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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 50-423-LA-3
Northeast Nuclear Energy Company	)	
	)	ASLBP No. 00-771-01-LA
(Millstone Nuclear Power Station,	)	
Unit No. 3)	)	

NORTHEAST NUCLEAR ENERGY COMPANY'S  
MOTION FOR PROTECTIVE ORDER  
REGARDING UNTIMELY DISCOVERY REQUEST

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 the discovery requested by the Intervenor<sup>1</sup> in this proceeding in the "Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone Third Set of Interrogatories and Request for Production Directed to Northeast Nuclear Energy Company," dated May 18, 2000 ("Discovery Request").<sup>2</sup> Under the schedule established by the Licensing Board in this Subpart K proceeding, the Discovery Request is not timely. The Discovery Request was not made on a schedule that would allow sufficient time for response prior to the May 30, 2000, close of discovery. No good cause is demonstrated for this untimeliness. Moreover, the Discovery Request is grossly overbroad and burdensome, and -- given the three admitted contentions in this

<sup>1</sup> The term "Intervenor" will refer collectively to Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone.

<sup>2</sup> The Discovery Request was received by fax after 10:30 p.m. on May 18, 2000. According to the certificate of service and the postmark, mail service was made on May 19, 2000.

Template = SECY-041

SECY-02

proceeding -- seeks information of little or no decisional significance. To the extent the discovery is allowed (and it should not be), NNECO requests a protective order from certain requests and a significant narrowing of the scope of discovery.

## II. DISCUSSION

### A. The Discovery Request is Untimely and Should Be Barred

The Commission has made clear in its recent Statement of Policy on Conduct of Adjudicatory Hearings, CLI-98-12, 48 NRC 18, 23 (1998) ("1998 Policy Statement"), that "[e]fficient management of pre-trial discovery is critical to the overall progress of a proceeding." Id. at 23. Moreover, the Commission has encouraged licensing boards to limit the number of rounds of interrogatories -- stating that "the board should allow only a single round of discovery regarding the admitted contentions." Id. at 24. These discovery management policies are even more compelling under the "expedited" hearing format of Subpart K, which allows 90 days for completion of all discovery. In its Prehearing Conference Order (Granting Request for Hearing), Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 3) LBP-00-02, 51 NRC 25 (2000), the Licensing Board established May 30, 2000, as the closing date for all discovery in this proceeding. The subsequent schedule for position papers and oral argument is premised on that discovery schedule.

The Intervenors' Discovery Request encompasses eight pages and almost 40 interrogatories and document production requests -- many of these with numerous sub-requests. The Discovery Request follows two earlier, substantial sets of interrogatories and requests for production of documents from the Intervenors -- one requesting discovery from NNECO and one

from the Nuclear Regulatory Commission ("NRC") Staff.<sup>3</sup> NNECO and the NRC Staff have both responded to those requests.<sup>4</sup> In addition, the parties agreed to an opportunity for depositions during the week of May 8, 2000, and the Intervenors conducted several depositions of NNECO and NRC Staff personnel. In addition, in response to an Intervenor request, NNECO arranged a spent fuel pool inspection for the Intervenors' prospective witnesses. This was held on May 10, 2000. In the aggregate, there have been ample opportunities for discovery in this proceeding and ample discovery has been had by the Intervenors -- especially given that there are only three admitted contentions, and one of those (Contention 6) raises a purely legal issue.

The current Discovery Request was made virtually on the eve of the May 30 close of the discovery period. Because service was made by first class mail on May 19, 2000, the normal due date for a response to interrogatories would be June 7, 2000, and the normal date for a response to document requests would be June 23, 2000.<sup>5</sup> See 10 C.F.R. §§ 2.740b(b) and 2.741(d). These return dates clearly exceed the May 30, 2000, close of the discovery period. The Subpart K regulations, at 10 C.F.R. § 2.1111, specifically provide that discovery shall be completed within 90 days. Therefore, the Intervenors' new Discovery Request is untimely and a protective order from both the interrogatories and document requests, *in total*, is warranted.

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<sup>3</sup> Intervenors' interrogatories and requests for production of documents directed to NNECO were filed on March 21, 2000. Intervenors' interrogatories and requests for production of documents directed to the NRC Staff were filed on March 22, 2000.

<sup>4</sup> NNECO has filed responses dated April 4, 20, and 28, 2000. The NRC Staff has filed responses dated April 10 and May 19, 2000.

