

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**IN RE:** : **DOCKET NO. 265**

**PROPOSAL OF DOMINION NUCLEAR :  
CONNECTICUT, INC. TO MODIFY THE :  
EXISTING MILLSTONE [NUCLEAR] :  
POWER STATION TO ESTABLISH :  
AN INDEPENDENT SPENT FUEL :  
STORAGE INSTALLATION (DRY :  
STORAGE SYSTEM) ON PROPERTY :  
LOCATED OFF ROPE FERRY ROAD :  
IN THE TOWN OF WATERFORD, :  
CONNECTICUT :** **APRIL 14, 2004**

**CONNECTICUT COALITION AGAINST MILLSTONE AND CO-PARTIES’  
OBJECTION TO DOMINION PROPOSED FINDINGS OF FACT**

The Connecticut Coalition Against Millstone (“CCAM”) and co-parties Geralyn Cote Winslow, Clarence O. Reynolds, William H. Honan and Dr. Milton C. Burton (collectively, CCAM”) object herewith to certain of the Proposed Findings of Fact as submitted by the applicant as being without support in the record and/or otherwise improper, as follows:

**Paragraph 7.** The statement “State agencies, such as this Council, may not regulate the dry storage activities authorized by the NRC relative to radiological health and safety or impose siting standards in a manner that will frustrate or undermine NRC decisions related to the storage of spent nuclear fuel” has no factual support in the record and constitutes legal argument only.

The Siting Council should be aware that it has jurisdiction to deny an application if a site is inappropriate for a particular use. Indeed, it has no authority to approve an application for a facility *environmentally* inappropriate and unsuited

for such use. See Conn. Gen. Stat. §16-50p(a). The NRC does not have jurisdiction to override legitimate local land-use objections. The U.S. Supreme Court has never held to the contrary. If it were otherwise, a town would have no control over the siting of a nuclear waste dump in a residential zone far removed from a nuclear reactor. Cf. Connecticut Yankee v. Town of Haddam 301 CV 2178 (AHN)(U.S. District Court endorsed agreement by Haddam Selectmen to override a unanimous decision of the Haddam Zoning Commission disallowing a zone change to permit a *de facto* permanent nuclear waste dump in a residential zone; the effect of Connecticut Yankee is to empower a federal judge to rezone a 500-acre parcel of land from “residential “ to “nuclear.” In agreeing to accept a \$10 million payment for a building permit which it could not issue lawfully, the Town of Haddam waived its land-use authority over the 500-acre parcel.)

**Paragraph 8.** “Consistent with the Council’s jurisdiction, the scope of the proceeding was limited to the siting of the ISFSI at Millstone, specifically the public benefit and the need for the ISFSI, its location and its potential impact on the environment. The proceeding did not address the current operations of the Millstone facility except as those operations directly relate to the ISFSI.”

To the extent that the Siting Council so limited its jurisdiction, it acted in error. Dominion’s interpretation of the scope of the Siting Council’s jurisdiction is far too narrow. At issue are the public need for the facility and the basis of the need. Conn. Gen. Stat. §16-50p.

**Paragraph 9:** While Dominion states that the ISFSI is not a “facility as defined in Conn. Gen. Stat. §16-50i(a),” clearly, the Millstone Nuclear Power Plant *is*

such a “facility.” (“Facility” means “(3) any electric generating or storage facility using any fuel, including nuclear materials . . .”) Nor is the present application for a “modification” as that term is defined in the statute. (“Modification” means a significant change or alteration in the general physical characteristics of a facility.”)

**Paragraph 10:** “The Property is traversed by an Amtrak rail line.”

In fact, the property is traversed by the Northeast Corridor “Amtrak rail line connecting New York City and Boston, Massachusetts, and as such is a key element of the region’s transportation infrastructure and is one of the most frequently traveled.

**Paragraph 11.** “The Protected Area was established and is maintained in accordance with requirements established by the NRC.”

This is a self-serving statement without corroborating evidence in the record. The applicant did not produce any witnesses from the NRC in these proceedings. Therefore, the Siting Council has no basis from which to judge the truth or accuracy of this statement and it should not rely upon it in its decisionmaking.

