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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

DOMINION NUCLEAR CONNECTICUT, INC.<sup>1</sup>

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

Docket No. 50-423-LA-3

ASLBP No. 00-771-01-LA-R

May 10, 2001

MEMORANDUM AND ORDER  
(CCAM/CAM Motion for Reconsideration of LBP-01-1)

Pending before this Atomic Safety and Licensing Board is the motion of the Intervenors, the Connecticut Coalition Against Millstone (CCAM) and the Long Island Coalition Against Millstone (CAM) (collectively referenced as CCAM/CAM) to reconsider our order in LBP-01-1, 53 NRC 75 (2001), that denied their request to reopen the record. For reasons set forth below, we are granting CCAM/CAM's motion and reopening the record.

1. Background. This proceeding involves an application to increase the capacity of the spent fuel pool (SFP) of the Millstone Nuclear Power Station, Unit No. 3 (Millstone-3). Based on the Licensee's election, it is subject to the hybrid hearing procedures of 10 C.F.R. Part 2, Subpart K. See LBP-00-26, 52 NRC 181, 184 (2000).

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<sup>1</sup>Effective March 31, 2001, Dominion Nuclear Connecticut, Inc. (DNC) became the operating licensee for Millstone Unit 3, in place of Northeast Nuclear Energy Company (NNECO). See letter from David A. Repka, Esq., counsel for both NNECO and DNC, to Licensing Board (Apr. 6, 2001).

Three contentions were previously admitted into controversy in this proceeding, one of which (Contention 4) concerned whether the then-licensee, Northeast Nuclear Energy Company (NNECO)(currently DNC—see n.1 supra) was able or willing to carry out administrative controls for the SFP adequately. On October 26, 2000, the Atomic Safety and Licensing Board issued a Memorandum and Order that, with respect to Contention 4, ruled 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.” LBP-00-26, 52 NRC at 200.

Thereafter, on December 18, 2000, CCAM/CAM filed a motion to reopen the record on Contention 4, based on newly developing information. In the Licensing Board’s January 17, 2001 Memorandum and Order (Denying Motion to Reopen Record on Contention 4), LBP-01-1, 53 NRC 75 (2001), this Board determined that the motion to reopen the record should be denied for failure of CCAM/CAM to demonstrate that the new information they proffered would cause us to reach a result different from that reached in LBP-00-26.

The new information consisted of recent matters of public record, stemming from NNECO’s [DNC’s] decommissioning of Millstone-1, concerning NNECO’s report that it could not confirm the location of two fuel pins (or rods) at the Millstone Unit 1 (Millstone-1) SFP. On January 16, 2001, NNECO provided the Licensing Board and parties with copies of the Unit 1 Licensee Event Report (LER) 2000-02-00, filed (by NNECO with the Staff) on January 11, 2001.<sup>2</sup> The LER stated that the two irradiated fuel rods are from a fuel assembly that was disassembled in 1972 for inspection, that the two rods were displaced during the re-assembly of the assembly, that in 1979 and

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<sup>2</sup>The LER itself was dated “01/15/2001.”

1980 the displaced rods were physically verified to be stored in a canister in the Millstone-1 SFP, that the rods and canister are no longer in the SFP location documented in 1979-80, and that “[r]ecords retrieved to date do not document their relocation or disposition.” LER at 1.

The LER goes on to hypothesize that the rods either remained stored in the SFP or were shipped in a shielded cask to a facility licensed to accept radioactive material. It states that NNECO had established a response team to investigate the location of the fuel rods, that several named actions had been completed, and that the investigation is ongoing. Id. at 3. According to CCAM/CAM, a public meeting of the Connecticut Nuclear Energy Advisory Committee (CNEAC)<sup>3</sup> to discuss work at Millstone-1 was held in Waterbury, Connecticut, on January 4, 2001 and was attended by Mr. Joseph H. Besade, a member of CCAM and one of CCAM/CAM’s declarants, At that meeting, the Decommissioning Director of Millstone-1, Bryan Ford (an employee not of NNECO (or DNC) but of Entergy Corp., the decommissioning contractor for Millstone-1), described the investigation of the fate of the missing fuel. He stated that such investigation is following two tracks: (1) an investigation of the Millstone-1 SFP itself to determine whether the pins may still be there (and in what location), and (2) a comprehensive

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<sup>3</sup>Connecticut Nuclear Energy Advisory Committee Subcommittee Meeting on Decommissioning: Millstone Proceeding (Jan. 4, 2001). The reports of events at the CNEAC meeting were based on the declaration of Joseph H. Besade, a member of CCAM who attended and videotaped the CNEAC meeting. Such declaration was attached to CCAM/CAM’s reconsideration motion. See Decl. of Joseph H. Besade in support of [CCAM/CAM] Motion for Reconsideration (Jan. 29, 2001). A copy of the videotape was included in CCAM/CAM’s motion and was served on the Board and parties. In addition, as set forth in our Memorandum (Transcript of Meeting of Connecticut Nuclear Energy Advisory Committee) dated March 16, 2001, the Licensing Board acquired an audio tape of the transcript of the January 4, 2001 CNEAC meeting and has relied on it in issuing this Memorandum and Order. Pages 7-36 of that transcript include a detailed discussion of the investigations being carried out by DNC to determine the disposition or location of the missing fuel rods.