<sup>5</sup> Because the Commission's rules do not contemplate service by fax, and such copies are typically treated as courtesy copies unless otherwise directed, these return dates include the time allowed by 10 C.F.R. § 2.710 for mail service.

The Intervenors' Discovery Request arbitrarily and unilaterally requests NNECO to respond to both the interrogatories and document requests by May 30, 2000. Obviously, this ignores the Intervenors' own obligation to consider its own case and discovery needs, and to file its discovery requests in a *timely* fashion. The contentions at issue in this proceeding were originally filed on November 17, 1999.<sup>6</sup> Therefore, the Intervenors had over six months between the drafting of the contentions and the current, untimely Discovery Request. There has been sufficient time available to the Intervenors for considering its own issues and related discovery needs. The Intervenors' discovery approach, however, has been one where it repeatedly fails to delineate the arguments and evidence it will offer to support the three admitted contentions in this proceeding. The Intervenors' own responses to interrogatories and document requests have been minimalist at best -- often characterized by an approach wherein its position will apparently not be revealed until the Subpart K position paper is filed. A failure to timely develop one's own case is not good cause for late discovery. A failure to consult with one's own experts earlier in the process to establish one's theories is not good cause for late discovery. And learning from depositions that could have been noticed at any time, and conducted much earlier in the discovery period, is not good cause for late discovery.

There is no fair and appropriate recourse for the Licensing Board in this situation other than to bar the untimely Discovery Request in total. To burden NNECO with the late request and to require an expedited response by May 30, as Intervenors suggest, would be patently unfair and inappropriate. Even allowing NNECO the normal time for a response (and setting aside the burden and scope issues discussed below), would place the burden for the

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<sup>6</sup> "Supplemental Petition to Intervene in Behalf of Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone," November 17, 1999 ("Supplemental Petition").

Intervenors' tardiness on NNECO. NNECO would be put in the position of responding to these untimely and overbroad requests at the same time as it prepares its position paper and affidavits on the contentions, due on June 30, 2000. And extending the date for the position papers and oral argument would effectively reward the Intervenors for their casual approach to discovery, to the detriment of NNECO. NNECO would strenuously object to any such "solution."

Formal NRC adjudicatory proceedings are not a casual undertaking. All parties should be required to approach the development of their case in an efficient manner to ensure a fair process on a reasonable schedule. One round of interrogatories and discovery requests, plus a round of depositions, plus a site visit, has provided Intervenors with a discovery opportunity that meets the goals of the Commission's 1998 Policy Statement.<sup>7</sup> Consistent with these principles, the Licensing Board should now conclude that the Discovery Request is late, that there has already been ample discovery, and that the parties should now move on to the question under Subpart K whether the admitted contentions raise "a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing." 10 C.F.R. § 2.1115(b)(1). A protective order barring the untimely Discovery Request *in total* is appropriate.

*B. The Discovery Request is Excessive and Burdensome in Addition to Being Untimely*

The unjustified lateness of the Discovery Request is made even more objectionable by the excessive, overbroad, burdensome -- and ultimately pointless -- nature of the vast majority of the interrogatories and document production requests. To the extent that the Licensing Board would even consider allowing any of this untimely discovery, NNECO further

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<sup>7</sup> Indeed, as long ago as 1981, when the Commission was less focused on efficiency in its hearing process than it is today, the Commission recognized that licensing boards could

objects and requests a protective order barring requests A1, A2, A6, A7, A8, and A9 (the first A9, on page 7), in their entirety. NNECO also objects to portions of request A10. Even a casual review of these requests show that they violate all notions of fair and efficient discovery, that they lead nowhere that would meaningfully support the two admitted factual contentions (Contentions 4 and 5) in this proceeding, and would make a mockery of the idea that Subpart K is an expedited, efficient process.

1. The Discovery Requests are Oppressive

First, requests A1, A2, A6, A7, A8, and A9 repeatedly and rather cavalierly ask NNECO to perform exhaustive reviews of paperwork, for all three Millstone units, for all time since the units began commercial operation. The underlying assumptions seem to be that all of the records that Intervenors seek are required to be maintained in the first place (an assumption that is not true for many documents outside the 10 C.F.R. Part 50, Appendix B quality assurance ("QA") program), that they are all in a "database" magically retrievable, with unquestionable accuracy, by computer technology (an assumption that is certainly not true given that many such computer technologies were only implemented at Millstone in the 1990s), and that information for all units and all time has some bearing on Unit 3 (an assumption that is not true based on fundamental differences between the units).<sup>8</sup> For example:

- A1 seeks descriptions of all events in NNECO's Operating Experience ("OE") "database" relevant to criticality in spent fuel pools. However, OE records are hard copy records for years prior to approximately 1994 and 1995. These are not required QA records and, to

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limit the number of interrogatories. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455-56 (1981).

