

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of: : Docket No. 50-423-~~ADJ~~  
:  
: ASLBP No. 00-771-01-LA  
:  
Northeast Nuclear Energy Company :  
:  
(Millstone Nuclear Power Station, :  
Unit No. 3) : December 18, 2000

CONNECTICUT COALITION AGAINST MILLSTONE  
AND LONG ISLAND COALITION AGAINST MILLSTONE  
MOTION TO REOPEN AND TO VACATE DECISION

The Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone (collectively ""Intervenors") move to reopen the proceedings for further development of the record based upon newly discovered evidence material to the controversy and to vacate the order terminating this proceeding.

More particularly, the Intervenors move to reopen the proceedings for further development of the record with regard to the disclosure by the Licensee, Northeast Nuclear Energy Company ("NNECO"), to the U.S. Nuclear Regulatory Commission during the week of November 24, 2000 that it "could not confirm the location of two fuel pins" at the Millstone Unit 1 spent fuel pool.

Such disclosure was made public by the NRC in the NRC Weekly Information Report For the Week Ending November 24, 2000. A copy of the pertinent excerpt from such Report is annexed hereto.

In addition, such disclosure was made public in the NRC Daily Events Report as Event Number 37596 dated December 14, 2000. A copy of such Report is annexed hereto.

The Intervenors were unaware that the location of the two highly radioactive spent fuel rods, presumed reposed at the Millstone Unit 1 spent fuel pool, was unknown to the Licensee until the Intervenors became aware of such public disclosures. Their motion is not untimely. See. E.g, Fritsch v. ICC, 59 F.3d 248, 251-52 (D.C. Cir. 1995) Indeed, the Atomic Safety and Licensing Board panel may properly decide to reopen or reconsider a decision, as long as it provides notice to the parties. Charlesworth v. U.S. INS, 966 F.2d 1323, 1326 (9<sup>th</sup> Cir. 1992).

During the limited Subpart K discovery period in these proceedings, the Intervenors submitted the following Interrogatory, inter alia, to NNECO on March 21, 2000:

"Interrogatory No. F-1: Please identify all instances of errors (at Millstone or other nuclear plants) in managing, moving, placing or tracking fresh or spent fuel and all documents pertinent thereto."

In response dated April 4, 2000, NNECO provided the following response:

"With regard to Millstone, the following events have been identified as responsive to this request. . . ." together with information regarding eleven events at Millstone. None of the events identified disclosed the fact that the Licensee could not account for the location of two spent fuel rods at Unit 1. A copy of the NNECO response is annexed hereto.

NNECO's April 4, 2000 response included the affidavit of Michael C. Jensen, who declared "under penalty of perjury that the following statements are true and correct of his own knowledge." Mr. Jensen's affidavit stated *inter alia* as follows:

"3. I have supplied information in response to the following interrogatories, as specified in the Connecticut Coalition Against Millstone and the Long Island Coalition Against Millstone's 'First Set of Interrogatories and Requests for Production' dated March 21, 2000, in the captioned proceeding . . . Interrogatory F-1."

However, when Mr. Jensen was deposed by the Intervenors on May 11, 2000, he stated that he did not compile the list, but that the list was compiled by attorneys from information provided in part by persons Jensen said he could not identify. Refer to Jensen Deposition, pages 13-14 (attached). Moreover, Jensen stated that he did not know what methodology was applied to compile the information responsive to the Interrogatory.

The Licensee's historical inability to adhere to administrative controls is an issue in these proceedings. (Contention 4) It appears from the content of the Weekly Information Report that NNECO knew or should have known of a "gap" in its record-keeping as early as 1980 and that perhaps for as long as twenty (20) years it has failed to acknowledge or address the issue of the missing fuel rods.

Such failure, if correct, constitutes an egregious disregard by the Licensee of its license conditions and may constitute a wilful disregard of the law.

In its ruling dismissing Contention 4 and terminating these proceedings on October 26, 2000, the ASLB stated:

"We find that NNECO has demonstrated that it can adhere to administrative controls, with adequate safety margin and defense-in-depth, without posing an undue or unnecessary risk to plant workers or the public."

It is the Intervenors' position that, had the ASLB been made aware that NNECO is unable to account for two highly radioactive spent fuel rods at Unit 1, it would have been unable to make such a finding and it would have been legally compelled to commence an evidentiary hearing as requested by the Intervenors. That two highly radioactive spent fuel rods which must be isolated from the environment for at least 100,000 years cannot be accounted for by NNECO is an issue which is clearly material to these proceedings.

