

May 3, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION TO COMPEL CONNECTICUT COALITION  
AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE  
TO RESPOND TO NRC STAFF'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to 10 C.F.R. §§ 2.740(f), 2.740b and 2.741, the NRC Staff ("Staff") hereby moves the Board to compel Intervenor Connecticut Coalition Against Millstone ("CCAM") and Long Island Coalition Against Millstone ("CAM") (collectively, "Intervenors") to answer certain discovery requests propounded in NRC Staff's First Set of Interrogatories and Requests for Production of Documents, dated March 24, 2000.

I. BACKGROUND

The NRC Staff submitted its First Set of Interrogatories and Requests for Production of Documents on March 24, 2000. Contained in that filing were the following two requests, set forth below with Intervenor's responses, which were provided in CCAM and CAM's Reply to NRC Staff's First Set of Interrogatories on April 8, 2000:

- (1) Specific Interrogatory B (6): Identify the boron loss event cited on page 100 of the prehearing conference transcript, as to name of plant and date. Specify the cause, the amount of boron lost, the duration of the event, the actions taken and the result. Make specific reference to all documents, records, statements or sources which relate to your answer.

Intervenors' response: Transcript not available.

- (2) Experts (2): For each expert named in the answer to General Interrogatory 1, state . . . (d) any authorities and/or treatises upon which the expert relies.

Intervenors' response: The brief which will be filed by the Intervenors will provide this information.

For convenience, the disputed requests and responses are set out as Attachment 1.

On April 17, 2000, counsel for the Staff provided Intervenors with the pertinent transcript pages. Letter from A. Hodgdon, Counsel for NRC Staff, to N. Burton, Counsel for Intervenors (April 17, 2000).<sup>1</sup> During a conference call held on April 18, 2000 between counsel for the Applicant (Northeast Nuclear Energy Company), the Intervenors, and the Staff, counsel for the Staff requested that these two interrogatories receive a prompt reply. This request was reiterated in a conference call involving the same persons on April 20, 2000. During that conference call, counsel for Intervenors, Ms. Nancy Burton, advised Staff that she would submit an additional response to Interrogatory (1) above by Monday, April 24, 2000, and an additional response to Interrogatory (2) above by Tuesday, April 25, 2000. To date, Staff has not received a response to either request.

#### ARGUMENT

- I. THE DISCOVERY SOUGHT BY THE STAFF IS APPROPRIATE AND INTERVENORS' RESPONSES SHOULD BE COMPELLED.

10 C.F.R. § 2.740(b) requires each interrogatory be answered unless objected to, in which case the reasons for objection are to be stated in lieu of an answer. Intervenors failed to object to these interrogatories. Moreover, Intervenors have not applied for a protective order pursuant to 10 C.F.R. § 2.740(c). Consequently, Intervenors are obligated to respond to these interrogatories.

In general, discovery extends to "any matter, not privileged, which is relevant to the subject matter involved in the proceeding." 10 C.F.R. § 2.740(b)(1). Discovery is considered relevant

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<sup>1</sup>The Staff expects to submit an additional letter to Intervenors' counsel this week, addressing other deficiencies in Intervenors' responses to Staff's First Set of Interrogatories and Requests for Production.

unless it is "palpable that the evidence sought can have no possible bearing upon the issues." *Commonwealth Edison Co.* (Zion Station, Units 1 & 2), ALAB-196, 7 AEC 457, 462 (1974). A motion to compel need not seek information which would be admissible *per se* in an adjudicatory proceeding, but need only request information which "could reasonably lead to obtaining evidence that would be admissible at [a] future evidentiary hearing on [a] proceeding." *Safety Light Corp.* (Bloomsburg Site Decontamination), LBP-92-3A, 35 NRC 110, 111-12 (1992); *see also* *Commonwealth Edison Co.*, 7 AEC at 462.

A. Specific Interrogatory (B)(6)

During the prehearing conference on December 13, 1999, counsel for the Intervenors cited an "event" of leakage in a spent fuel pool resulting in loss of boron, in support of Contention 5, "Significant Increase in Probability of Criticality Accident." Tr. at 100-01. In Specific Interrogatory (B)(6), the Staff requested that Intervenors identify this "event." 10 C.F.R. § 2.740(b)(3) allows interrogatories to be used to "elicit factual information reasonably related to a party's position in the proceeding, including data used, assumptions made, and analyses performed by the party . . ." Consequently, the Staff's interrogatory is proper, as it is designed to discover the basis of Intervenors' assertion in support of Contention 5.

