

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
DOMINION NUCLEAR CONNECTICUT, INC.)	Docket Nos. 50-336-OLA-2
CONNECTICUT, INC.)	
)	
(Millstone Power Station, Unit 2))	

NRC STAFF'S BRIEF OPPOSING
CONNECTICUT COALITION AGAINST MILLSTONE'S APPEAL OF LBP-03-12

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Counsel for NRC Staff

September 11, 2003

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.714a, the NRC staff ("Staff") hereby files its response to Connecticut Coalition Against Millstone's ("CCAM") Notice of Appeal and Brief in Support of Notice of Appeal of LBP-03-12 ("Brief"), filed by CCAM on August 28, 2003. CCAM appeals the order issued by the Atomic Safety and Licensing Board ("Licensing Board"), dismissing CCAM's only proffered contention and terminating the proceeding. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 NRC ____ (slip op. August 18, 2003). For the reasons set forth below, the Staff submits that CCAM's appeal from the Licensing Board's dismissal of its contention should be denied and that LBP-03-12 should be affirmed.

BACKGROUND

This proceeding, concerning the application of Dominion Nuclear Connecticut, Inc. ("Licensee") to amend the operating license for Millstone Power Station, Unit No. 2, was commenced by publication of a Notice in the *Federal Register* on November 12, 2002. 67 Fed. Reg. 68,728, 68,731 (Nov. 12, 2002). The license amendment would revise the Technical Specifications to 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.¹

On December 12, 2002, CCAM and the STAR Foundation ("STAR") jointly filed an "Amended Petition to Intervene and Request for a Hearing."² On February 14, 2003, the Licensing Board determined that Petitioner CCAM had standing to participate in the proceeding, but that Petitioner STAR lacked standing. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-3, 57 NRC 45 (2003). Pursuant to the Licensing Board's order, on March 10, 2003, CCAM filed a Supplemented Petition and Contention ("Petition") proffering its one contention. On June 5, 2003, the Licensing Board heard oral argument on CCAM's March 10, 2003, Supplemented Petition and Contention and Licensee and Staff responses thereto.³ On August 18, 2003, the Licensing Board issued a Memorandum and Order dismissing CCAM's single contention and terminating the proceeding. LBP-03-12. CCAM timely filed a notice of appeal together with a supporting brief dated August 28, 2003, appealing the dismissal of its contention.

As set forth below, the Staff submits that CCAM has failed to demonstrate that the Licensing Board erred in its decision of August 18, 2003, dismissing CCAM's contention and terminating the proceeding. Accordingly, the Staff opposes CCAM's appeal and submits that the Commission should affirm LBP-03-12.

¹ The proposed changes take credit for re-analysis of the limiting design basis Fuel Handling Accidents using a selective implementation of the Alternative Source Term methodology in accordance with 10 C.F.R. § 50.67 and Regulatory Guide 1.183. See "Millstone Power Station, Unit 2, License Basis Document Change Request (LBDCR) 2-18-02, Selective Implementation of the Alternative Source Term—Fuel Handling Accident Analysis" (September 26, 2002) ("Application").

² Earlier on that same day, CCAM filed an intervention petition that did not include STAR as a petitioner. Petition to Intervene and Request for Hearing, December 12, 2002.

³ Answer of Dominion Nuclear Connecticut, Inc. to Connecticut Coalition Against Millstone Supplemented Petition and Contention, dated March 31, 2003, and NRC Staff's Answer Opposing Contention Filed by Connecticut Coalition Against Millstone, dated March 31, 2003.

ARGUMENT

I. Legal Standards Governing Contentions

Requirements regarding the admissibility of contentions are addressed in 10 C.F.R. § 2.714(b)(2). Each contention must provide the following information:

- (i) A brief explanation of the bases of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the applications (including the applicant's environmental and safety report) that the petitioner disputes and the supporting reason for each dispute, or if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

In order to intervene a petitioner must both establish standing and proffer at least one contention that meets the requirements of 10 C.F.R. § 2.714(b), (d). *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). If any of the requirements for an admissible contention is not met, a contention *must* be rejected. *Arizona Public Service Company* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) (emphasis added). Some form of factual, scientific or expert opinion must

be proffered in order to raise doubt as to the sufficiency of the applicant's supporting documents. Personal opinion and speculation are not enough to create a genuine dispute of law or fact. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 (1990); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 267 (1996); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 304, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). The proponent of a contention "must do more than submit 'bald or conclusory allegation[s]' of a dispute with the applicant." *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *citing* Final Rule, "Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in The Hearing Process," 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989).

II. The Licensing Board Properly Dismissed the Contention For Failing To Meet the Requirements of 10 C.F.R. § 2.714.

In its Petition, CCAM raised only one 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 adverse impact on the public health and safety and does involve a Significant Hazards Consideration.⁴

Petition at 3. The Licensing Board correctly determined that CCAM had not presented an admissible contention and dismissed the proceeding. LBP-03-12, slip op. at 24. In its Brief in Support of Notice of Appeal, CCAM again proffers this single contention. Brief at 4. At no point in its brief, however, does CCAM explain why the Licensing Board's decision was erroneous. In essence, the brief reiterates CCAM's original opinion articulated in its Petition and during the oral

⁴ This contention appears impermissibly to challenge the "no significant hazards consideration determination." 10 C.F.R. § 50.58(b)(6). Indeed, counsel for CCAM acknowledged, during oral argument, that CCAM was withdrawing the part of the contention that challenged the staff's "no significant hazards consideration determination." See Transcript of Oral Argument, June 5, 2003, 30, 97-98.

argument, while still failing to meet the criteria set forth in 10 C.F.R. § 2.714(b). CCAM's argument that "Petitioner's contention was acknowledged [by the Board] to be plausible as a matter of common sense," does not obviate the necessity for specific support required by 10 C.F.R. § 2.714(b). Moreover, this argument fails to recognize the distinction between the legal requirements for admissible contentions as compared with those for standing. See LBP-03-12, slip op. at 21. CCAM failed to produce any credible support for its contention; therefore, the Board properly denied it.

