

CONNECTICUT SITING COUNCIL
DOCKET NO. 265A

IN THE MATTER OF:

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

APPLICANT'S POST-HEARING BRIEF

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I. INTRODUCTION

On October 31, 2012, Dominion Nuclear Connecticut, Inc. (“DNC”) filed an application with the Connecticut Siting Council (“Council”) to make certain modifications to the existing Independent Spent Fuel Storage Installation (“ISFSI”) at Millstone Power Station (“MPS”) in Waterford, Connecticut. The Council designated this filing as Docket No. 265A.

The siting of the ISFSI at MPS was approved by the Council on May 27, 2004 in Council Docket No. 265, subject to conditions. (DNC Hearing Exhibit 1 (“DNC 1”), Attachment 6). In the Docket No. 265A application, DNC requests that the Council approve minor changes to certain physical features of the ISFSI and modify Condition No. 15 of the Docket No. 265 Decision and Order (“D&O”), to permit DNC to complete the installation of all concrete pads at the ISFSI to accommodate the full build-out of 135 Horizontal Storage Modules (“HSMs”). (DNC 1). The HSMs would continue to be installed and filled with spent fuel only as required by MPS operations and spent fuel management strategies. (DNC 1; DNC 4).

II. AUTHORITY AND PURPOSE

The Application is made pursuant to the provisions of Sections 16-50k(a) and 4-181a(b) of the Connecticut General Statutes (“Conn. Gen. Stat.”). Pursuant to Section 4-181a(b), the Council may modify its final decision in Docket No. 265 on a showing of “changed conditions”. (DNC 1, pp. 1-2; DNC 4). As such, the scope of the Council’s authority and jurisdiction is limited to a determination that (1) changed conditions, relating to the existing ISFSI, warrant a modification to Condition No. 15 of the D&O; and (2) the minor physical modifications to the ISFSI, described in the Docket No. 265A Application, will not result in a substantial adverse environmental effect beyond those previously approved in Docket No. 265. (DNC 1).

III. SITING COUNCIL JURISDICTION

MPS operates under federal licenses issued by the U.S. Nuclear Regulatory Commission (“NRC”) pursuant to the Atomic Energy Act and Volume 10, Part 50 of the Code of Federal Regulations (“CFR”) (12/20/13 Transcript (“Tr. 1”), pp. 5-6). NRC regulations authorize DNC, as the licensee, to develop and store spent nuclear fuel in an ISFSI, subject to specific requirements, including the use of only NRC-certified dry storage systems, the storage of spent fuel only from the particular licensed facility and the installation of physical security measures around the ISFSI. (See 10 CFR § 72.212; Council Administrative Notice Item (“Admin. Notice”) 17; DNC 1, Attachment 6; DNC 5). Likewise, the regulation of radiological effects of commercial nuclear power stations and associated spent fuel storage is exclusively under the jurisdiction of the NRC. (See Maine Yankee Atomic Power Co. v. Bonsey, 107 F. Supp. 2d 47 (D. ME 2000). These jurisdictional limits were further reinforced by the Connecticut Supreme Court in its 2008 decision in Connecticut Coalition Against Millstone, et al. v. Connecticut Siting Council. In that decision, the Connecticut Supreme Court limits the Council’s jurisdiction to “non nuclear environmental effects”. Connecticut Coalition Against Millstone, et al. v. Connecticut Siting Council, 286 Conn. 57 (2008).

IV. PROCEDURAL BACKGROUND

The Council conducted an evidentiary and public hearing on the Application on December 20, 2012. (Tr. 1, p. 4). The evidentiary portion of the hearing continued on January 29, 2013. (1/29/13 Transcript (“Tr. 2”), pp. 4-5). Prior to the December 20, 2012 hearing, the Council and its staff visited MPS and the ISFSI site. (Council Hearing Notice dated November 16, 2012). This Post-Hearing Brief is filed on behalf of DNC pursuant to Section 16-50j-31 of

the Regulations of Connecticut State Agencies (“R.C.S.A.”) and the Council’s directives. (Tr. 2, p. 70).

V. FACTUAL BACKGROUND

On August 25, 2003, DNC filed an application with the Council to establish an ISFSI at MPS. The ISFSI provides for interim storage of spent fuel from MPS until such time as the U.S. Department of Energy (“DOE”) fulfills its statutory and contractual obligation and accepts the fuel for permanent disposal. (*See* Nuclear Waste Policy Act of 1982 as amended, 42 U.S.C. §§ 10101, et. seq.) The ISFSI as proposed and approved in Docket No. 265, would support a total of 135 HSMs located on reinforced concrete pads. (Admin. Notice 17; DNC 1, pp. 5-6, Attachment 6).

