

May 25, 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 SECOND SUPPLEMENTAL RESPONSE TO CONNECTICUT
COALITION AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST
MILLSTONE'S FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION DIRECTED TO U.S. NUCLEAR REGULATORY COMMISSION

The Nuclear Regulatory Commission staff (Staff) hereby files this second supplement to Staff's Response to Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone's First Set of Interrogatories and Requests for Production, filed April 10, 2000.

GENERAL INTERROGATORIES

GENERAL INTERROGATORY G-2. For each admitted contention, identify each person whom NRC expects 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 hearing. For each person identified, describe that person's professional affiliation, address, area of professional expertise, qualifications, and subject matter on which each person is expected to provide sworn affidavits or testimony in the proceeding.

STAFF RESPONSE:

Anton Cerne
Senior Resident Inspector, Millstone, Unit 3
General Subject matter: Contention 4

A copy of Mr. Cerne's resume is annexed hereto as exhibit 1. The Staff reserves the right to amend this answer.

SPECIFIC INTERROGATORIES

INTERROGATORY 4-1. Please identify any and all documents on which NRC intends to rely in support of its position on Contention 4.

STAFF RESPONSE: In addition to the documents identified in the Staff's Response dated April 10, 2000, the Staff intends to rely on the following documents:

- 1) SECY-98-090 (9805060017)
- 2) SECY-98-119 (9806260244)
- 3) Millstone Restart Assessment Plan, Rev. 6, 11/20/98 (9811270086)
- 4) IR 50-423/97/83, Millstone Unit 3 OSTI, 6/12/98 (9806220008)
- 5) NRC letter from Callan to Kenyon, 6/29/98 (98070202690)
- 6) Millstone 2 and 3 PPR letter from Lanning to Necci, 4/9/99 (9904190275)
- 7) Millstone Mid-Cycle PPR letter from Linville to Necci, 9/30/99 (9910120210)
- 8) Millstone IRs 99-05 (6/3/99) (9906110025); 99-08 (9/20/99) (9909280223); 99-09 (11/3/99) (ML993230343); 99-12 (12/21/99) (ML993560041)
- 9) Millstone PPR letter from Linville to Scace, 3/31/00 (ML003697676, Unit 2; ML 003697691, Unit 3)
- 10) E-mail March 24, 2000 from Dave L. Lochbaum to Nancy Burton, Esq. [NRC CONCERNS], Fuel Failures at Farley Found (enclosed).
- 11) Documents produced by NNECO on April 20, 2000.

INTERROGATORY 4-2. Please identify any and all actual events, at Millstone Station or elsewhere, on which NRC intends to rely in support of its position regarding Contention 4.

STAFF RESPONSE: CAM/CCAM do not define "actual events." Assuming that the term means events reported to the NRC pursuant to 10 C.F.R. § 50.73, the Staff is not aware of any such events at Millstone 3 and, at any rate, will not rely on such events to support its position in its written presentation on Contention 4.

INTERROGATORY 5-1. Please identify any and all documents on which the NRC intends to rely in support of its position regarding Contention 5.

STAFF RESPONSE: In addition to the documents identified in the Staff's Response of April 10, 2000, the Staff intends to rely on the following documents:

Millstone Nuclear Power Station, Unit 3, Modification of Proposed Revision to Technical Specification - Spent Fuel Pool Rerack (TSCR 3-22-98), April 17, 2000, provided to the Licensing Board and parties by letter of David A. Repka, April 18, 2000.

Millstone Nuclear Power Station, Unit No. 3, Response to Requests for Additional Information Spent Fuel Pool Rerack (TAC No. MA 5137), May 5, 2000, provided to the Licensing Board and parties by letter from David A. Repka, dated May 8, 2000.

Documents produced by NNECO on April 20, 2000.

INTERROGATORY 5-2. Please identify any and all actual events, at Millstone or elsewhere, on which NRC intends to rely in support of its position regarding Contention 5.

STAFF RESPONSE: CAM/CCAM do not define "actual events." Assuming that by the term "actual events," CAM/CCAM mean events reported to the NRC pursuant to 10 C.F.R. §50.73, the Staff is not aware of such events at Millstone 3 and, at any rate, will not rely on such events to support its position in its written presentation on Contention 5.

Nonetheless, the Staff states that the only boron dilution event of which it is aware occurred at Maguire Unit 1 on July 11, 1994, which was reported in LER-94-005-00, NUDOCS accession number 9408180023.