Intervenors failed to respond to this interrogatory, stating without any objection, "Transcript not available." The Staff provided Intervenors with a copy of the pertinent pages of the prehearing conference transcript, although not required to do so; the transcript is reasonably available from another source. See 10 C.F.R. §§ 2.741, 2.744.

As noted above, notwithstanding our efforts to obtain this information voluntarily, we have been unsuccessful in obtaining a response to this interrogatory informally and must resort to the Board's assistance. Due to the time constraints of this Subpart K proceeding, the Intervenors should be compelled to produce information responsive to this interrogatory.

B. Experts (2)

Intervenors failed to provide a response to a request for the identification of the authorities and/or treatises on which its proffered experts will rely in their testimony when they stated that information would be provided in Intervenors' brief for this proceeding. An evasive or incomplete response to an interrogatory constitutes a failure to answer or respond. *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-5, 9 NRC 193, 194-95 (1979). Moreover, the failure to provide information on which Intervenors' experts will rely improperly denies Staff the opportunity to develop its case. See *Tenbarge v. Ames Taping Tool Systems*, 190 F.3d 862, 865 (8<sup>th</sup> Cir. 1999); *Uresil Corp. v. Cook Group, Inc.*, 135 F.R.D. 168, 173 (N.D. Ill. 1991)("[I]n order to sufficiently answer expert witness interrogatories one must provide, the theories which the experts will use . . . , a precise statement of the subject matter upon which the answer is based, an explanation of the terms used by the expert, *and the rationale or reasons behind the expert's answers.*")(emphasis added).

Furthermore, the failure of the Intervenors to provide this information circumvents the very purpose of discovery - to narrow the issues and eliminate surprise. See *Hickman v. Taylor*, 329 U.S. 495 (1947)("Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end a party may compel the other to disgorge whatever facts he has in his possession . . . thus reducing the possibility of surprise.") Such disclosure is all the more important in a Subpart K proceeding such as this one, in which the parties must simultaneously file both the detailed written summary of their positions and all supporting facts and data. See 10 C.F.R. § 2.1113.

As noted above, the Staff has unsuccessfully attempted to obtain a response to this interrogatory informally. Due to the time constraints of this Subpart K proceeding, the Intervenors should be compelled to produce information responsive to this interrogatory.

CONCLUSION

For the foregoing reasons, the Intervenor's failure to respond to Staff's interrogatories and requests for production is without merit. Therefore, the Intervenor should be ordered to answer the above-described requests. Because discovery in this proceeding is scheduled to be completed by May 30, 2000, the Staff requests expedited consideration of this motion.

Respectfully submitted,



Brooke D. Poole  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 3<sup>rd</sup> day of May, 2000

**ATTACHMENT 1**

March 24, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO CONNECTICUT COALITION AGAINST MILLSTONE  
AND LONG ISLAND COALITION AGAINST MILLSTONE

Pursuant to the schedule established in the Atomic Safety and Licensing Board (Licensing Board) Prehearing Conference Order (Granting Request for Hearing) (LBP-00-02), issued on February 9, 2000, NRC staff (Staff) hereby requests the Connecticut Coalition Against Millstone (CCAM) and the Long Island Coalition Against Millstone (CAM) (collectively, Intervenors) to: (1) answer this first set of interrogatories fully, in writing, and under oath, within 14 days after service of this request pursuant to 10 C.F.R. § 2.740b; and (2) produce the documents requested below within 30 days after service of this request pursuant to 10 C.F.R. § 2.741(d).

I. DEFINITIONS

1. The word "document" as used herein shall mean any written or recorded matter, whether produced, reproduced or stored on paper, cards, tapes, disks, film, e-

4. Identify any and all actual mispositionings or misplacements of fuel assemblies in SFPs which have resulted in criticality. Make specific reference to all documents, records, statements or sources which relate to your answer.

5. Identify any and all boron dilution or boron loss events which have resulted in criticality in SFPs. Make specific reference to all documents, records, statements or sources which relate to your answer.