records review of all potentially pertinent records going back over the last 20 years, to determine whether the rods were removed from the pool and shipped offsite. NNECO [DNC] indicated at the CNEAC meeting that the latter review “is going to take some time” because it involves the retrieval and review of “potentially hundreds of thousands of pages of documents for the scope of what we’re looking at.”<sup>4</sup>

In declining to reopen the record in LBP-01-1, we ruled that the loss of accountability for the fuel pins had apparently occurred as early as September 1980, long before the shutdown in 1996 and later restart in 1998 of Unit 3. We also acknowledged that, in LBP-00-26, we relied in part on affidavits to the effect that, following the Unit 3 restart, NNECO had demonstrated its ability to carry out administrative controls adequately. (The NRC Staff witnesses, James C. Linville, Jr. and Antone C. Cerne, Jr., filed updated affidavits, dated January 8, 2001, to the same effect.) See LBP-01-1, 53 NRC at 80 n.4.<sup>5</sup> In denying reopening, we pointed to the disappearance of the fuel rods as early as 1980 and the improved performance of NNECO personnel following the reactor’s restart in 1998 as demonstrating that the loss of the particular fuel rods had no bearing on NNECO’s [DNC’s] current ability or willingness to carry out administrative controls in the SFP adequately.

In LBP-01-1, however, we further noted that, on January 16, 2001, shortly before our issuance of that decision on January 17, 2001, CCAM/CAM moved for permission to respond to NNECO’s January 8, 2001 filing in opposition to the motion to reopen. We

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<sup>4</sup>Transcript of January 4, 2001 CNEAC meeting at 8.

<sup>5</sup>In particular, see Aff. of James C. Linville, Jr. in support of NRC Staff Response Opposing Intervenors’ Motion to Reopen, attached to NRC Staff Response Opposing Intervenors’ Motion to Reopen (Jan. 8, 2001); Aff. of Antone C. Cerne, Jr., in support of NRC Staff Response Opposing Intervenors’ Motion to Reopen (Jan. 8, 2001).

denied CCAM/CAM's motion, although advising CCAM/CAM of their right to file a petition for reconsideration of LBP-01-1. See LBP-01-1, 53 NRC at 81 n.6.

2. CCAM/CAM Motion. On January 29, 2001, CCAM/CAM timely filed a motion for reconsideration of LBP-01-1, which is currently before us for resolution. This motion is supported by the declarations of David A. Lochbaum and Joseph H. Besade. In this motion, CCAM/CAM reiterate their previous claim (based on reports of NNECO to the NRC that we referenced in LBP-01-1) that NNECO's inability to account for the two missing fuel rods indicates its lack of ability to carry out administrative controls successfully. CCAM/CAM also reiterate and expand upon their claim that NNECO had failed to respond adequately to discovery requests of CCAM/CAM that, if answered properly, would have revealed NNECO's uncovering of failures of administrative controls at Millstone-1, to the effect that "there were questions about the spent fuel pool configuration control" [at Millstone-1].<sup>6</sup>

Further, based upon the declaration of Mr. Besade, CCAM/CAM reference the January 4, 2001 CNEAC meeting described earlier, at which "NNECO representatives appeared to comment on the issue of the missing spent fuel rods."<sup>7</sup> CCAM/CAM claim that the NNECO representatives "reported that they still were unable to account for the missing spent fuel rods."<sup>8</sup> According to CCAM/CAM, these representatives also acknowledged that "recent mandatory inventories" of the Millstone-1 SFP had "failed to detect that two irradiated spent fuel rods could not be accounted for" and that "NNECO

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<sup>6</sup>[CCAM/CAM] Motion for Reconsideration [of LBP-01-1] (January 29, 2001) at 2 (emphasis omitted).

<sup>7</sup>CCAM/CAM Motion for Reconsideration, at 4.