<sup>8</sup> Millstone Units 1, 2, and 3 are all significantly different designs. The units began commercial operation in 1971, 1975, and 1986, respectively. Unit 1 is now being decommissioned.

the extent they exist, would need to be manually searched. NNECO, in responding to Intervenor's prior discovery request F-1, has already answered -- to the best of its ability - - a question related to identifying "errors" in managing and handling spent fuel at Millstone. (The NRC Staff objected to prior request F-1 as overly broad and unduly burdensome.) The manual effort to search OE logs for more information, often to prove a negative, is simply not warranted.

- A2 seeks all manner of information related to hypothetical boron dilution events. In addition to the reasons discussed below regarding the materiality of this request, the Interveners are seeking descriptions of systems, piping, etc., that would be available from a review by the Interveners of the publicly available Final Safety Analysis Report ("FSAR") for Millstone Unit 3. NRC regulations provide that NNECO is not obligated to perform additional research or analytical work to address the Interveners' issues. See 10 C.F.R. § 2.740(b)(3)(B). Intervenor should prepare their own case, no matter how strained the theory might be.
- A6 and A7 are the ultimate in excess. The Interveners seek control room operator logs, reactor engineering logs, and fuel handling logs for refueling outages for all three Millstone units since commercial operation began. The requested materials, if given full scope, would involve paper logs and would include control room logs, material transfer forms, and other non-QA reactor engineering and refueling records. NNECO, based on a review of available computer databases, including NRC correspondence, internal reporting systems, the records of condition reports, licensee event reports, and the like, has already answered Interveners' prior requests F-1, F-2, F-3, F-4, and F-5 related to fuel handling and fuel management experience at Millstone. (By their nature, the external

reporting systems previously reviewed inherently involved a filter for the information now requested by the Intervenor, in that external reporting mechanisms generally only captured operational experience, at the time it happened, that was determined to meet applicable reporting thresholds.) There is simply no basis to go back, especially at the eleventh hour, to now require NNECO to review and produce lower tier documentation.

- A8 and A9 request vast quantities of information and documents which are objectionable for the lack of focus alone (in addition to scope reasons discussed below). For example, these requests seek all procedures related to fuel handling and spent fuel pool chemistry. See Requests A8(1) and (2) and A9(1) and (2). NNECO has already provided fuel handling procedures in its prior discovery response (see Documents 2 through 13 in NNECO's April 20, 2000 response). But now the Intervenor apparently want maintenance procedures, foreign material exclusion procedures, instrumentation and calibration procedures, surveillance procedures, procedures for pumps and radiation monitors, load test procedures, procedures for lights -- indeed, procedures of all types for everything in the spent fuel handling building.
- In requests A8 and A9 the Intervenor also seek various "non-conformance reports, NRC inspection findings, conditions adverse to quality reports, adverse condition reports, and quality assurance/quality control reports." See Requests A8(4) and (5) and A9(4) and (5). Identifying and gathering such information would involve man-weeks of effort. There is no focus to these untimely interrogatories that would bring the requests even remotely within the scope of the admitted contentions. Moreover, there is no significance threshold to be applied that might make the information material. NNECO's prior responses sufficiently encompassed fuel handling operating experience.

- Additionally, discovery requests A8 and A9 seek "design basis documents" and "calculations, evaluations and assessments" regarding fuel handling, the spent fuel pool, the spent fuel pool cooling systems and systems used to control boron concentration. See Requests A8(7) and (8) and A9(7). Design basis information has always been available to the Intervenors in the FSAR. This request, however, would include additional evaluations, assessments, and supporting calculations for apparently any system related to the spent fuel pool. The three admitted contentions certainly do not support such a sweep. Moreover, with respect to boron control, the Intervenors are presuming that there is a single system to serve this function, which is not true. NNECO personnel have indicated that it would take at least a man-month to gather all of the information requested by these two requests.

At bottom, the Intervenors bear the responsibility for narrowing the focus of their discovery and the consequences of a failure to do so. The Licensing Board has an obligation, particularly in the Subpart K process with its expedited discovery, to manage the discovery process and to enforce limitations. Interrogatories and document requests must be limited to have some direct bearing on the issues and to avoid inordinate and oppressive burden. See, e.g., Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 588 (1975); Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-42, 2 NRC 159, 163 (1975). These requests overreach to an almost absurd degree.