**Paragraph 13.** Contrary to the statement “Millstone Unit 1 ceased operations in 1998,” Unit 1 ceased operations in 1996 and never restarted. See Testimony of Clarence O. Reynolds, Paragraphs 3-4.

**Paragraph 16.** “The storage of spent fuel is incidental to the principal use of the Millstone property for the generation of electricity.” This is a legal conclusion, not a finding of fact and it has no basis in the record. In fact, the Millstone

Nuclear Power Station was initially designed and approved for electric power generation, not for either short-term or long-term storage of spent nuclear fuel. The Town of Waterford zoning regulations prohibit longterm storage of nuclear waste within the town. The application presumes prohibited longterm storage of spent nuclear fuel. See Dominion Proposed Findings of Fact Paragraph 88 (assuming, for planning purposes, storage at the Millstone site of spent nuclear fuel through the year 2045 and to an indefinite time beyond the year 2045). An ISFSI is not incidental to the principal use of the Millstone property for the generation of electricity. To the extent that Dominion uses the term “incidental use“ to suggest that the application conforms with the requirements of the Waterford zoning regulations, any conclusion to such effect is without factual support and is erroneous.

**Paragraph 17.** “A dry storage system would allow DNC to remove fuel from the Millstone spent fuel pools, thereby freeing space in the spent fuel pools to both accommodate spent fuel from more recent refuelings and to maintain full core reserve capability into the future.”

Should the Siting Council approve the application but limit the number of storage canisters to 19, all the spent fuel which has accumulated to date in the pools of Units 1, 2 and 3 will remain in the pools in dense configurations achieved as a result of successive rerackings. Because of the high density of the fuel rod bundles in each of the spent fuel pools, each of the spent fuel pools is particularly vulnerable to a catastrophic event if an unplanned criticality were to result from a loss of water. High-density reracking in the Millstone spent fuel

pools assumes an ability to maintain the water level without interruption. The present application would do nothing to reduce the density of the fuel rods in their present unsafe dense configuration.

**Paragraph 18.** “The ISFSI is intended to be used for the interim storage of spent fuel at Millstone until the U.S. Department of Energy (DOE) fulfills its statutory and contractual obligations and accepts the fuel for permanent disposal. The ISFSI is not a permanent repository for the storage of spent fuel.”

For purposes of this application, the applicant presumes that the Department of Energy will not accept all the spent fuel from Millstone until an indefinite time subsequent to the year 2045. See Dominion’s Proposed Findings of Fact, Paragraph 88.

Insofar as the applicant was unable to identify a date by which the spent fuel will exit Millstone, or a location presently approved for such alternate storage offsite, the Siting Council has no choice given the present record but to consider the application to be one for permanent high-level storage of nuclear waste onsite at the Millstone Nuclear Power Station. The application is clearly deficient in failing to adequately analyze the longterm environmental and other effects of *de facto* longterm storage. To appreciate this shortcoming, the Siting Council should consider that the as-yet-untried dry storage components Dominion proposes to use are only licensed for a 20-year term and that Dominion Nuclear Connecticut, Inc., is a limited liability company.

**Paragraph 20.** “The Millstone ISFSI will be developed pursuant to a general license issued by the NRC and will use a dry storage system certified by the NRC.”

This is a self-serving statement without corroborating evidence in the record. The applicant did not produce any witnesses from the NRC in these proceedings. Therefore, the Siting Council has no basis from which to judge the truth or accuracy of this statement and it should not rely upon it in its decisionmaking.

**Paragraph 22.** “DNC’s indirect parent company, Dominion Resources, Inc. (Dominion), owns and operates three nuclear power stations, which are Millstone, North Anna and Surry, in the United States. Dominion has a track record for taking advantage of technological changes and advances in dry storage technology that provide an operational benefit.”

According to the records of the Town of Waterford Tax Collector and the Tax Assessor as of April 14, 2004, Dominion Nuclear Connecticut, Inc., the applicant, is the owner of the Millstone Nuclear Power Station, not Dominion Resources, Inc.

