

**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 : JANUARY 28, 2013**

**RESPONSE TO OBJECTION OF DOMINION TO  
NOTICE OF INTERVENTION  
BY BLACK POINT BEACH CLUB ASSOCIATION**

**I. The Black Point Beach Club Association (“BPBCA”) has been delayed in filing its requests for intervenor status and party status for justifiable reasons and its participation in this proceeding is important to assist the Siting Council better appreciate the serious objections of those residents directly affected by the proposal.**

1. BPBCA is a quasi municipality, chartered by Special Act 462 of the 1931 Connecticut General Assembly, within the Town of East Lyme composed of 620 property owners, located on the western shore of Niantic Bay . Although the membership consists of year round and seasonal residents, the Board of Governors does not meet during the winter months and in this case a special Board meeting was necessary to consider the Siting Council proceeding. This meeting was called held on January 16, 2013, at which BPBCA representatives were authorized to participate in this proceeding. (Copy of Resolution attached.) Thereafter, BPBCA promptly filed its requests.for intervenor status and party status. Under these circumstances, the Siting Council should grant some leeway to organizations such as BPBCA which do not have regular staff or decision making procedures in place during the winter months.

2. Admittedly, BPBCA was aware of this proceeding during the late summer of 2012. At that time, representatives of BPBCA met with the First Selectman of East Lyme to express their concerns and to solicit the active participation by the Town. Under the auspices of the First Selectman a meeting was convened with a representative of Dominion, Mr. Kevin Hennessey, on November 14, 2012. BPBCA representatives made known their concerns about the continuing expansion of permanent storage of nuclear waste in areas never designed for such use, particularly in light of the U.S Court of Appeals decision affecting Nuclear Regulatory Commissions regulations related to dry cask storage. Mr. Hennessey indicated that he would convey those concerns to the Dominion management. Although Mr. Hennessey made no

promises, he did convey the impression that discussions with Dominion management might be arranged. Subsequent to that meeting several contacts were made with Mr. Hennessey, but no meetings were ever arranged. It was only in early January that the representatives of BPBCA concluded that Dominion did not intend to consider seriously its objections and requests.

3. PBBCA learned after the November meeting with Mr. Hennessey that the Town of East Lyme did not intend to participate as a party.

4. Representatives of the BPBCA have had several discussions with Assistant Attorney Mr. Robert Snook during the fall of 2012, urging the Attorney General to consider opposing the Dominion application. The initial discussions suggested that the State might support the BPBCA views, but around the time of the December hearing BPBCA was informed that the State was not intending to raise any objections.

5. While all this was transpiring BPBCA learned that Dominion may have misled the Siting Council by failing to disclose the expected update of the FEMA Flood Plan map and by not disclosing that additional NRC approval might be need as part of the fuel management process that will utilize the expanded dry cask storage. This information first came to the attention of the BPBCA in January 2013.

6. In light of these additional troubling disclosures and the failure of Dominion, the Town of East Lyme and the State of Connecticut to respond to the issues raised by BPBCA, the Chairman of the BPBCA determined that a special meeting of the Board of Governors should be called as soon as possible to deal with the problem. As it was difficult to organize such as meeting over the Christmas holidays, it was not until mid- January that the meeting could be held. The Board determined that the issues were so serious and the jeopardy to the BPBCA members' property values so great that they would have to bring these concerns directly to the Siting Council.

## **II The BPBCA's Request for Party Status Satisfies the Council's Statutory and Regulatory Requirements**

1. The BPBCA's Request for Party-Status Intervention satisfies the requirements of Connecticut General Statutes Section 4-177a(a), which provides as follows:

Sec. 4-177a. Contested cases. Party, intervenor status. (a) The presiding officer shall grant a person status as a party in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency's decision in the contested case.

a) While the BPBCA filed its petition beyond the five-day period set forth in Section 4-177a(a), it has provided the Council with good cause to waive the five-day requirement, in accordance with Section 4-177a(c). See discussion hereinabove.

b) Furthermore, the petition “states facts that demonstrate that the petitioner’s legal rights, duties or privileges shall be specifically affected by the agency’s decision in the contested case.”

(i) The petition states that the BPBCA’s membership consists of 620 property owners in the Black Point neighborhood of East Lyme, Connecticut. Black Point is located at a distance of approximately two miles directly across the Niantic Bay from Millstone in the western shore of the Bay. Only the waters of Niantic Bay serve as a buffer to environmental disruptions at Millstone. Petition, Paragraph 1.

(ii) BPBCA’s membership is substantially and specifically affected by the proceeding insofar as the property owners’ property is so proximate to Millstone that any environmentally-related problem that may occur there will directly affect the environment at Black Point. Petition, Paragraph 2.

