLEAR CONNECTICUT, INC. ASLBP No. 03-808-02-OLA

**(Millstone Nuclear Power Station,
Unit 2)**

August 28, 2003

BRIEF IN SUPPORT OF NOTICE OF APPEAL

The Connecticut Coalition Against Millstone (CCAM) herewith submits its brief in support of the notice of appeal filed contemporaneously herewith with the United States Nuclear Regulatory Commission from the decision of the Atomic Safety and Licensing Board Panel ("Memorandum and Order, Ruling on Petitioner's Supplemented Petition and Contention") issued on August 18, 2003 dismissing the Petitioner's contention and terminating the administrative proceedings. 10 C.F.R. §2.714a.

Factual Background

The petitioner, CCAM, petitioned to intervene and request a hearing in proceedings concerning the application of Dominion Nuclear Connecticut, Inc. ("DNC") dated September 26, 2002 to amend its Operating License to change Technical Specification (TS) 3.3.3.1 ("Monitoring Instrumentation, Radiation Monitoring"); TS 3.3.4 ("Instrumentation, Containment Purge Valve Isolation Signal"); TS 3.7.6.1 ("Plant Systems, Control Room Emergency Ventilation System"; TS 3.9.4 ("Refueling Operations, Containment Penetrations"); TS 3.9.8.1 ("Refueling Operations, Shutdown Cooling and Coolant Circulation – High

Water Level"); TS 3.9.8.2 ("Refueling Operations, Shutdown Cooling and Coolant Circulation – Low Water Level"); TS 3.9.15 ("Refueling Operations, Storage Pool Area Ventilation System"); and to revise the Technical Specifications bases to address the proposed changes.¹

The proposed changes to the Technical Specifications modify requirements regarding containment closure and spent fuel pool area ventilation during movement of irradiated fuel assemblies in containment and in the spent fuel pool area. The proposed changes will allow containment penetrations, including the equipment door and personnel airlock door, to be maintained open under administrative control. The proposed changes will eliminate the requirements for automatic closure of containment purge during Mode 6 fuel movement. The technical specifications associated with storage pool area ventilation will be deleted.²

The proposed modifications obviate existing requirements to prevent leakage of radioactive effluent from containment to the environment should radiation levels be deemed too hazardous for personnel. Proposed administrative controls to substitute human personnel for an automatic door-closing device are waivable within the sole discretion of the Licensee. Thus, if during an accident radiation levels escaping the penetration exceed permissible levels for worker exposure, the licensee would not be required to have capability to close the door to prevent radiation leakage directly into the environment. (See Attachment 2 to License Amendment Application, Page 8)

¹ Notice of the License Amendment Application was published in the November 12, 2002 Federal Register (Volume 67, Number 218).

² Licensee's analysis of the issue of no significant hazards consideration.

The petitioner, CCAM, is an organization of environmental advocacy and safe-energy groups, former employees of the Millstone Nuclear Power Station and families and individuals who reside within and beyond the five-mile emergency evacuation zone of Millstone.

CCAM petitioned to intervene in these proceedings and request a hearing because of concerns of adverse health and safety risks to its membership, as well as the health and safety of Millstone workers and the surrounding community, should the amendment be granted.

CCAM petitioned to participate in these proceedings to raise the contention that the amendment involves the potential of increase in the amounts of radiological effluents that may be released offsite.

The petition was supported by the accompanying Declaration of Joseph H. Besade, a CCAM member, Millstone whistleblower and resident of the Town of Waterford.³ Mr. Besade's home is located within two miles of the Millstone Nuclear Power Station.

In its Supplemented Petition, CCAM submitted the following contention:

The amendment involves the potential of significant increase in the amounts of radiological effluents that may be released offsite and thus the amendment involves an adverse impact on the public health and safety and does involve a Significant Hazards Consideration.

In its June 20, 2003 filing, the Licensee acknowledged "some increase in projected doses" assuming approval of the requested amendments. (See Memorandum and Order at 22)

³ Mr. Besade died on August 16, 2003 after battling an aggressive form of cancer.