## 2. The Requests Involve Matters with No Decisional Significance

Second, as a separate basis for objection to these requests, NNECO maintains that the Discovery Requests are unduly burdensome given the lack of decisional significance and materiality of the reams of information Intervenors are seeking. In requests A1, A2, A6, A7, A8,

and A9, the Interveners are, in broad terms, seeking: (a) information on fuel handling errors and criticality events, at Millstone and elsewhere; and (b) information on potential boron dilution scenarios. NNECO -- in its prior responses -- has already provided information addressing both of these issues, including Millstone-specific fuel handling procedures, operational experience related to fuel handling and boron concentrations, and criticality calculations. The NRC Staff has done likewise. The more universal search and more detailed information now sought by the Interveners would shed no further light on either admitted Contention 4 or 5. (Contention 6 is a purely legal matter and NNECO does not believe that any of this discovery bears on that issue.)

Contention 4, as admitted in this proceeding, alleges that the proposed spent fuel storage approach for Millstone Unit 3 trades physical protection against a criticality event for "complex" administrative controls, and that NNECO has a history of not being able to adhere to administrative controls. Northeast Nuclear Energy Company, LBP-00-02, 51 NRC at 32-34. NNECO has already produced the current Unit 3 fuel handling procedures relevant to this contention (see NNECO response of April 20, 2000). Moreover, in the supplement to the license amendment application filed with the NRC on May 5, 2000, and provided to the Interveners, NNECO has described these procedures in considerable detail and explained that these procedures will be adapted for the three region spent fuel storage proposed. These procedures involve controls for determining burnup, handling fuel assemblies, and verifying that fuel is in the correct location. NNECO has also provided operational experience on fuel management, handling, and tracking issues at Millstone in its prior discovery responses (see response to requests F-1 through F-5). Based on all of these documents, plus the deposition opportunity and site visit, Interveners have had ample opportunity and information on which to identify any

inadequacies it perceives in NNECO's administrative controls for fuel management, handling, and tracking.

Much of the information now sought in the untimely Discovery Request is directed instead at further detailed searches of Millstone and industry experience related to fuel handling -- often to prove the negative. At most, all these searches could reveal is further or less significant examples of procedural non-compliances, non-conformance reports, human errors, and the like, related to fuel management that may have escaped NNECO's prior searches of databases. (Those searches could never prove the negative, i.e., that there are no more examples of "errors." To be as complete as possible, the searches were made using broad terms and then narrowed by applying a threshold of materiality or potential relevance to the three admitted contentions.) The information now requested in A1, A6, A7, and A8 would prove no more than that fuel handling errors and nonconformances can occur. This is not a point that requires any further proof.<sup>9</sup>

By way of proffer, NNECO here states that it will establish in its Subpart K position paper and supporting affidavits in this proceeding, that there are adequate procedures for managing spent fuel at Millstone Unit 3, that those procedures are essentially the current procedures, and that those procedures are not particularly "complex." Additionally, and more important for our present purposes, NNECO will establish that there is defense-in-depth to address hypothetical breakdowns in administrative controls related to fuel handling and regional storage. Specifically, NNECO will present information and criticality analyses to support the following:

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<sup>9</sup> To the extent this information is being sought to support Contention 4 with examples of past performance issues at Millstone, the requests are still unwarranted. Those past problems can be established by more direct means.

- NNECO, by administrative limit, maintains 2600 ppm soluble boron in the spent fuel pool<sup>10</sup> and, by proposed Technical Specifications, will maintain and verify weekly (at all times) 800 ppm soluble boron in the spent fuel pool.<sup>11</sup>
- In a required licensing basis criticality analysis, the 800 ppm soluble boron minimum provides ample margin to prevent criticality and maintains  $K_{eff}$  less than 0.95 in the event of the most conservative fuel assembly drop or misplacement.<sup>12</sup>
- In addition, in beyond design basis criticality analyses being prepared for this proceeding by NNECO and its contractor, it will be demonstrated that with 2000 ppm soluble boron (as previously noted, the Millstone Unit 3 administrative limit is for at least 2600 ppm soluble boron), for all three regions of the proposed arrangement, *the racks can be completely filled, concurrently, with fresh fuel of 5% enrichment and will remain subcritical.*<sup>13</sup>

In this light, endless discovery requests to prove the possibility of fuel handling errors (which most likely would not even involve multiple, concurrent misplacement errors) would simply not be a fruitful or useful enterprise.