6. Identify the boron loss event cited on page 100 of the prehearing conference transcript, as to name of plant and date. Specify the cause, the amount of boron lost, the duration of the event, the actions taken and the result. Make specific reference to all documents, records, statements or sources which relate to your answer.

C. Contention 6: "Proposed Criticality Control Measures Would Violate NRC Regulations"

1. Specify the basis, including all facts and circumstances, for your position that credit for administrative measures is not permitted under General Design Criterion (GDC) 62 for the prevention of criticality (Tr. at 134). Make specific reference, including pinpoint citations to particular page numbers where applicable, to all documents, records, statements or sources which support your position.

2. Explain, in detail and with reference to specific examples, your position that there are two classes of administrative measures: "those that are made over a finite time and after having been made are no longer necessary;" and "administrative measures that are required on an ongoing basis." (Tr. at 139). Make specific reference, including

pinpoint citations to particular page numbers where applicable, to all documents, records, statements or sources which support your position.

3. Specify the basis, including all facts and circumstances, for your position that only those administrative measures "that are made over a finite time and after having been made are no longer necessary" are permissible under GDC 62 for the prevention of criticality.

#### V. EXPERTS

1. Identify each and every expert who will provide sworn affidavits or declarations for the written filing for the Subpart K proceeding, including each expert's name, affiliation, business address and telephone number.

2. For each expert named in the answer to General Interrogatory 1, state (a) the subject matter and substance of his/her testimony, (b) the facts and opinions upon which that testimony will be based, (c) the grounds for each opinion, and (d) any authorities and/or treatises upon which the expert relies.

3. Identify all persons from whom you, or any of your agents, servants or employees, have taken statements. Specify (a) when the statement was taken; (b) where the statement was taken; (c) who took the statement; (d) whether the statement was reduced to writing; (e) who has possession of the statement; and (f) the substance of the statement.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

*Reply* in the Matter of : Docket No. 50-423-LA-3  
:   
Northeast Nuclear Energy Company :   
:   
(Millstone Nuclear Power Station, :   
Unit No. 3) :

**CONNECTICUT COALITION AGAINST MILLSTONE AND  
LONG ISLAND COALITION AGAINST MILLSTONE'S  
REPLY TO NRC STAFF'S FIRST SET OF INTERROGATORIES**

In accordance with the schedule established in the Atomic Safety and Licensing Board ("Licensing Board") Prehearing Conference Order (Granting Request for Hearing) (LBP-00-02), issued on February 9, 2000, the Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone ("CAM") (collectively, "Intervenors") answer this first set of interrogatories fully, in writing and under oath as follows:

**III. General Interrogatories**

1. Identify all persons whom you expect or intend to provide sworn affidavits and declarations for the written filing for the Subpart K proceeding and each person who would testify in any subsequent evidentiary proceeding. For each such person, identify the subject matter and substance of his anticipated testimony.

David Lochbaum  
Nuclear Safety Engineer  
Union of Concerned Scientists  
1616 P Street NW  
Washington DC

It is anticipated that Mr. Lochbaum will address principally

result in criticality. The licensee's submittal clearly detailed various restrictions on which fuel assemblies can be placed where in the SFP and at what time. Thus, the licensee is not proposing to store fuel assemblies in the Millstone Unit 3SFP such that any fuel assembly can be placed in any SFP storage location at any time. Consequently, failure to conform with all of the specified restrictions and conditions could result in criticality. Because the licensee's application imposes additional restrictions and conditions than currently exist, the probability of inadvertent criticality increases.

4. Identify any and all mispositionings or misplacements of fuel assemblies in SFPs which have resulted in criticality. Make specific reference to all documents, records, statements or sources which relate to your answer.

At this time, we are not aware of any such events.

5. Identify any and all boron dilution or boron loss events which have resulted in criticality in SFPs. Make specific reference to all documents, records, statements or sources which relate to your answer.

At this time, we are not aware of any such events.

6. Identify the boron loss event cited on page 100 of the prehearing conference transcript, as to name of plant and date. Specify the cause, the amount of boron lost, the duration of the event, the actions taken and the result. Make specific reference to all documents, records, statements or sources which relate to your answer.

Transcript not available.