INTERROGATORY E-1. Please identify the systems and procedures used at Millstone for planning, implementing and overseeing of the management, movement and placement of fresh and spent fuel.

STAFF RESPONSE: To the extent that this information is available from another source it will not be supplied by the Staff. Without waiving this objection, the Staff states that Information responsive to this request, as it relates to Millstone 3, may be found in the Staff's response to Interrogatory 5-1, above.

INTERROGATORY E-2. Please identify the systems and procedures used at Millstone for planning, implementing and overseeing control of concentrations of soluble boron in fuel pool water.

STAFF RESPONSE: See Staff response to Interrogatory E-1.

INTERROGATORY E-3. Please identify all documents pertaining to Interrogatories E-1 and E-2.

STAFF RESPONSE: See Staff response to Interrogatory E-1.

INTERROGATORY F-4. Please identify all instances of unplanned leakage from spent fuel pools at Millstone and other nuclear plants and all documents pertinent thereto.

STAFF RESPONSE: The Staff does not understand CAM/CCAM means by "unplanned leakage." The Staff is aware of an inadvertent transfer of 2700 gallons of water from the spent fuel pool at Millstone 2, which is the subject of PNO-1-99-006, January 29, 1999 (enclosed).

REQUESTS FOR PRODUCTION OF DOCUMENTS

The Staff notes that 10 C.F.R. §§ 2.744 and 2.790, which govern the production of NRC records and documents, contemplate that most NRC documents will be available for inspection and copying in the public document room and, if they have been withheld from the public document room pursuant to § 2.790, a request to the Executive Director for Operations for the production of such a document is required by § 2.744, which must state, among other things, why the requested record or document is relevant to the proceeding.

Notwithstanding these regulations, without waiving any objections or privileges, and except as specified below, the Staff is now voluntarily providing supplemental responses to intervenors' request for responses to interrogatories and production of documents. In doing so, the Staff is not waiving its right to require compliance with the Commission's regulations regarding any future discovery requests made by intervenors in this matter.

I. GENERAL OBJECTIONS

1. The Staff objects to intervenors' discovery requests to the extent that they call for disclosure of litigation strategy and other material protected under 10 C.F.R. § 2.740 or other protection provided by law, attorney work product, privileged attorney-client materials,

and other privileged materials such as draft agency documents protected by executive privilege.

2. The Staff objects to Intervenor's discovery requests to the extent that they request information or documents relating to licensees and/or entities other than Northeast Nuclear Energy Company's Millstone Nuclear Power Station, Unit 3. Such discovery requests call for information which is irrelevant, immaterial, and not calculated to lead to the discovery of admissible evidence, and are overbroad and unduly burdensome.

3. The Staff objects to Intervenor's discovery requests to the extent that they seek discovery which is beyond the scope of the three contentions admitted by the Board in this proceeding. Intervenor is only permitted to obtain discovery of matters that pertain to the subject matter within the scope of this proceeding.

4. The Staff objects to Intervenor's discovery requests to the extent that they are unreasonably cumulative, and are obtainable from other source that is more convenient, less burdensome, or less expensive. Pleadings, briefs, orders, and other legal documents available in the public docket are not being produced under this response.

5. The Staff objects to Intervenor's discovery requests to the extent that they call for documents not within the possession, custody, or control of the NRC staff, which reports to the Executive Director for Operations.

GENERAL DOCUMENT PRODUCTION REQUESTS

GENERAL DOCUMENT PRODUCTION REQUEST G-1. All documents that are identified, or referred to, in responding to all of the above interrogatories.

STAFF RESPONSE: Any available, non-objectionable documents, relevant to the three contentions, as admitted into the proceeding by the Board, which are identified or referred to in responding to the above interrogatories or in the Staff's previous responses

to the interrogatories, and which are not in the PDR, CCAM's or CAM's possession or have not been previously produced, are being produced herewith. The responses and related documents being produced are being provided on a voluntary basis. Only final NRC records and documents, under 10 C.F.R. § 2.790, are subject to this response and production.

Notwithstanding this voluntary response and document production, the Staff is not waiving its right to require full compliance with NRC regulations regarding any discovery requests made to the Staff in this proceeding. The Staff reserves the right to amend this answer.