Similarly, many of the new, untimely Discovery Requests seek all manner of documents, diagrams, operating experience, and the like attempting to find a possible boron dilution scenario. In this regard, requests A1, A2, A6, A7 and A9 exceed the scope of admitted

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<sup>10</sup> Technical Specifications currently provide, and will continue to provide, that 2600 ppm boron is required in the reactor cavity/spent fuel pool at the time of refueling. This is discussed in NNECO's May 5, 2000, supplement to the license amendment application.

<sup>11</sup> See NNECO's supplement to the license amendment application, dated April 17, 2000.

<sup>12</sup> See NNECO's March 19, 1999, license amendment application, Attachment 3, at pages 4-5.

<sup>13</sup> Additionally, NNECO's analyses will show that even assuming a lower soluble boron concentration equal to the Technical Specification limit of 800 ppm, a finite number of concurrent misplacements of the most reactive fuel in the most reactive region will be accommodated by maintaining the assemblies subcritical.

Contention 5, which represents only a challenge to NNECO's previous proposal to modify Technical Specifications to require a boron surveillance only during fuel movements. (NNECO has since charged the proposal to include a seven-day periodicity on the Technical Specification boron surveillance applicable whenever spent fuel is in the pool, as addressed in its April 17, 2000, supplement to the application.<sup>14</sup> NNECO has also always maintained that it would continue its present practice of routine surveillance against a 2,600 ppm administrative limit.) And while the Intervenors might argue that this information is somehow related to Contention 4, it seems implausible to argue that a boron concentration surveillance is "new" as a result of the proposed license amendment or that it is unduly "complex."

In addition, these requests related to potential boron dilution events exceed anything that might have evidentiary value in this proceeding, with respect to any of the admitted contentions. *A boron dilution event is an analyzed event for Millstone Unit 3. See, e.g., 10 C.F.R. § 50.68(b)(4).* The licensing basis criticality analysis shows that if the pool were flooded instantaneously with unborated water (not a credible event), the fuel array will remain subcritical. In addition, NNECO will establish in the Subpart K position paper and supporting affidavits, that:

- As discussed in NNECO's supplement to the amendment application dated May 5, 2000, Attachment 1 at page 2, the volume of the spent fuel pool is 450,000 gallons. To reduce the soluble boron concentration from the normal 2,600 ppm to the Technical Specification limit of 800 ppm, it would require the undetected/unmitigated dilution of the pool by at least 500,000 gallons of unborated water by some sort of continuous dilution scenario. For many reasons, including the design of the spent fuel building, level alarms, and operator rounds, this is not a credible scenario.

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<sup>14</sup> In the recent deposition of one of Intervenors' technical experts, Mr. Lochbaum, he stated that at least from his perspective, the revised Technical Specification would resolve the Contention 5 issue if it is imposed by the NRC as proposed.

- In 1997, when NNECO modified its Technical Specifications to first credit soluble boron for the licensing basis criticality analyses to address Boraflex degradation at Unit 3, NNECO performed a structural review of Unit 3 fuel building piping systems to assure that these lines are leak-tight and meet NNECO's seismic qualification commitments. NNECO also made appropriate modifications to address roof drain piping. This is a matter of public record.<sup>15</sup>
- In a beyond design basis criticality analysis prepared for this proceeding, NNECO will show that even in the most reactive region of the pool, *with the improbable concurrence of a simultaneous loss of all soluble boron and a misplacement of one assembly of maximum reactivity loaded into a previously filled rack*, the configuration will remain subcritical.<sup>16</sup>

In sum, the vastly overreaching and untimely Discovery Requests should not be allowed. Their burden and scope far transcend any possible materiality or decisional significance in this proceeding.

### 3. Additional Specific Objections Apply

Finally, several of the Discovery Requests are objectionable for additional, specific reasons. Requests A1, A8(3), and A9(3) seek industry OE information, as well as NRC and Institute for Nuclear Power Operations ("INPO") evaluations related to Millstone Unit 3. With respect to NRC evaluations, to the extent there are such evaluations within the scope of the requests, they are public documents accessible to Intervenors and its consultants through the NRC's public document systems. Intervenors can do their own research. With respect to OE

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<sup>15</sup> This review is described in NNECO's submittal to the NRC, "Proposed Revision to Technical Specification Reactivity Control for Spent Fuel Pool and Refueling Operations (PTSCR 3-33-97)," B16727, November 11, 1997. See Attachment 4, page 2; Attachment 6, page 4.

