

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 05/10/00

Before Administrative Judges:

SERVED 05/10/00

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

In the Matter of

NORTHEAST NUCLEAR ENERGY
COMPANY

(Millstone Nuclear Power
Station, Unit No. 3;
Facility Operating License
NPF-49)

Docket No. 50-423-LA-3

ASLBP No. 00-771-01-LA

May 10, 2000

MEMORANDUM AND ORDER

(Denying Licensee's Motion for Protective Order)

This proceeding concerns the re-racking of the spent-fuel pool of the Millstone Nuclear Power Station, Unit No. 3. Parties are now engaged in discovery. On May 9, 2000, the Licensee, Northeast Nuclear Energy Co. (NNECO), filed a motion for a protective order, seeking to prevent the Intervenor, Connecticut Coalition Against Millstone/Long Island Coalition Against Millstone (CCAM/CAM), from deposing Mr. Robert Griffin, a NNECO chemistry manager at Millstone. (All parties, and the Licensing Board, were served by e-mail.) On May 10, 2000, CCAM/CAM filed a response (by telefax) opposing NNECO's motion.

1. NNECO's Motion. The primary basis of NNECO's protective order request is that Mr. Griffin was not one of NNECO's previously identified witnesses in this proceeding and, further, that CCAM/CAM had not previously identified

Mr. Griffin as an individual whose deposition they wished to take. (Although the Licensing Board has established an overall time limit for discovery, consistent with the requirements of 10 C.F.R. Part 2, Subpart K, no Board Order required either that deponents be identified by a particular date or that depositions be limited to proposed witnesses.) NNECO does not appear to object to the particular time set for Mr. Griffin's deposition (on May 12, 2000), although it faults CCAM/CAM for not giving more advanced notice of the time. NNECO acknowledges that Mr. Griffin might have information bearing upon one of CCAM/CAM's contentions (Contention 5), although other NNECO witnesses also are knowledgeable in this area.

2. CCAM/CAM's Response. In its response, CCAM/CAM claim that a movant seeking an order barring discovery is required by 10 C.F.R. § 2.740(c) to demonstrate "good cause" and that NNECO has failed to meet that burden. CCAM/CAM asserts that Mr. Griffin would be able to speak to procedures and experience related to boron surveillances at Millstone-3, which is relevant in their view to both Contentions 4 and 5. CCAM/CAM adds that NNECO does not protest Mr. Griffin's lack of availability at the time or place specified for the deposition.

3. Licensing Board Ruling. Under applicable NRC discovery rules, parties may obtain discovery regarding any matter (not privileged) relevant to the subject matter of

the proceeding. Moreover, it is not ground for objection that the information sought will be inadmissible if such information appears reasonably calculated to lead to the discovery of admissible evidence. 10 C.F.R. § 2.740(b)(1). For good cause shown, however, discovery may be limited or denied. 10 C.F.R. § 2.740(c).

The Licensing Board here agrees with CCAM/CAM that NNECO has not demonstrated good cause for us to bar the deposition of Mr. Griffin. In particular, he may be able to provide information relevant to at least CCAM/CAM contention 5, if not also Contention 4. Although additional time for the Notice of Deposition may have been desirable, the time constraints applicable to discovery in this proceeding may have made additional notice impracticable. In any event, NNECO does not appear to have objected to the particular time set for Mr. Griffin's deposition. For these reasons, NNECO's motion for a protective order is denied. The deposition may take place as scheduled.

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board

/RA/

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 10, 2000

Copies of this Memorandum and Order have been e-mailed to counsel for each party on May 10, 2000.

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NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
NORTHEAST NUCLEAR ENERGY) Docket No. 50-423-LA-3
COMPANY)
)
(Millstone Nuclear Power Station,)
Unit No. 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING LICENSEE'S MOTION FOR PROTECTIVE ORDER) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ann P. Hodgdon, Esq.
Robert M. Weisman, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lillian M. Cuoco, Esq.
Senior Nuclear Counsel
Northeast Utilities Service Company
107 Selden Street
Berlin, CT 06037

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David A. Repka, Esq.
Donald P. Ferraro, Esq.
Winston & Strawn
1400 L Street, NW
Washington, DC 20005

Nancy Burton, Esq.
147 Cross Highway
Redding Ridge, CT 06876

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of May 2000