GENERAL DOCUMENT REQUEST G-2. All documents (including experts' opinions, work papers, affidavits, and other materials used to render such opinion) supporting or otherwise relating to the written filing and oral argument that NRC intends to use in this Subpart K proceeding on each admitted contention.

STAFF RESPONSE: The Staff objects to this document request as being overly broad, unduly burdensome, seeking pre-decisional, trial preparation or privileged material or material exempted from disclosure by 10 C.F.R. §§ 2.744 and 2.790. Without waiving these objections, any available, non-objectionable documents that are relevant to the three contentions, as admitted into the proceeding by the Board, which are not in the PDR, CCAM or CAM's possession or have not been previously produced, are being provided herewith. The Staff reserves the right to amend this answer.

SPECIFIC DOCUMENT REQUESTS

REQUEST 4-1. All documents (including industry event reports, deviation reports and the like) that NRC will rely on as a basis to object to the contention that the proposed administrative controls will result in an increased probability of a criticality accident in the Millstone Unit 3 SFSP.

STAFF RESPONSE: In addition, the staff intends to rely on the the documents identified in these and other responses to discovery, and the NNECO's application for amendment to tech specifications of March 1999 and all supporting documents and supplements. The Staff notes that, in this request, CCAM/CAM misstates Contention 4, as admitted by the Licensing Board, and the Staff objects to the request to the extent that it misstates the contention. Without waiving this objection, the Staff states that all presently available, non-objectionable documents responsive to this request and relevant to the contention as admitted, have been previously identified or are identified elsewhere in this document. The Staff reserves the right to amend this answer.

REQUEST 4-2. All documents that refute the increased likelihood that Northeast Nuclear Energy Company will violate k_{eff} of -0.95 or 1.00 if the proposed administrative controls are implemented.

STAFF RESPONSE: All presently available, non-objectionable documents responsive to this request have been previously identified or are identified elsewhere in this document. The Staff reserves the right to amend this answer.

REQUEST 5-1. All documents that NRC will rely on to object to the contention that changing the Millstone Unit 3 Technical Specifications to require 800 parts per million of soluble boron in the SFSP only during fuel movements increases the probability of a criticality accident.

STAFF RESPONSE: The Staff notes that NNECO has amended its Technical Specification amendment request so as to render this request irrelevant. Therefore, there are no documents upon which the Staff will rely to refute the contention as stated, other than those identified in the Staff's response to Interrogatory 5-1, above.

REQUEST 5-2. All documents that support NRC's objection that the mispositioning of fuel in the Millstone SFSP is a "likely event."

STAFF RESPONSE: All presently available, non-objectionable documents responsive to this request have been previously identified or are identified elsewhere in this document. In addition, the Staff intends to rely on the documents submitted in the Shearon Harris spent fuel pool expansion matter as to Technical Contention TC-2, and the decision of the Licensing Board in that case. See *Carolina Power & Light Co. (Shearon Harris Nuclear Plant)*, LBP- 00-12, 51 NRC___ (2000). A list of ADAMS accession numbers for the Shearon Harris documents is attached. The Staff reserves the right to amend this answer.

REQUEST 5-3. All documents concerning the potential for boron dilution in the Millstone Unit 3 SFSP, including the:

- (a) mechanism to accomplish boron dilution, including, but not limited to, the source and quantity of water required to accomplish the dilution;
- (b) basis for assumptions that boron dilution could not credibly occur, including whether such an event would be noticed and terminated; and
- (c) criticality analyses identifying boron dilution limits required to achieve criticality.

STAFF RESPONSE: (a) None known; (b) Section 9.1 of the Millstone Unit 3 FSAR; and (c) Millstone 3 TS amendment request.

REQUEST 6-1. All documents that NRC will rely on to object to the contention that the use of enrichment and burnup limits for criticality control in spent fuel pools, implemented in part by administrative controls, is not permitted by General Design Criterion ("GDC") 62.

STAFF RESPONSE: The Staff notes that, in this request, CCAM/CAM misstates Contention 6, as admitted by the Licensing Board, and the Staff objects to the request to the extent that it misstates the contention. Without waiving this objection, the Staff states that all presently available, non-objectionable documents responsive to this request and

relevant to the contention as admitted, have been previously identified or are identified elsewhere in this document. In addition, the Staff intends to rely on the documents submitted in the Shearon Harris spent fuel pool expansion matter as to Technical Contention TC-2, and the decision of the Licensing Board in that case. *See Carolina Power & Light Co. (Shearon Harris Nuclear Plant), LBP- 00-12, 51 NRC_____ (2000).* A list of ADAMS accession numbers for the Shearon Harris documents is attached. The Staff reserves the right to amend this answer.