The Council approved the Docket No. 265 Application on May 27, 2004, subject to conditions. The Docket No. 265 approval allowed DNC to complete all subsurface infrastructure work for the entire ISFSI development (135 HSMs) including, without limitation, site clearing, grading, subsurface construction activity, backfilling, installation of the Protected Area (“PA”) fence and haul road, installation of drainage improvements and underground utilities and the installation of a reinforced concrete pad large enough to accommodate 49 HSMs.¹ (DNC 1, p. 6, Attachment 6; Admin. Notice 17).

Construction of the ISFSI commenced in 2004 and has been developed in phases. As of the date of filing of the Docket No. 265A Application, DNC had completed all subsurface improvements for a total of 135 HSMs; constructed a haul road for fuel transfer purposes;

¹ *See* Docket No. 265 D&O, Condition No. 15. (DNC 1, Attachment 6).

installed certain storm water drainage improvements and underground utilities; installed a gravel and crushed stone finish within the ISFSI area; placed excess fill material in the designated "Soil Placement Area" located to the north of the Amtrak rail line; installed a reinforced concrete pad and loading apron large enough for 20 HSMs; and installed the PA fence around the entire ISFSI area. (DNC 1, p. 7, Attachment 7). DNC began transferring spent fuel to the ISFSI in 2005 and there are currently nineteen (19) HSMs on the existing ISFSI pad. Eighteen (18) of the nineteen (19) HSMs are now loaded with spent fuel. (DNC 1, pp. 7-8). DNC plans to transfer more spent fuel (loading seven (7) additional HSMs) to the ISFSI in 2015. (DNC 1, pp. 12-13; DNC 9).

VI. CHANGED CONDITIONS

The Docket No. 265A record 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&O, 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.

A. Status of the National Spent Fuel Repository

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 units to the ISFSI, install permanent storm water drainage improvements and underground utilities, relocate the PA fence around the ISFSI and install a concrete pad large enough to accommodate up to 49 HSMs. (DNC 1, Attachment 6; Admin. Notice 17). 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 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 its 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 the 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).

B. Changes to MPS Projected Fuel Transfer Schedule

In Docket No. 265, DNC described its need for the ISFSI and its plans to load fuel, as needed, to maintain full core reserve in the MPS Unit 2 and MPS Unit 3 spent fuel pools. As a contingency, 50 HSMs were also reserved for the storage of spent fuel from the MPS Unit 1, if DNC chose to transfer Unit 1 spent fuel to the ISFSI at some point in the future. Projections for the transfer of MPS Unit 2 and MPS Unit 3 spent fuel to the ISFSI change over time and have been updated in response to changes in operations and spent fuel management strategies. (DNC 1, p. 12; DNC 4; DNC 5; Tr. 1, pp. 61-63).

First, DNC is taking steps to change its management of the MPS Unit 2 spent fuel pool to accommodate a new fuel assembly design planned for first use in 2015. The new fuel assembly design is a standard product offered by DNC's fuel vendor and used by numerous other nuclear

plants across the country. (Tr. 1, p. 133). To accommodate increased fuel assembly spacing needed for the new fuel assembly design, DNC will create additional empty rack locations in the MPS Unit 2 spent fuel pool. To create these empty rack locations, additional fuel assemblies will be transferred from the MPS Unit 2 spent fuel pool to the ISFSI. This change will require DNC to load spent fuel into four (4) additional HSMs in 2015. These four (4) HSMs are in addition to the three (3) HSMs DNC previously projected in 2003 it would need to fill in 2015. (DNC 1, p. 12; DNC 4).

Second, the 2008 NRC approved power uprate for MPS Unit 3 has resulted in more fuel being discharged during each refueling cycle. The projection for loss of full core reserve in the MPS Unit 3 spent fuel pool has changed from Spring 2019 to Fall 2017. This change will require DNC to transfer more MPS Unit 3 spent fuel (one (1) extra Dry Shielded Canister (“DSC”) every five (5) years) to maintain full core reserve in the MPS Unit 3 spent fuel pool. (DNC 1, p. 12; DNC 4; DNC 5).

