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May 9, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'00 MAY 12 P2:59

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
 )  
Northeast Nuclear Energy Company )  
 )  
(Millstone Nuclear Power Station, )  
Unit No. 3) )

Docket No. 50-423-LA-3  
ASLBP No. 00-771-01-LA

OFFICE OF PUBLIC AFFAIRS  
BUREAU OF PUBLIC INFORMATION  
U.S. NUCLEAR REGULATORY COMMISSION

NORTHEAST NUCLEAR ENERGY COMPANY'S  
MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.740(c), Northeast Nuclear Energy Company ("NNECO") moves that the Licensing Board grant, for good cause, a protective order barring a deposition noticed by the Intervenor Connecticut Coalition Against Millstone/Coalition Against Millstone ("CCAM/CAM"). On May 8, 2000, CCAM/CAM filed and served on NNECO by facsimile the Notice of Deposition of Robert Griffin ("Notice"), a NNECO chemistry manager at Millstone.<sup>1</sup> The deposition would be conducted on Friday, May 12, 2000.

For several weeks the parties in this proceeding have been discussing the schedule for any depositions of potential "witnesses" (*i.e.*, the individuals that will provide affidavits in support of the Subpart K filing). The parties eventually settled on the week of May 8, 2000 for these depositions -- a week selected to accommodate CCAM/CAM and its witnesses. (By filing of April 7, 2000, NNECO had previously noticed depositions of the Intervenor's experts for April 27 and 28, 2000, but subsequently agreed to defer at Intervenor's request.) After originally agreeing to begin depositions on May 8, counsel for CCAM/CAM refused to begin until May 10.

<sup>1</sup> The facsimile was sent at approximately noon on Monday, May 8, 2000.

Template = SECY-041

SECY-02

As a result, NNECO is presently scheduled to conduct depositions of Intervenor's witnesses on May 10. Any Intervenor depositions would follow on the succeeding days.

While this timetable was being discussed, counsel for CCAM/CAM indicated that Intervenor's would conduct one deposition of a NNECO witness. Such depositions would be held during the agreed-to week for depositions. Counsel indicated she would identify the individual once NNECO provided a witness list. NNECO provided that witness list in response to a discovery request, by a filing of April 28, 2000. Counsel for CCAM/CAM also indicated a plan to depose unnamed NRC Staff personnel.

Following NNECO's filing of the witness list, counsel for CCAM/CAM steadfastly continued to demur on naming who she would depose from NNECO. Then, on May 8, CCAM/CAM filed the Notice. In addition, later in the day, CCAM/CAM counsel notified NNECO that it would depose two other NNECO witnesses from the witness list. (NNECO does not object to these depositions, but is still determining availability of the individuals.) Counsel for CCAM/CAM has not named a witness from the NRC Staff for a deposition -- a deposition to be held on Thursday, May 11.

## II. DISCUSSION

By its Notice of May 8, 2000, CCAM/CAM identified Mr. Griffin -- a chemistry manager at Millstone. In its April 28, 2000 filing, NNECO did not identify Mr. Griffin on its witness list as an individual who would provide an affidavit in support of NNECO's Subpart K filing in this proceeding.

NNECO objects to the Notice of Mr. Griffin's deposition, first for a lack of demonstrated relevance or need. Mr. Griffin was not a named witness. Moreover, the issues which have been admitted in this proceeding are very narrow. Given Mr. Griffin's position as a

chemistry manager, he would not be involved in spent fuel pool administrative controls generally, and would be able to speak to no more than procedures and experience related to boron surveillances for the Millstone Unit 3 spent fuel pool. The latter are arguably relevant only to Contention 5 -- a contention NNECO perceives as moot, given the company's recent acceptance of a Technical Specification for a boron surveillance applicable at all times. Furthermore, NNECO, in providing its witness list, identified another individual who will provide an affidavit on the boron surveillance procedure and experience. It appears that CCAM/CAM wishes to pursue a "fishing expedition" into very stale allegations. This should not be tolerated.

NNECO secondarily objects to the Notice for lack of reasonable notice -- four days. The fact that Mr. Griffin is not on NNECO's witness list only exacerbates this issue. He has not been closely involved in these matters, and has not been involved to a degree that might be the case for a prospective witness.

The Commission has made clear in its recent Statement of Policy on Conduct of Adjudicatory Hearings, CLI-98-12, 48 NRC 18, 23 (1998), that "[e]fficient management of pre-trial discovery is critical to the overall progress of a proceeding." This is even more true under the "expedited" format of Subpart K. NNECO finds the conduct of counsel for CCAM/CAM to be grossly inefficient and uncooperative, and the request for Mr. Griffin's deposition to be both unnecessary and burdensome.

III. CONCLUSION

Accordingly, NNECO requests a protective order from the Notice of Deposition and admonishing CCAM/CAM to proceed efficiently to complete discovery in this matter. NNECO also requests expedited action on this Motion.<sup>2</sup>

Respectfully submitted,



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ATTORNEY FOR NORTHEAST NUCLEAR  
ENERGY COMPANY

Dated at Washington, D.C.  
this 9th day of May 2000

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<sup>2</sup> Counsel for NNECO will be in Connecticut beginning May 9, 2000, for discovery in this proceeding, but would be available for the Licensing Board upon reasonable notice.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NORTHEAST NUCLEAR ENERGY COMPANY'S MOTION FOR PROTECTIVE ORDER" in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 9th day of May, 2000. Additional e-mail service has been made this same day as shown below.

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