**C. Contention 6: "proposed Criticality Control Measures  
Would Violate NRC Regulations"**

1. Specify the basis, including all facts and circumstances, for your position that credit for administrative measures is not permitted under General Design Criterion (GDC) 62 for the prevention of criticality. (Tr. at 134) Make specific reference, including pinpoint citations to particular page numbers where applicable, to all documents, records, statements or sources which support your position.

Please refer to the Orange County filing of January 4, 2000, pages 18-37 In the Matter of Carolina Power & Light, Docket No. 50-400-LA, ASLBP No. 99-762-02-LA.

2. Explain, in detail and with reference to specific examples, your position that there are two classes of administrative measures: "those that are made over a finite time and after having been made are no longer necessary"; and "administrative measures that are required on an ongoing basis." (Tr. at 139) Make specific reference, including pinpoint citations to particular page numbers where applicable, to all documents, records, statements or sources which support your position.

Physical protection against criticality may rely on one-time administrative measures to ensure that the physical protection is in place. For example, if physical protection is provided by the geometry of racks, one-time administrative measures will be needed to ensure that the racks are constructed so as to preserve the specified geometry under specified conditions. This situation

contrasts with reliance on ongoing administrative measures, such as taking credit for burnup.

3. Specify the basis, including all facts and circumstances, for your position that only those administrative measures "that are made over a finite time and after having been made are no longer necessary" are permissible under GDC 62 for the prevention of criticality.

Please refer to the Orange County filing of January 4, 2000, pages 18-37,, In the Matter of Carolina Power & Light, Docket No. 50-400-LA, ASLBP No. 99-762-02-LA.

#### V. Experts

1. Identify each and every expert who will provide sworn affidavits or declarations for the written filing for the Subpart K proceeding, including each expert's name, affiliation, business address and telephone number.

David Lochbaum  
Nuclear Safety Engineer  
Union of Concerned Scientists  
1616 P Street NW  
Washington DC

Gordon Thompson, Ph.D.  
Institute for Resource and Security Studies  
27 Ellsworth Avenue  
Cambridge MA 02139

2. For each expert named in the answer to General Interrogatory 1, state (a) the subject matter and substance of his/her testimony, (b) the facts and opinions upon which that testimony will be based, (c) the grounds of each opinion, and (d) any authorities and/or treatises upon which the expert relies.

(a) Each will address technical aspects of Contentions 4-6

(b) and (c) Publicly available information and the experts' analytic capabilities

(d) The brief which will be filed by the Intervenor will provide this information.

3. Identify all persons from whom you, or any of your agents, servants or employees, have taken statements. Specify (a) when the statement was taken; (b) where the statement was taken; (c) who took the statement; (d) whether the statement was reduced to writing; (e) who has possession of the statement; and (f) the substance of the statement.

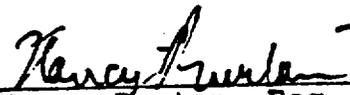
No statements have been taken at this time.

4. Identify all persons you, or any of your agents, servants or employees, have interviewed. Specify (a) the date of the interview; (b) where the interview occurred; (c) who was present during the interview; (d) whether the interview was recorded or reduced to writing, including notes; (e) who is in possession of the recording or writing; and (f) the substance of the interview.

No interviews have been conducted at this time.

Respectfully submitted,  
CT COALITION AGAINST MILLSTONE  
LI COALITION AGAINST MILLSTONE

By:

  
Nancy Burton, Esq.  
147 Cross Highway  
Redding Ridge CT 06876  
Tel. 203-938-3952

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
NORTHEAST NUCLEAR ENERGY COMPANY ) Docket No.50-423-LA3  
 )  
(Millstone Nuclear Power Station, Unit No. 3) )  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION TO COMPEL CONNECTICUT COALITION AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE TO RESPOND TO NRC STAFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system; or by deposit in the Nuclear Regulatory Commission's internal mail system with copies by electronic mail, as indicated by an asterisk; or by E-mail as indicated by a double asterisk, followed by a conforming copy via first-class mail this 3<sup>RD</sup> day of May, 2000:

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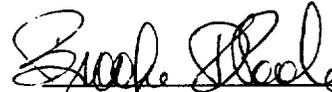
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