Finally, DNC does not intend to wait until 2017 to begin moving fuel from the MPS Unit 3 spent fuel pool to the ISFSI. Based on current projections, this work will commence in 2016, at the same time DNC loads the three (3) additional HSMs with fuel from the MPS Unit 2 spent fuel pool. (DNC 1, p. 12; Tr. 1, p. 62).

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

C. **Modifications to Certain ISFSI Site Construction Features and Details will Improve the Overall Performance and Efficiency of the Fuel Transfer Process**

DNC began transferring fuel to the ISFSI in 2005 and to date, has loaded spent fuel into eighteen (18) HSMs in the southeasterly portion of the ISFSI. (DNC 1, Attachment 7). During the last seven years, DNC has identified several areas where changes to certain ISFSI site construction features and details would improve fuel transfer operations. (DNC 1, p. 9; DNC 9).

First, DNC intends to level the sloped grade to the west of HSM Units 37-67, in the northerly portion of the ISFSI area, by 15 feet to allow for the widening of the area adjacent to the loading apron. This widening will require the removal of soil and other earthen material which will be transported to the previously designated Soil Placement Area to the north of the Amtrak rail line. The wider area adjacent to the loading apron will better accommodate the turning radius of the spent fuel transporter. (DNC 1, p. 9, Attachment 7; DNC 9).

Second, DNC intends to eliminate the center trench drain from all future loading aprons. During fuel loading operations, the slope of the loading apron, designed to direct storm water to the trench drain, unnecessarily complicates the alignment of the DSC with the HSM. All future loading aprons will be level and will not contain a trench drain. (DNC 1, pp. 9-10; DNC 9; Tr. 1, pp. 40-43).

Third, to accommodate the widening of the area adjacent to the loading apron and the leveling of the loading apron itself, DNC will make certain improvements to the existing storm water drainage system, around the perimeter of the ISFSI area. This modified drainage system will utilize existing and new drainage structures within the ISFSI area but does not require DNC to make any changes to drainage out-fall structure DSN011, originally approved as a part of Docket No. 265. (DNC 1, pp. 10-11, Attachment 7; DNC 9; Admin. Notice 17).

Finally, as discussed throughout the Council's Docket No. 265A proceeding, DNC intends to fill an additional seven (7) HSMs with spent fuel in 2015. To do so will require DNC to expand the existing concrete pad immediately. To expand the existing concrete pad and loading apron and complete the additional ISFSI site improvements described above, DNC will need to temporarily relocate the PA fence. This will allow for all new construction activity to occur outside the PA.² The existing loaded HSMs will remain inside the PA, as required by NRC regulations. (DNC 1, p. 11, Attachment 7; DNC 9). In order to avoid having to relocate the PA fence every time DNC needs to expand the ISFSI concrete pad and provide for fuel transfer accommodations in a more reasonable time frame, DNC has asked for the ability to install all remaining ISFSI concrete pads (for 135 HSMs), requiring the relocation of the PA fence only once. Even after the installation of all remaining concrete pads, DNC will continue to transfer fuel to the ISFSI only as required for MPS operations and spent fuel management strategies. (DNC 9).

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

D. Review of MPS Unit 1 Spent Fuel Storage Strategy

DNC's current spent fuel management strategy for MPS Unit 1 involves its storage in the Unit 1 spent fuel pool until the DOE accepts the fuel for permanent disposal. Given the uncertainty in the DOE's efforts to establish a national repository, DNC is reviewing whether a change to its current MPS Unit 1 strategy is warranted. It is important to note that MPS Unit 1

² Certain limited pad and loading apron construction will need to occur inside the PA before the PA fence is temporarily relocated. This activity would occur in the vicinity of HSMs 21-27 and 68-71. (DNC 1, Attachment 7; DNC 9, p. 2).

fuel continues to be safely and securely stored in the MPS Unit 1 spent fuel pool. DNC is not currently required to move MPS Unit 1 fuel to the ISFSI nor has it committed to do so.³ (DNC 1, p. 13; DNC 8). If DNC decides to transfer Unit 1 fuel to the ISFSI, it would account for the use of 50 of the 135 HSMs. (DNC 1, p. 13; DNC 8; Tr. 1, p. 116 and 121).