With regard to the track record of Dominion Nuclear Connecticut, Inc. in the matter of dry cask nuclear waste storage, it has none.

The negative track record of Dominion Resources, Inc., to the extent it may have developed a track record with regard to the North Anna and Surry nuclear facilities, was in part withheld from the Siting Council during these proceedings. Indeed, it was not until the CCAM parties presented the testimony of nuclear waste expert Kevin Kamps that Dominion – the applicant herein - acknowledged

that deficiencies in design as revealed over time – not corporate prescience – led Surry’s owner to take advantage of changes in technology to improve what it had heralded as “state-of-the-art technology” when dry cask storage was introduced at the Surry nuclear facility.

**Paragraph 27.** “Millstone is the largest base load generator of electricity in New England and supplies enough power to supply approximately 1.2 million households. Power generated at Millstone is 28% of the installed capacity in Connecticut and provided the equivalent of 47 per cent of Connecticut’s actual generation needs between 2000 and 2002.”

The Siting Council’s “Report 2002 – Resource Forecast,” submitted in pertinent part as a CCAM exhibit, states that Millstone’s Units 2 and 3 together contributed a total of 2.107 MW in 2002, or approximately 28 per cent of the state’s capacity, while nuclear capacity, which previously had accounted for 45 per cent of the state’s operating capacity, has been reduced by the early retirement of Millstone Unit 1 and Connecticut Yankee.

**Paragraph 28.** “During the August 14, 2003 blackout, Millstone was the only major Connecticut generator to stay online. Millstone’s ability to stay online provided invaluable support to the reliability of the Connecticut power transmission grid. As a result, Millstone was credited with playing a major role in stopping the migration of the blackout throughout New England.”

These statements were presented as conclusions without factual support. Historically, Millstone has been highly unreliable as an electricity generator. See Testimony of Clarence O. Reynolds. What happened n the August 14, 2003

blackout remains subject to conjecture. What is not with certainty is that between 1996 and 1998 – when Millstone Units 1, 2 and 3 and Connecticut Yankee were all shut down – the state of Connecticut did not suffer a single brownout or blackout.

**Paragraph 30.** “Without the ISFSI, Millstone Unit 2 will lose full core reserve capability after its Spring 2005 refueling outage and will be required to shut down if alternate spent fuel storage is not available by 2010. . . . This premature closure of Millstone would impact the reliability of the electric market in the State and the region, result in the loss of jobs and have an adverse economic impact on the State, the region and the nation.”

The application is complete devoid of facts and analysis to support this conclusion. Indeed, the evidence that Millstone Unit 2 closure would have any negative effect at all on the reliability of the electric market in the state is to the contrary, given CCAM’s submission of the Siting Council’s own report of new generating capacity since 1997. To the contrary, if both Unit 2 and Unit 3 were to close, the economic impact would undoubtedly be positive: removal of the terrorist threat would promote economic development and property values and enable government and business resources to be directed to positive initiatives rather than issues of security and public safety, and the positive impact on health would reduce the drain on the economy from the epidemic of illnesses affecting the Millstone community.



**Paragraph 38.** The ISFSI Site is adequately separated from inland wetlands and watercourses, coastal resources, tidal waters, marine habitats and other marine resources.”

The conclusory statement is not supported by a factual record. The record is absent any substantive analysis of longterm impacts to these nearby natural resources.

**Paragraph 52.** “DNC’s radiological exposure calculations . . . show that expected yearly exposures to workers and/or members of the public both on-site and off-site to be a small fraction of the regulatory limits.”

The application does not recognize that “regulatory limits” were established arbitrarily and without scientific proof that such levels are without adverse health risks. Indeed, the mounting evidence is to the contrary. The conclusion is not supported by any analysis of the exposures which would result from an accident, malevolent or otherwise. The public is becoming aware that the U.S. Nuclear Regulatory Commission acts as a nuclear power industry lapdog rather than a regulatory watchdog. The NRC continues to refuse to act upon its authority to protect the public health and safety, and this malfeasance and misfeasance extends to its lack of commitment to date to appropriately consider of the terrorist threat potential to dry cask storage installations. See, e.g., San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Commission, No. 03-74628 (pending before the U.S. Court of Appeals for the 9<sup>th</sup> Circuit).