(iii) The application has potential to release harmful and toxic materials likely to be readily dispersed to Black Point. Petition, Paragraph 2.

(iv) BPBCA possesses legal rights and privileges not to have its members’ properties adversely affected by acts undertaken as set forth in the application. Therefore, BPBCA’s interests are specifically affected by the agency’s decision making; the statute is satisfied.

(v) BPBCA testimony will establish that there is no need for approval of spent nuclear fuel storage facilities to cover operations through 2045 at this time. Approval of all anticipated facilities at this time will eliminate the need for Dominion to request future approvals and thus deprive members of BPBCA of the opportunity to have the nuclear fuel; storage plans subjected to the evolving science that will surely be available if Dominion is required to file another application in ten years.

2. The BPBCA petition also satisfies the requirements of Section 16-50j-14(b) of the Regulations of State Agencies. Section 16-50j-14(b) of the Regulations of State Agencies provides as follows:

(b) Contents of petition: The petition shall state the name and address of the petitioner. It shall describe the manner in which the petitioner claims to be substantially and specifically affected by the proceeding. It shall state the contention of the petitioner concerning the issue of the proceeding, the relief sought by the petitioner, and the statutory or other authority therefor,

and the nature of the evidence, if any, that the petitioner intends to present in the event that the petition is granted.

The petition states the name and address of the petitioner (Paragraph 1); it describes the manner in which the petitioner claims to be substantially and specifically affected by the proceeding (Paragraphs 1 and 3); it states the contention of the petitioner concerning the issue of the proceeding (Paragraphs 3 and 4); it states the relief sought by the petitioner (Paragraph 5); it states the statutory or other authority therefore (Prayer for relief, Paragraph 2); and it states the nature of the evidence the petitioner intends to presents (Paragraph 6).

3. The issues put forward in the petition are well within the Council’s jurisdiction and authority:

a) In Paragraph 3, the petitioners contend that “the instant application has not adequately addressed the possible disastrous consequences of the expected increase in mean sea levels and the impact of increasingly forceful tropical storms.” This issue is squarely within the Council’s jurisdiction to consider the probable environmental impacts of the application. Connecticut General Statutes Section 16-50p(a)(3)(B).

b) In Paragraph 4, the petitioners assert that the U.S. Nuclear Regulatory Commission is in the process of preparing an Environmental Impact Statement addressing environmental consequences of spent fuel storage at U.S. nuclear power plants. The petitioners properly request the Council to defer its decision on an expansion of dry cask storage at Millstone until after completion of the NRC’s Environmental Impact Statement and the NRC’s further guidance on this serious issue. (See *State of New York v. Nuclear Regulatory Commission*, et al., 681 F.3d 471 (D.C. Circuit 2012).

4.. Dominion faults BPBCA for asserting the incompleteness of the application, arguing the Council has previously deemed the application to be complete. However, whether the application adequately addresses the issues – such as environmental impacts from flooding, severe storms and rising sea levels - is an issue properly addressed in the adversary proceeding. That the petitioner has raised the issue provides no basis to deny the petitioner the ability to participate in these proceedings to address the issue.

**III. Granting BPBCA’ request for Intervenor Status and Party Status will have no negative affect on the proceedings and BPBCA is the only organization in the immediate vicinity of Millstone that has requested such status. To deny that request would exclude an Association whose 650 members have a direct stake –environmental, health, safety, and financial - in the outcome of this proceeding.**

1. .Attached is a copy of the Pre-Filed testimony of Thomas Kelly, the Chair of the Board of Governors. The issues raised by Mr. Kelly's testimony have been communicated to representatives of Dominion on several occasions, so there should be no surprise to them.

2. The expansion of spent nuclear fuel storage facilities is a major decision, affecting the BPBCA residential area for many decades into the future, probably many centuries. These decisions cannot be made lightly. Although all of the State could be impacted, the BPBCA, within 2 miles of Millstone is one of the areas most at risk. The views of BPBCA are not reflected by any other participant in this proceeding and BPBCA has unique perspectives that the Siting Council will benefit in hearing.

3. BPBCA does not believe that Dominion is in any way prejudiced by BPBCA's delay in filing. However, if any possible prejudice is identified by the Council, BPBCA would not object to limits on its participation in the hearing that the Siting Council determines to be necessary to prevent such prejudice.

Black Point Beach Club Association

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By Thomas Kelly, Chairman of the Board

## **CERTIFICATION**

This is to certify that a copy of the foregoing was sent via electronic mail, to the following on January 28 2013:

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