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

VII. THE PROPOSED ISFSI MODIFICATIONS WILL NOT HAVE ANY SUBSTANTIAL ADVERSE ENVIRONMENTAL EFFECTS

The proposed ISFSI modifications will not result in any adverse environmental effects. The Council conducted a complete and thorough investigation of all potential environmental impacts (within its jurisdiction) associated with the construction of the full build-out of the ISFSI, including the construction of concrete pads large enough for 135 HSMs in its Docket No. 265 proceeding. (Admin. Notice 17; DNC 1, Attachment 6). The construction of the remaining concrete pads needed for 135 HSMs and the minor ISFSI modifications, proposed as a part of the Docket No. 265A application, will not adversely impact the environment or ecology at MPS. (DNC 1, pp. 14-15, Attachments 8-11).

³ Some of the general factors that DNC will need to consider in evaluating the MPS Unit 1 spent fuel storage strategy include, but are not limited to, the DOE’s assessment of the recommendations of the Blue Ribbon Commission; the evaluation of issues involved in decommissioning of the MPS Unit 1 spent fuel pool; and the effect moving MPS Unit 1 spent fuel will have on operations, personnel, availability of equipment and resources at MPS Unit 2, MPS Unit 3 and other plants in the Dominion nuclear fleet. (DNC 8; Tr. 1, p. 116).

A. Wetlands and Watercourses

All construction activity associated with the ISFSI modifications described in the Application, including modifications to ISFSI site drainage, will occur within the previously disturbed ISFSI area or Soil Placement Area. No construction activity will occur within approximately 150 feet of the nearest wetland or watercourse. (DNC 1, p. 15, Attachment 4).

B. Flooding

According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), Map Number 09011C0491G, effective date July 18, 2011, the ISFSI area is located outside the 500 year (0.2% annual chance) flood plain (DNC 15; Tr. 1, pp. 57-58). More recently, FEMA developed a set of updated Flood Insurance Rate Maps for the Town of Waterford. (CCAM/Burton 4). These maps are preliminary and have not been formally adopted by FEMA. Regardless, the flood plain designation for the ISFSI area on both the currently published FIRM and the unpublished FIRM is the same; the ISFSI area is located outside the 500 year flood plain. (DNC 15; CCAM/Burton 4; Tr. 1, pp. 64, 68, 89, 93-96).

C. Site Ecology

All construction activity associated with the ISFSI modifications will occur within the limits of the existing improved ISFSI area and Soil Placement Area. Construction of the proposed ISFSI modifications will not result in any further impacts to site ecology. (DNC 1, pp. 15-16, Attachments 7 and 9; Admin. Notice 17).

D. Noise

The ISFSI at MPS is a passive system. There are no operating motors, fans or similar mechanical devices associated with the HSMs that produce noise. The only noise associated with the ISFSI modifications proposal is that produced during construction and the fuel transfer process. (DNC 1, pp. 16-17, Attachment 6).

E. Historic and Archeological Resources

All of the proposed modifications described in the Docket No. 265A application will remain within the previously disturbed limits of the ISFSI area and Soil Placement Area. None of the ISFSI modifications will result in any additional impacts on State or federal historic, architectural or archeological resources listed on or eligible for listing on the National Register of Historic Places. (DNC 1 p. 17, Attachments 6, 7, 9 and 10).

F. Visibility

In the Docket No. 265 proceeding, the Council evaluated the visual impact of the full build-out (135 HSMs) of the ISFSI. None of the proposed modifications will change, in any way, the visual impact of the ISFSI. Due to its location behind existing buildings at MPS, the ISFSI will not be visible from Black Point, in the Town of East Lyme. (DNC 1, p. 17, Attachments 6 and 9; Admin. Notice 17/Visual Analysis; Tr. 2, pp. 68-69).

G. Recreational

The closest recreational resources, identified in the Docket No. 265 application are the Town of Waterford operated ball fields located in the northeast portion of the Property. None of the proposed ISFSI modifications will impact, in any way, these recreational resources. (DNC 1, p. 18, Attachment 9; Admin. Notice 17).

H. Public Drinking Water Supply

Operation of the ISFSI does not require the use of or access to any public or private water supply. The existing drinking water supply service at MPS will not be impacted, in any way by the proposed ISFSI modifications. (DNC 1, p. 18, Attachment 9).

I. Traffic

The operation of the ISFSI, as modified, will have no impact on local traffic, in any way. All fuel transfer processes will continue to occur within the ISFSI area. (DNC 1, p. 18). Additional traffic impacts associated with construction of the proposed ISFSI modifications will be minimal. (DNC 1, p. 18, Attachment 9).