In neither its Petition nor Brief does CCAM indicate how its contention relates to the change in the Technical Specifications. In support of its contention, CCAM posits that "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."⁵ Brief at 2. CCAM raised this argument in its Petition (see Petition at 5), and the Licensing Board correctly determined that the petitioner failed to produce "sufficient information to show a genuine issue of law or fact." LBP-03-12, slip op. at 22. At no point, either in the Supplemented Petition or in the present appeal, does CCAM remedy that deficiency.

The appellant also asserts that the proposed changes to the Technical Specifications "would allow doors and other penetrations to remain open under administrative control" during fuel movement operations. Petition at 5; Brief at 4. CCAM states that such modifications would result in a "greater likelihood of a release of radioactivity that might have an impact on those who live

⁵ This argument ignores the fact that Millstone-2 had already been granted approval to keep the personnel airlock open during refueling. See Bi-Weekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 65 Fed. Reg 31,365 (2000). License Amendment 245 to Facility Operating License No. DPR-65. Application dated December 14, 1999 and supplemented February 11, March 30, and April 26, 2000.

nearby the site.”⁶ Petition at 4; Brief at 4. As with the previous unsupported assertion, the Licensing Board correctly determined that CCAM had failed to meet its burden with respect to putting forward an admissible contention.⁷ The Board notes, “Petitioner alleges a lowering of safety as a result of increases, but does not provide a specific basis for establishing this, sufficient to demonstrate a genuine dispute on a material issue.” LBP-03-12, slip op. at 22.

In addressing the sole contention raised by CCAM, the Licensing Board held that the petitioner had not “challenged the increases or the operational changes in a sufficiently specific manner so as to raise a genuine dispute of material fact or law that could lead to any relief in this proceeding.” *Id.* at 23. The Board noted that CCAM failed to raise any challenge to the specific dose calculations of the alternative source term. *Id.* at 22. As the Board indicates, “a contention may be supported by a fact-based argument, [but] such an argument must provide sufficient information to show a genuine issue of law or fact, a requirement that the Petitioner has not fulfilled in this proceeding with sufficient basis or specificity.” *Id.* at 22. CCAM offered no support for its contention that would meet the criteria of 10 C.F.R. § 2.714(b)(ii), (iii). The contention offered only mere reference to the application itself, the Licensing Board’s previous ruling on standing

⁶ The CCAM Supplemented Petition and Brief are unclear as to which changes in the Technical Specifications with respect to “containment closures” might result in potentially adverse offsite consequences. None of the changes involves a physical change to the plant, nor do the changes alter the “operational methods or procedures used for the physical movement of irradiated fuel assemblies in Containment or in the Spent Fuel Pool area.” See Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 67 Fed. Reg. 68,728, 68,732 (2002). The proposed amendment changes the methodology for the evaluation of dose consequences. CCAM fails to establish that these changes would have any significant or adverse impact offsite. The licensee’s calculated doses from a fuel handling accident are less than those specified in 10 C.F.R. § 50.67 and Regulatory Guide 1.183 for the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and control room without closure of containment. See Application, Attachment 2, pg. 11-16.

(LBP-03-03), and to a report that concerns *severe accidents*, not design basis accidents which are the accidents at issue in the alternative source term changes. LBP-03-12, slip op. at 22.

Given that CCAM failed to satisfy the requirements of 10 C.F.R. § 2.714(b), the Board properly dismissed the contention.

The Licensing Board's Memorandum and Order fully articulates the reasoning for denial of the petition based on the failure of CCAM to meet the requirements for an admissible contention as set forth in 10 C.F.R. § 2.714(b). The Board addressed the issues of containment penetrations, fuel handling accidents, potential off-site releases, specific dose calculations, administrative controls, and potential terrorist attack, all of which were mentioned in the CCAM Supplemented Petition. With respect to each issue, the Board found that CCAM, "has not challenged the increases or the operational changes in a sufficiently specific manner so as to raise a genuine dispute of material fact or law that could lead to any relief in this proceeding." LBP-03-12, slip op. at 23. As the Board points out, the factual requirements for an admissible contention are "considerably more stringent" than those required for standing. LBP-03-12, slip op. at 21.

Given that CCAM failed to present any factual, scientific, or expert support for its contention, the Licensing Board decision should be affirmed.

CONCLUSION

For the reasons set forth above, the Commission should deny Petitioner CCAM's appeal from the Licensing Board's Memorandum and Order of August 18, 2003.

Respectfully submitted,

/RA/

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 11th day of September, 2003

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S BRIEF OPPOSING CONNECTICUT COALITION AGAINST MILLSTONE'S APPEAL OF LBP-03-12" 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 11th day of September 2003. Additional e-mail service has been made this same day as shown below.

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