Moreover, 10 CFR Section 2.740(e)(2) pertains to these proceedings. It provides as follows:


"A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that failure to amend the response is in substance a knowing concealment."

The Intervenors represent that the Licensee was required by section 2.740(e)(2) to amend its response to Interrogatory F-1 immediately upon its discovery that its prior response was incomplete or inaccurate.

Should this motion be granted, the Intervenors reserve the opportunity to file all appropriate motions for sanctions as against the Licensee.

WHEREFORE, the Intervenor move that the ASLB panel reopen the proceedings for further development of the record and that it vacate its order terminating these proceedings.

**THE INTERVENORS**

By:   
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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

**In the Matter of:** : **Docket No. 50-423-LA-3**  
: **ASLBP No. 00-771-01-LA**  
**Northeast Nuclear Energy Company** :  
: **December 18, 2000**  
(Millstone Nuclear Power Station, :  
Unit No. 3) :

**Certificate of Service**

I hereby certify that copies of Intervenors' "Motion to Reopen and to Vacate Decision" in the above-captioned proceeding have been served on the following by E-Mail as indicated by asterisk on December 18, 2000, and to all by conforming copy via U.S. Mail, postage pre-paid, on December 19, 2000:

Charles Bechhoefer, Chairman\*  
Administrative Judge  
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U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
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Dr. Richard F. Cole\*  
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Washington DC 20555-0001  
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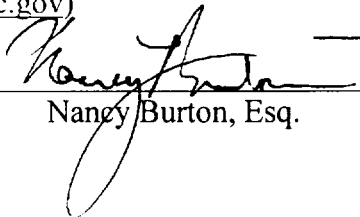
Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001

Office of the Secretary\*  
ATTN: Rulemaking and Adjudication Staff  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
(Original + Two Copies)  
(E-Mail copy to: [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV))

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
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\_\_\_\_\_  
Nancy Burton, Esq.

NRC Weekly Information Report  
For the Week Ending November 24, 2000

Millstone Unit 1

Early this week, Millstone, Unit 1, informed the NRC that they could not confirm the location of two fuel pins. The licensee currently believes that they have located the box containing the fuel pins in the spent fuel pool. However, they will require GE assistance in order to lift the box and verify that it is the correct container. The licensee currently anticipates having GE personnel and equipment on site next week. The background on this issue is as follows:

In 1972, a once burned fuel assembly that was damaged by chloride intrusion in the reactor vessel was disassembled to allow testing by GE. During the disassembly, two of the fuel rods were bent and could not be put back in the assembly. These two fuel rods were put in a special fuel rod box. Records dated 1979 and 1980 show the box stored in the Northwest corner of the spent fuel pool. Records after 1980 do not show the fuel rod box in the fuel pool. Significant work, including two re-racks, has been performed on the fuel pool since 1980.

Due to the unique nature of the special fuel rod box the licensee does not consider it likely that the fuel pins have been mistakenly shipped out as waste. They currently believe that the fuel rods are still in the pool or were shipped to GE. To Date, GE has not identified any records of receiving the fuel pins. The licensee believes that the fuel rod box/pins were moved in the past to allow work to be performed in the pool and the movement not recorded. The licensee has identified a fuel pin container in the pool that may contain the fuel pins, but they have not been able to look in the container due to the need for a special tool which GE has but the licensee does not.

Currently, the licensee believes that the condition involves a lack of control of special nuclear material not an actual loss. Since the licensee does not believe that the fuel pins are in the public domain, 10 CFR 20.2201 only requires a formal report to the Commission within 30 days.

