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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 06/13/00

SERVED 06/14/00

Before Administrative Judges:

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

June 13, 2000

MEMORANDUM AND ORDER
(Denying Staff's Motion to Dismiss CCAM/CAM Contention 4)

On June 8, 2000, the NRC Staff filed a motion to dismiss CCAM/CAM's Contention 4 based on perceived discovery deficiencies on the part of the Intervenor. The Staff claimed that CCAM/CAM had provided insufficient responses to two of the Staff's interrogatories. In a telephone conference on May 26, 2000, the Licensing Board had granted the Staff's motion to compel responses to those interrogatories and directed the Intervenor to respond by May 30, 2000, which they did. The Staff in the instant motion claims that these responses are inadequate.¹

The Licensing Board has examined the responses of the Intervenor to the Staff's interrogatories.² We express no opinion as to their adequacy on the merits for

¹The Licensing Board on June 12, 2000, advised the Licensee and Intervenor that they need not respond to the Staff's motion.

²The Intervenor forwarded to the Licensing Board copies of their responses to the interrogatories in question, including copies of documents on which they are relying. Their certificate of service indicates that the Staff (as well as Licensee) were sent copies of those same documents.

proving the Intervenor's contention. We have no basis, however, for presuming that the Intervenor's responses to the Staff's inquiries (which related to the case Intervenor propose to present on Contention 4) did not in fact set forth what their case would be.³

As the Staff points out, the failure of a party to respond to discovery might be considered a default, which could lead to a variety of sanctions, including dismissal of a contention to which the discovery related. Here, however, we are not convinced that CCAM/CAM failed to respond adequately to the Staff's interrogatories. Whether those discovery responses, together with other matters on which CCAM/CAM has stated they would rely, are sufficient to support CCAM/CAM's case on the merits are matters best left to the parties' presentations, oral argument, or evidentiary hearing as warranted.

For the foregoing reasons, the Staff's June 8, 2000 Motion to Dismiss CCAM/CAM Contention 4 is denied.

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board

/RA/

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 13, 2000

³We note an obvious typographical error in the Intervenor's response. They referenced "Preliminary Notification Index I-990996 Millstone 2," whereas the attached document was designated "PNO-I-99-006 Millstone 2."

NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING STAFF'S MOTION TO DISMISS CCAM/CAM CONTENTION 4) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-423-LA-3
LB MEMORANDUM AND ORDER
(DENYING STAFF'S MOTION TO
DISMISS CCAM/CAM CONTENTION 4)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of June 2000

[Copies of this Memorandum and Order were sent this date by e-mail to counsel for all parties.]