<sup>16</sup> As with the beyond design basis criticality analyses discussed previously, these analyses are not presently documented. They are being prepared by NNECO and its contractor for this proceeding.

information that NNECO may have or may access from INPO, as well as specific INPO evaluations to the extent there are such evaluations in NNECO's possession, this is proprietary information of INPO. In accordance with INPO's procedures, INPO data and documents are not available for public disclosure under either the Freedom of Information Act<sup>17</sup> or in this proceeding. And, as is more likely in this case, to the extent any responsive INPO reports or operating data is available to NNECO only by computer network access, these are not *NNECO documents* discoverable in this proceeding.

The discovery request in this proceeding is distinguished from the Diablo Canyon case, where the intervenor sought a single report prepared by INPO concerning "maintenance and surveillance programs or activities" at the Diablo Canyon facility.<sup>18</sup> In that case, the licensing board permitted discovery of a single report under a protective order. The licensing board noted that "the single most-recent assessment by INPO, an independent expert body, would be singularly important."<sup>19</sup> In its ruling, the licensing board also seemed to rely on the fact that there were no minimum regulatory standards established by the NRC regarding maintenance and surveillance programs, and that production of that particular INPO report could help the licensing board evaluate the adequacy of the applicant's program and to resolve issues in that proceeding.<sup>20</sup> In the present Discovery Request, the Intervenors are not seeking a singularly

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<sup>17</sup> Critical Mass Energy Project v. U.S. Nuclear Regulatory Commission, 975 F.2d 871, 880 (D.C. Cir. 1992). For the same reason that the NRC was not required to disclose these documents, so too NNECO should not be required to disclose these documents in litigation -- particularly given the lack of materiality and lack of demonstrated need in the present case.

<sup>18</sup> Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-13, 38 NRC 11 (1993).

<sup>19</sup> Id. at 14.

<sup>20</sup> Id. at 15.

important document or data with particular significance (for reasons discussed above). In addition, to the extent Intervenors are requesting that NNECO access and search INPO's proprietary database for the purpose of making confidential INPO information publicly available, NNECO objects to this request because the database is the property of INPO, and NNECO has no authority to generate and distribute reports related to either Millstone or other nuclear plants.

NNECO additionally objects at this time to Discovery Request A10(1). This request is for names of NNECO personnel. The requests are irrelevant, immaterial, could not lead to relevant information, and are an unwarranted intrusion into personal privacy.

NNECO also reserves the right to make further specific objections at the time it responds to any discovery that may be allowed.

### III. CONCLUSION

Based on the reasons discussed above, NNECO requests the following:

First and foremost, NNECO requests a protective order with respect to the Discovery Request specifying that the discovery not be had because it is untimely.

Second, in the event untimely discovery is allowed, NNECO in the alternative requests a protective order establishing that: (a) the unfocused, overbroad and immaterial interrogatories and document production requests not be had, as discussed above; and (b) any NNECO response should be no earlier than the time specified by the Commission's rules in 10 C.F.R. Part 2, with no impact on the schedule for position papers and oral argument in this proceeding. Specifically, in this alternative motion, NNECO requests a protective order directing that requests A1, A2, A6, A7, A8, A9 (the first A9) and A10(1) shall not be had. Moreover, NNECO reserves the right in an answer to any allowed discovery to object to further specific burdensome or overbroad requests.

Respectfully submitted,



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ATTORNEYS FOR NORTHEAST NUCLEAR  
ENERGY COMPANY

Dated at Washington, D.C.  
this 22nd day of May 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
5/26/00

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
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Northeast Nuclear Energy Company )  
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(Millstone Nuclear Power Station, )  
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Docket No. 50-423-LA-3  
ASLBP No. 00-771-01-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NORTHEAST NUCLEAR ENERGY COMPANY'S MOTION FOR PROTECTIVE ORDER REGARDING UNTIMELY DISCOVERY REQUEST" in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 22nd day of May, 2000. Additional e-mail service has been made this same day as shown below.

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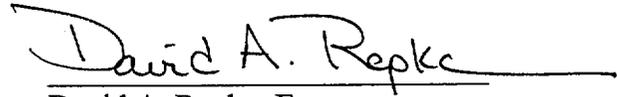
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