In its Memorandum and Order (Ruling on Petitioner's Supplemented Petition and Contention) issued on August 18, 2003, the Atomic Safety and Licensing Board Panel assigned to the proceeding dismissed the contention as being insufficiently supported under relevant rules and law to be admissible and terminated the proceedings.

Argument

The amendment involves the potential of significant increase in the amounts of radiological effluents that may be released offsite and thus the amendment involves an adverse impact on the public health and safety.

The proposed changes modify certain containment closure and spent fuel pool ventilation requirements during fuel movement operations that would allow doors and other penetrations to remain open under administrative control – which is waivable within the sole discretion of the Licensee - and eliminate requirements for automatic closure of openings. 67 Fed. Reg. 68,728, 68,731 (Nov. 12, 2002).

If in such fuel movement operations, containment penetrations are left open, rather than having automatic and other closing functions operable or in effect, in the event of an accident and in routine operations there is a greater likelihood of a release of radioactivity that might have an impact on those who live nearby the site.

If a fuel handling accident occurs during refueling, and the containment door is left open, more radioactivity will escape the containment than if the doors were closed.

A fuel handling accident involving spent fuel entails an increased potential for offsite consequences.

In LBP-03-03, the Panel stated that if, after the proposed changes at issue are implemented, in fuel movement operations, "containment penetrations are left open . . . rather than having automatic and other closing functions operable or in effect, it would seem self-evident that in the event of an accident there is a greater likelihood of a release of radioactivity that might have an impact on a person who lives near the plant." LBP-03-03, 57 NRC at 61.

The Panel also stated that "if a fuel handling accident occurs during refueling, and the containment door is left open, common sense indicates that more radioactivity is going to escape the containment than if the doors were closed" and found that an event of a fuel handling accident involving spent fuel would "quite obviously entail an increased potential for offsite consequences." *Id.* at 61-62.

However, ultimately, the Panel accepted the assertions by the Licensee that the proposed changes are "safe" and that they do not involve an adverse impact on public health and safety. (See Dominion cover letter dated September 26, 2002, pages 1-4 and referenced attachments.)

The petitioner argued that the proposed changes are not "safe" and that the public health and safety are not protected. In the event of a fuel handling accident, with a containment penetration open, if the level of airborne radiation is too severe to enable personnel to carry out the substitute administrative controls

to prevent venting to the environment, the impact to the surrounding area will be adverse as a matter of "common sense."

Moreover, the proposed changes involve a significant reduction in a margin of safety. Under the present regime, containment penetrations are required to automatically close during a fuel handling accident, imposing a barrier to block radiation emission to the environment. Should the radiation levels be too severe – a not at all unlikely event during a fuel handling accident involving spent nuclear fuel – the administrative controls now proposed will be automatically rendered nugatory and the Licensee will not be faulted for not closing the penetration. Such an episode would inevitably result in a significant reduction in a margin of safety.

Petitioner's contention was acknowledged to be plausible as a matter of common sense by the Panel. The petitioner is entitled to the specific relief sought, namely, denial of the license amendment application.

As the Licensing Board ruled earlier in these proceedings,

With regard to redressability, a favorable Board ruling that, for example, disallowed leaving penetrations open, would obviously redress the harm alleged to arise from allowing the penetrations to remain open during movement of fuel.

For the foregoing reasons, It is respectfully requested that the Commission grant this appeal, reverse and vacate the decision of the Panel and remand this matter for further proceedings.

THE PETITIONER

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**CERTIFICATE OF SERVICE OF
NOTICE OF APPEAL BRIEF OF PETITIONER,
CONNECTICUT COALITION AGAINST MILLSTONE**

I hereby certify that a copy of the foregoing "Brief In Support of Notice of Appeal" of petitioner, Connecticut Coalition Against Millstone, was sent via U.S. Mail, postage pre-paid on August 28, 2003 to the following and emailed to the addresses below indicated:

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