REQUEST 6-2. All documents relied upon by NRC concerning the interpretation of GDC 62 regarding the use of enrichment and burnup limits for criticality control in spent fuel pools.

STAFF RESPONSE: Refer to the response to Request 6-1.

REQUEST 6-3. All documents that state, imply or infer that the Nuclear Regulatory Commission ("NRC") agrees or disagrees with the NRC Staff's position on the use of burnup credit for criticality control in SFSPs, including the NRC Staff's position on the use of burnup credit in Reg. Guide 1.13.

STAFF RESPONSE: The Staff does not understand the request, in that it does not understand the distinction being drawn, in the request, between "NRC" and NRC Staff. See 10 C.F.R. § 1.1(b), which defines "NRC." Therefore, no documents can be provided in response to the request.

REQUEST 6-4. All documents that state, imply or infer that the NRC might be uninformed or unaware of the NRC Staff's position on the use of burnup credit for criticality control in SFSPs, including the NRC Staff's position in Reg. Guide 1.13.

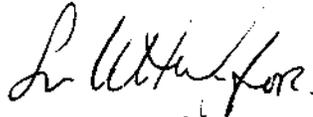
STAFF RESPONSE: Refer to the answer to Request 6-3.

REQUEST 6-5. All documents that state, imply or infer that the NRC might be informed or aware of the NRC Staff's position on the use of burnup credit for criticality control in

SFSPs, including the NRC Staff's position in Reg. Guide 1.13.

STAFF RESPONSE: Refer to the answer to Request 6-4. The NRC Staff notes that the NRC has issued numerous license amendments, since approximately 1983, permitting the use of credit for burnup. These documents are publically available in NUDOCS and on the NRC website.

Respectfully submitted,



Ann P. Hodgdon
Counsel for NRC Staff



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 25h day of May 2000

Exhibit 1

NAME: ANTONE C. CERNE

ORGANIZATION: USNRC, Region I

TITLE: Senior Resident Inspector, Millstone Unit 3

EDUCATION: B.S., United States Military Academy (West Point), 1968
(graduated in top 1% of class)

M.S., Massachusetts Institute of Technology (MIT), 1972,
Nuclear Engineering

Mellon (post-graduate) Fellowship, MIT, 1989, Program in Science,
Technology and Society

EXPERIENCE: Over twenty-two years nuclear experience including:

Approximately twenty years in the USNRC resident inspection program, including the last four(+) years at Millstone Unit 3, with prior assignments at Seabrook Station and the Pilgrim Nuclear Power Station;

Temporary USNRC assignment as a technical assistant to Commissioner Kenneth Carr, and details to the agency's special review effort for Comanche Peak, the NRC Regulatory Review Group, the NRR South Texas Project Task Force, and the NRR group reviewing the Construction Inspection Program for Future Reactors;

Participation in over thirty NRC team inspections at nuclear power plants around the country, with designation as team leader or assistant team leader on some of these inspections;

Senior Resident Inspector at Millstone Unit 3 during conduct of the Independent Corrective Action Verification Program, recovery, and startup activities, including responsibility for managing the "significant items list" inspection and closure, as part of the USNRC Inspection Manual Chapter 0350 process;

Qualification as both a Construction and Operations (Pressurized Water Reactor) Senior Resident Inspector.

AWARDS: USNRC (agency-level) award recognitions include:

NRC Resident Inspector of the Year, 1985 (first time award was presented);

**NRC Meritorious Service Award for Resident Inspector Excellence,
1992;**

**NRC Distinguished Service Award for Senior Resident Inspector
Excellence, 1999.**

Exhibit 2

Shearon Harris Documents

ADAMS Accession numbers:

NRC staff's January 4, 2000 filing

ML 003673204

ML 003673177

ML 003673919

ML 003673795

CP&L's January 4, 2000 filing

ML 003673328

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S SECOND SUPPLEMENTAL RESPONSE TO CONNECTICUT COALITION AGAINST MILLSTONE AND LONG ISLAND COALITION AGAINST MILLSTONE'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION DIRECTED TO U.S. NUCLEAR REGULATORY COMMISSION" 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 25th day of May, 2000.

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