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|Power Reactor                                     |Event Number: 37596                               |
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| FACILITY: MILLSTONE                             | REGION: 1 | NOTIFICATION DATE: 12/14/2000 |
| UNIT: [1] [] []                                 | STATE: CT | NOTIFICATION TIME: 18:02[EST] |
| RXTYPE: [1] GE-3, [2] CE, [3] W-4-LP           |           | EVENT DATE: 12/14/2000 |
+-----+-----+-----+-----+
| NRC NOTIFIED BY: DAVID DVORAK                  |           | EVENT TIME: 17:15[EST] |
| HQ OPS OFFICER: FANGIE JONES                   |           | LAST UPDATE DATE: 12/14/2000 |
+-----+-----+-----+-----+
| EMERGENCY CLASS: N/A                           | PERSON    | ORGANIZATION |
| 10 CFR SECTION:                               | JOHN WHITE| R1            |
| APRE 50.72(b)(2)(vi) OFFSITE NOTIFICATION     |           |               |
| BAB2 20.2201(a)(1)(ii) LOST/STOLEN LNM>10X   |           |               |
+-----+-----+-----+-----+
| UNIT | SCRAM CODE | RX CRIT | INIT PWR | INIT RX MODE | CURR PWR | CURR RX MODE |
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| 1    | N          | N       | 0        | Decommissioned | 0        | Decommissioned |
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| EVENT TEXT
|
| THE LOCATION OF 2 FUEL PINS IN THE SPENT FUEL POOL IS UNKNOWN
|
| "As part of the ongoing decommissioning of Millstone Unit 1, a detailed
| documentation of the fuel currently in the Unit 1 spent fuel pool is
| underway. A detailed verification of spent fuel pool content records was
| part of this effort. During this process, workers identified a discrepancy
| in the paperwork relating to the location of two spent fuel pins that were
| removed from a fuel assembly in October 1972. A search is underway; however,
| these fuel pins have not yet been located among the 2,884 fuel assemblies
| containing more than 140,000 fuel pins currently in the spent fuel pool. In
| addition, workers are also searching pertinent records.
|
| "Due to the radiation levels of the fuel pins, if they were removed from the
| spent fuel pool, the use of a shielded cask would have been required and the
| shipment could have only been made to a licensed facility. Any other
| movement of these pins from the site would have been immediately detected by
| the site radiation monitoring system. Therefore, there is a high degree of
| confidence that these pins are not in an unrestricted area and are under the
| control of a licensed facility; either here in the spent fuel pool or
| possibly at a licensed radioactive waste disposal site. As a result, we are
| also confident that no overexposure of workers or members of the public has
| resulted. An independent team with relevant expertise is on-site to assist
| in an ongoing investigation to determine the location of the 2 fuel pins."
|
| The licensee notified NRC Region 1 (Todd Jackson) and the state of
| Connecticut. The licensee intends notifying the NRC Resident Inspector.
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|Power Reactor

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April 4, 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)	)	ASLBP No. 00-771-01-LA

NORTHEAST NUCLEAR ENERGY COMPANY'S RESPONSE TO  
CONNECTICUT COALITION AGAINST MILLSTONE AND LONG ISLAND  
COALITION AGAINST MILLSTONE'S FIRST SET OF INTERROGATORIES

Northeast Nuclear Energy Company ("NNECO") hereby files an initial response to the Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone's ("CAM") (collectively, "Intervenors") "First Set of Interrogatories and Requests for Production" ("Intervenors' First Discovery Requests"), a facsimile of which was served on NNECO on March 21, 2000. This initial response is directed to the Intervenors' interrogatories and is filed within 14 days of service, consistent with 10 CFR § 2.740b(b). NNECO will separately respond to Intervenors' document production requests in accordance with the schedule set forth in 10 CFR § 2.741(d).

I. GENERAL OBJECTIONS

These general objections apply throughout NNECO's responses to Intervenors' First Discovery Requests.

A. NNECO objects to Intervenors' interrogatories to the extent that they request discovery of information or documents protected under the attorney-client privilege, the

All fresh and spent fuel is handled as special nuclear material ("SNM"). When Millstone Station receives SNM, the applicable Unit maintains control over it and tracks its movement until it is shipped off site. The organization with primary responsibility for planning and implementing actual fuel movements for each Unit is the Reactor Engineering department in the Plant Engineering organization. Upon arrival of SNM on site, Reactor Engineering personnel (or designees) perform initial inspection and receipt, and Reactor Engineering assumes responsibility for controlling and maintaining material status of the SNM at all times.

Other organizations support Reactor Engineering in implementing and tracking the movement of fuel. Qualified Operations or vendor personnel under the direction of Reactor Engineering perform actual fuel movements. Health Physics personnel conduct associated radiological surveys and monitoring. Operations personnel operate the spent fuel pool. Maintenance of the required equipment and facilities is planned and performed by the Maintenance organization, or by contract under the direction of Reactor Engineering. Procedures are developed and maintained by the Procedures group of the Station Director's organization. Analysis to support fuel management and spent fuel pool criticality control is provided by the Nuclear Fuels branch of the Nuclear Engineering department. Independent quality assurance for all these activities is provided by the Nuclear Oversight organization.