**Paragraph 58.** “Upon completion of construction, the NUHOMS System, which is a passive installation without moving equipment or components, will not generate any air emissions.”

This statement is simply untrue.

The applicant acknowledged during cross examination that the facility will emit radiation into the air continuously. These emissions are so significant that workers are not allowed within close range except for very brief periods.

**Paragraph 64:** “The development of the ISFSI Site will have no direct permanent impacts on wetlands or watercourses and will result in no net loss of wetlands or watercourses on the Property. The ISFSI project will not result in any changes or impacts to the existing fresh water pond or any of its adjacent wetland areas.”

These conclusory statements are entirely without support in the record. For example, the application provided no evaluation of environmental effects over the many decades, at the least, that the applicant anticipates the high-level nuclear waste will repose onsite.

**Paragraph 81.** “The ISFSI is not a long-term repository for the storage of spent fuel.”

This statement is untrue. The ISFSI **is** a long-term repository for the storage of spent nuclear fuel. See Dominion’s Proposed Finding Paragraph 88.

Therefore, its location within the Town of Waterford is prohibited by the Waterford Zoning Regulations.

**Paragraph 83:** “DNC has agreed that only spent fuel from Millstone units will be stored in the ISFSI.”

Once nuclear materials are stored at an ISFSI, a community loses all control over the site. Dominion’s pledge is illusory.

**Paragraph 92.** The Waterford Conservation Commission required a “good faith and detailed examination of alternatives to the current storage proposal that were considered and rejected.”

This did not occur.

**Paragraphs 96-123**

The applicant failed to provide a sufficiently detailed application by which the Siting Council could evaluate the suitability of the site for the use proposed as a *de facto* permanent facility. Prudent and feasible alternatives are available, such as:

- a. Denial of the application without prejudice to submittal of a complete application proposing robust “post-911” dry storage;
- b. Denial of the application for failure to establish a public need; this alternative would protect and preserve the environment from unnecessary environmental impact from the continued production of more tons of high-level nuclear waste which poses a high terrorist threat and for which no safe place to store it for the tens of thousand of years required yet exists;
- c. Denial of the application without prejudice to further development and exploration of alternatives, such as shipment to the James River, Virginia, Surry site, or burial, or berming; and

- d. Denial of the application as proposing a facility which is environmentally unsuited to the site in question.

**CONNECTICUT COALITION AGAINST  
MILLSTONE  
GERALYN COTE WINSLOW  
CLARENCE O. REYNOLDS  
WILLIAM H. HONAN  
DR. MILTON C. BURTON**

By: \_\_\_\_\_

Nancy Burton  
147 Cross Highway  
Redding Ridge CT 06876  
Tel.: 203-938-3952  
Fax: 203-938-3168  
Email: [nancyburtonesc@aol.com](mailto:nancyburtonesc@aol.com)

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed on April 14, 2004 to the following via U.S. Mail, postage pre-paid:

Robert L. Marconi, Esq.  
Assistant Attorney General  
Ten Franklin Square  
New Britain CT 06051

Kenneth C. Baldwin, Esq.  
Robinson & Cole, LLP  
280 Trumbull Street  
Hartford CT 06103

Lillian M. Cuoco, Esq.  
Dominion Resources Services, Inc  
Millstone Nuclear Power Station  
Rope Ferry Road  
Waterford CT 06385

Robert A. Avena, Esq.  
Kepple, Morgan & Avena, P.C.  
Box 3A Anguilla Park  
20 South Anguilla Road  
Pawcatuck CT 06379

Mark R. Sussman, Esq.  
Murtha Cullina LLP  
CityPlace I, 29<sup>th</sup> Floor  
185 Asylum Street  
Hartford CT 06103-3469

James S. Butler, Esq.  
Southeastern Connecticut  
Council of Governments  
5 Connecticut Avenue  
Norwich CT 06360

Robert D. Snook, Esq.  
Assistant Attorney General  
55 Elm Street  
Hartford CT 06141-0120

---

