

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**APPLICATION OF DOMINION NUCLEAR :
CONNECTICUT, INC. TO MODIFY SITING :
COUNCIL CERTIFICATE (DOCKET NO. :
265A) FOR THE EXISTING INDEPENDENT :
SPENT FUEL STORAGE INSTALLATION :
(DRY STORAGE SYSTEM) AT MILLSTONE :
[NUCLEAR] POWER STATION, ROPE :
FERRY ROAD, WATERFORD, :
CONNECTICUT : MARCH 9, 2013**

**CONNECTICUT COALITION AGAINST MILLSTONE AND NANCY BURTON
MOTION FOR LEAVE TO REPLY**

The intervenors Connecticut Coalition Against Millstone and Nancy Burton move the Siting Council to grant leave to them to reply to a misleading and incorrect assertion in the post-hearing brief filed on behalf of the applicant, Dominion Nuclear Connecticut, Inc., (“Dominion”) on February 28, 2013.

In support of this motion, the Intervenors respectfully represent as follows:

1. In Section VI of its brief (“Changed Conditions”), Dominion asserts that the record in these proceedings

. . . contains ample evidence of “changed conditions” that, pursuant to Conn. Gen. Stat. Section 4-181a(b), would justify a Council decision to modify the D & D [Siting Council’s Decision and Order in Docket No. 265 dated May 27, 2004], and allow for the construction of all concrete storage pads and aprons and approve the physical ISFSI site modifications described in the Docket No. 265A application.

2. Subparagraph A of Section VI of Dominion’s brief (“Status of the National Spent Fuel Repository”) further states as follows:

In Condition No. 15 of the D & O, the Council permitted DNC to complete all ISFSI subsurface infrastructure work for the full build-out of 135 HSMs, construct a haul road from the MPS [Millstone Nuclear Power Station] units to the ISFSI, install permanent storm water drainage improvements and underground utilities, relocate the PA [“Protective Area”] fence around the ISFSI and install a concrete pad large enough to accommodate 49 HSMs. (DNC 1, Attachment 6; Admin. Notice17). **At the time of the Council’s review of the Docket No. 265 Application**

(August of 2003 to May of 2004), it was the official stated position of the DOE [U.S. Department of Energy] that it intended to submit to the NRC a license application for construction of a national spent fuel repository at Yucca Mountain by December of 2004 and that its target for accepting spent fuel for permanent disposal at Yucca Mountain was 2010. (Admin. Notice 17 - October 3, 2003 Response to Council Interrogatory No. 2; DNC 1, Attachment 6.)

Since that time, the Administration has taken alternate steps to reconsider what path the nation might take to deal with disposal of spent nuclear fuel from nuclear power reactors like MPS. As a result, the DOE sought to withdraw the Yucca Mountain license application and, in September 2011, the NRC's Yucca Mountain licensing proceeding was suspended. The DOE is also assessing the recommendations of the Blue Ribbon Commission. (Admin. Notice 13) DNC is therefore planning for the use of additional on-site, interim storage of spent fuel at the MPS ISFSI. (DNC 1, p. 8-9; DNC 4; Admin. Notice 13).

The information described above constitutes a "changed condition" under Conn. Gen. Stat. Section 4-181a(b).

(Emphasis added.)

3. The reference provided by Dominion to "DNC 1, Attachment 6," as highlighted above, is misleading.

4. "DNC 1, Attachment 6" is a reference to the Council's Decision and Order dated May 27, 2004 in Docket No. 265.

5. This is what the Siting Council actually determined as set forth in its Decision and Order dated May 27, 2004:

The Nuclear Waste Policy Act of 1982 assigned the Department of Energy (DOE) as the federal agency to establish, construct and operate a national repository for spent nuclear fuel. Also, DOE is contractually obligated to take ownership of spent nuclear fuel from commercial reactors. At present, there is no national disposal site; however, DOE is preparing a license application for a spent nuclear fuel storage site, Yucca Mountain, in the State of Nevada. **This site has been under scrutiny for decades and milestones for operations have been missed. While this would be the first choice to dispose of spent nuclear fuel, the NRC's decision to license Yucca Mountain as the national repository for spent nuclear fuel, and the timing to accept spent nuclear fuel for storage by year 2010 is speculative at best.**

Siting Council Opinion in Docket No. 265, May 27, 2004, page 1, paragraph 5.

6. Thus, when the Siting Council acted in Docket No. 265 to deny Dominion the full extent of what it applied for – that is, approval to construct concrete pads for 135 HSMs – it did so with an acute awareness that any claims that Yucca Mountain would be accepting spent nuclear fuel for permanent storage in 2010 were little more than fanciful. The Siting Council did not base its decision on a declared belief that Yucca Mountain would be accepting Millstone spent nuclear waste by the year 2010. To the contrary, the Siting Council had no expectation that Yucca Mountain would begin to receive spent nuclear fuel for permanent disposal by 2010 or within decades of 2010. As the Siting Council well knew (“This site has been under scrutiny for decades and milestones for operations have been missed.”), it was as likely as not that there would be further delays and missed milestones in the decades to come before the nation might open a permanent repository for spent nuclear fuel.

7. Indeed, the Siting Council explicitly rejected Dominion’s request for concrete pads to accommodate 135 HSMs when it limited its approval to 49 HSMs which would carry Millstone through the year 2025.

8. As the Siting Council stated:

This Council has analyzed and carefully considered the construction of the ISFSI and operational need for Millstone [Nuclear] Power Station and concluded 49 HSMs is reasonable to allow for storage of Unit 2 and Unit 3 spent fuel to approximately year 2025. This allows for the continued operation of Unit 2 until 2015 and Unit 3 until 2025 under current licenses; allows for flexibility if the license renewal application is granted by the NRC; and allows for a prudent planning horizon and implementation for a national repository (Yucca Mountain).

Siting Council Opinion in Docket No. 265, May 27, 2004, page 3, paragraph 3.

9. Thus, Dominion’s argument that DOE’s failure to open Yucca Mountain to receive spent nuclear fuel for permanent storage in 2010 constitutes a “changed condition” pursuant to Conn. Gen. Stat. Section 4-181a(b) is simply specious.

10. Dominion premises its argument on a distortion of the record and a distortion of the Siting Council’s actual findings in Docket No. 265.

Conclusion

For the reasons presented, the Intervenors urge the Siting Council to reject Dominion’s argument that delays in siting a national repository for permanent storage of spent nuclear fuel constitute a “changed condition” under these

circumstances, given that the Siting Council fully anticipated such delays when it acted in Docket No. 265.

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CERTIFICATION

This is to certify that a copy of the foregoing was transmitted to the following via email on March 9, 2013:

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