F. Errors

Interrogatory No. F - 1: Please identify all instances of errors (at Millstone or other nuclear plants) in managing, moving, placing or tracking fresh or spent fuel and all documents pertinent thereto.

NNECO's Response: NNECO objects to Interrogatory No. F - 1 to the extent it asks to identify errors at "other nuclear plants" for the reasons explained in General Objection B.

With regard to Millstone, the following events have been identified as responsive to this request. NNECO does not concede, however, that these matters are relevant to the license amendment application at issue.

<i>DATE</i>	<i>UNIT</i>	<i>DESCRIPTION</i>
1/17/97	1	Determined that a spent fuel assembly in the spent fuel storage pool was not fully seated in the storage rack
1/14/97	1	Determined that an irradiated fuel assembly, stored in a damaged fuel container in a control rod storage rack, may have been an unanalyzed configuration
10/3/96	1	Determined that a spent fuel assembly in the spent fuel storage pool was not fully seated in the storage rack
3/6/96	1	Determined that new fuel assemblies moved over irradiated fuel assemblies in the spent fuel storage pool
11/14/95	1	A fuel assembly was placed in the spent fuel storage pool in the wrong orientation
10/12/95	2	A fuel assembly was moved to an incorrect location in the spent fuel storage pool and lowered until it came in contact with an assembly already placed in that location
4/26/95	3	While transferring fuel in the spent fuel storage pool, the crane operator inadvertently brought an assembly to the wrong location; the error was detected before the assembly was lowered
4/27/94	3	A fuel assembly was moved from one location in the spent fuel storage pool to an incorrect location and lowered until it came in contact with an assembly already placed in that location
6/12/87	1	A fuel assembly in the reactor core was found to be 90 degrees out of the proper orientation
3/18/85	2	A fuel assembly was lowered into contact with another assembly located in the fuel upender
9/18/74	1	Drop of unchanneled fuel assembly from main fuel grapple to spent fuel storage pool floor

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of: : Docket No. 50-423-LA-3  
:  
Northeast Nuclear Energy :  
Company :  
:  
Millstone Nuclear Power :  
Station, Unit No. 3 : MAY 11, 2000

DEPOSITION OF MICHAEL C. JENSEN

CERTIFIED  
COPY

Kathryn Orofino  
Shea & Driscoll, LLC  
Court Reporting Associates  
16 Seabreeze Drive  
Waterford, Connecticut 06385

1 Q And how long has -- and could you spell her  
2 name please, Kathy.

3 A Emmons.

4 Q Emmons?

5 A E-M-M-O-N-S.

6 Q How long has she been at Millstone?

7 A I couldn't say with any accuracy, but it's in  
8 the neighborhood of six or seven years.

9 Q Do you know what her qualifications are  
10 professionally?

11 A I -- I can find out precisely. I know she  
12 has a bachelor's degree and a master's degree, I  
13 believe it's in -- the master's degree is in safety.  
14 She has 23 years of experience, all of it with  
15 Northeast Utilities, the bulk of that being with  
16 Connecticut Yankee, where she was an operations  
17 technician, and she was a reactor engineering  
18 technician for Connecticut Yankee prior to coming over  
19 to Millstone.

20 Q And that was six or seven years ago?

21 A Yes, it was.

22 Q Now, there is a description here of 11  
23 events in response to Interrogatory F-1?

24 A Yes.

25 Q And who compiled this list?

1 A I believe the attorneys compiled it.

2 Q From what information?

3 A From the information supplied by Kathy Emmons  
4 and others.

5 Q Who are the others?

6 A I don't know.

7 Q Did you provide any of the information?

8 A Directly, no.

9 Q Did you attempt to retrieve any of the  
10 information in response to this interrogatory?

11 A What do you mean by "retrieve"?

12 Q Go into some kind of a record repository --

13 A No.

14 Q -- database.

15 A No, that was Kathy's job. That was her  
16 assignment. I did review the list.

17 Q Now, do you know where she obtained -- where  
18 she was able to locate these documents?

19 A I do not know the exact method that she used  
20 to search out these documents, no.

21 Q What is your best understanding of where she  
22 went to retrieve these documents?

23 A Well, there's several databases that she  
24 could interrogate. There is a program called LIST,  
25 which is Licensing -- I forget what the I stands for --