J. Local Land Use Controls

Notwithstanding the Council's jurisdiction, the ISFSI, as modified would continue to comply with the applicable provisions of the Waterford Zoning Regulations, Inland Wetlands Regulations and Plan of Conservation and Development. (DNC 1, pp. 19-20, Attachments 4 and 5).

VIII. LOCAL CONTACTS

Prior to the filing of the Docket No. 265A application, DNC participated in a local review process involving public officials and residents in Waterford and East Lyme. On April 10, 2012, DNC representatives met with Waterford officials to discuss preliminary plans for the proposed ISFSI modifications. Technical information regarding the proposed ISFSI modifications was provided to public officials in the Towns of Waterford and East Lyme on June 27, 2012. (DNC 1, pp. 3-5; DNC 3). On August 15, 2012, DNC presented its ISFSI modifications proposal to a joint public informational forum hosted by the Towns of Waterford and East Lyme. The forum

was attended by State and local elected officials, members of local Planning and Zoning and Conservation Commissions and members of the general public. Notice of this forum was sent to 165 property owners who live or own property near MPS. (DNC 1, pp. 3-4; DNC 3). Also in attendance at this meeting were members of the Black Point Beach Club Association (“BPA”). (DNC’s Objection to Request for Party-Status Intervention by BPA).

In addition to these public meetings, on November 14, 2012, Kevin Hennessy, Director of Federal, State and Local Affairs for Dominion Resources, Inc. met with members of the BPA. At that meeting, the BPA expressed concerns for their property values, aesthetics and their views of MPS. (DNC’s Objection to Request for Party-Status Intervention by BPA; Tr. 2, pp. 68-69).

The ISFSI modifications proposal was formally reviewed by the Waterford Planning and Zoning Commission (“PZC”) and Waterford Conservation Commission (“WCC”). In its August 29, 2012 comment letter, the WCC determined that none of the proposed ISFSI modifications would occur within 100 feet of a wetland area or the Town’s 100-foot upland review area; proposed drainage improvements would not increase peak run-off at the site; soil erosion control measures were adequate to prevent the discharge of sediment; and, overall, the ISFSI modifications will not result in significant adverse environmental effects at MPS. (DNC 1, p. 4, Attachment 4).

The PZC, in its August 28, 2012 comment letter, issued certain recommendations on the ISFSI modification proposal. The PZC continues to support the conditions imposed by the Council in the Docket No. 265 D&O, but supports the “acceptance of the revised [HSM] installation schedule as proposed [in Docket No. 265A] not to exceed 135 Horizontal Storage Modules . . .”. (DNC 1, pp. 4-5, Attachment 5).

IX. ON-SITE HSM FABRICATION

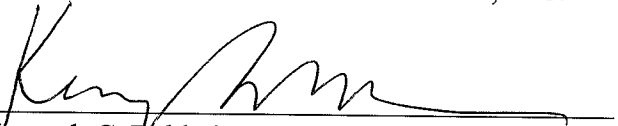
DNC intends to pursue plans for the fabrication of HSMs on-site at MPS. This fabrication process would require the installation of a 50' x 250' concrete pad within a 250' x 400' fabrication area. DNC has identified an existing (unused) parking lot, northwest of the ISFSI, as a viable location for HSM fabrication. (DNC 1, pp. 13-14). By fabricating the HSM components at MPS, DNC can avoid the delays associated with transporting these components from the current fabrication facility in Virginia. (Tr. 2, pp. 21-23). By 2014, DNC anticipates that it will assemble and install twenty-three (23) HSMs at the ISFSI to accommodate projected fuel transfer activities. (DNC 1, pp. 13-14). Environmental effects associated with the on-site HSM fabrication process are in the process of being evaluated.

X. CONCLUSION

The evidence contained in the Docket No. 265A record, would support a finding by the Council that changed conditions, related to the ISFSI, warrant the modification of Condition No. 15 of the D&O and allow for the construction of all remaining concrete pads and that the minor physical modification to the ISFSI will not result in a substantial adverse environmental effect. Accordingly, the Docket No. 265A application should be approved.

Respectfully submitted,

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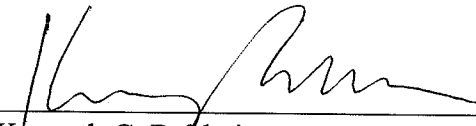
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