<sup>8</sup>Id.

did not provide NRC with a confirmation that Unit 1 was operating in conformance with its licensing and design basis in response to the 50.54(f) confirmatory order.”<sup>9</sup>

Finally, CCAM/CAM reference the same LER that we described earlier (2000-02-00, dated January 15, 2001) (a copy of which is also attached to the declaration of David A. Lochbaum), issued by Bryan Ford, the Decommissioning Director of the Millstone-1 facility. According to CCAM/CAM, the LER states in pertinent part that “[d]uring a reconciliation and verification of the Millstone Unit 1 spent nuclear fuel records, Unit 1 personnel concluded that the location of two full-length irradiated fuel rods could not be determined, and was not properly tracked in the Special Nuclear Material (SNM) records.”<sup>10</sup>

Based on the foregoing, CCAM/CAM claim that standards for reopening the record have been satisfied and, in particular, that a materially different result would be or would have been likely had the newly proffered evidence been considered initially. CCAM/CAM specify that (1) NNECO is operating Millstone-1 outside its design basis because of a “failure of adherence to administrative controls for a period of perhaps twenty years and counting;”<sup>11</sup> (2) “material facts regarding the missing fuel rods are in dispute and should be addressed;”<sup>12</sup> (3) NNECO’s agent “has implicitly conceded that failure to adhere to administrative controls over spent fuel storage can challenge criticality margins;”<sup>13</sup> (4) “this extraordinary circumstance illustrates the folly of trading

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<sup>9</sup>Id. (emphasis supplied).

<sup>10</sup>CCAM/CAM Motion at 4 (emphasis added by CCAM/CAM, footnote omitted).

<sup>11</sup>Id. at 5.

<sup>12</sup>Id. at 6.

<sup>13</sup>Id. at 7.

physical protection for administrative controls;”<sup>14</sup> (5) the new administrative controls at Millstone-3 “require far more attention to complexity than maintaining controls to prevent spent fuel rods from leaving the spent fuel pool;”<sup>15</sup> (6) referring to the Millstone-3 restart, the “ability of NNECO [currently DNC] to adhere to administrative controls has not been assessed;”<sup>16</sup> and (7) “the Licensing Board itself should mount an investigation.”<sup>17</sup> Based on these considerations, CCAM/CAM argue that their motion for reconsideration should be granted and that a full and complete record be developed at a full evidentiary hearing on Contention 4.

3. NNECO [DNC] and Staff Responses. In responses filed on February 13, 2001, and February 20, 2001, respectively, both DNC and the Staff oppose CCAM/CAM’s motion for reconsideration of LBP-01-1.<sup>18</sup> They assert that CCAM/CAM have failed to show any error in LBP-01-1 that warrants reconsideration.

DNC initially asserts that the new information provided by CCAM/CAM in their motion for reconsideration, included in attached declarations of David Lochbaum and Joseph Besade, should have been provided with the initial motion to reopen (denied by LBP-01-1). DNC concludes this information is untimely without adequate explanation and, accordingly (along with arguments based thereon), should not be considered. We reject this claim at the outset, inasmuch as certain information discussed in the

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<sup>14</sup>Id.

<sup>15</sup>Id. at 8.

<sup>16</sup>Id.

<sup>17</sup>Id. at 9.

<sup>18</sup>[NNECO’s] Response in Opposition to Motion for Reconsideration of LBP-01-01 (February 13, 2001)[hereinafter, DNC Response]; NRC Staff Response in Opposition to Intervenor’s Motion for Reconsideration (February 20, 2001)[hereinafter Staff Response].

declarations—particularly the CNEAC meeting referenced by Mr. Besade and the LER discussed by Mr. Lochbaum—did not arise (or was not readily available) until subsequent to the date (December 18, 2000) on which CCAM/CAM filed their motion to reopen.<sup>19</sup>

For its part, the Staff maintains that motions for reconsideration are generally disfavored when premised on new arguments or evidence rather than errors in the existing record. Although there is some precedent to this effect, there also are cases that permit reconsideration based on new facts not available at the time of the decision in question and relevant to the particular issue under consideration, which clarify information previously relied on and are potentially sufficient to change the result previously reached. See, e.g., Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-17, 48 NRC 69 (1998); Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-21, 38 NRC 143 (1993); see also Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (“Motions to reconsider should be associated with requests for re-evaluation of an order in light of an elaboration upon, or refinement of, arguments previously advanced.”) Given the particular circumstances present in this case, where the new information was initially sought to be presented as part of the motion to reopen,<sup>20</sup> we reject the Staff’s request for us to deny the motion on procedural grounds and proceed to consider CCAM/CAM’s current motion for reconsideration on the

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<sup>19</sup>We note that, had CCAM/CAM waited to develop further information in support of their motion to reopen, they might have raised a question as to the motion’s timeliness under 10 C.F.R. § 2.734(a)(1). In LBP-01-1, we determined that the motion had been timely filed. See LBP-01-1, 53 NRC at 78 (2001). But see n.19, infra.

<sup>20</sup>We reiterate that, shortly prior to our ruling in LBP-01-1, CCAM/CAM advised that it wished to file additional information in support of its motion, but that we denied that request based on the circumstance that CCAM/CAM might file a motion for reconsideration, if warranted. See LBP-01-1, 53 NRC at 81 n.6.



merits—indeed, essentially as a supplemented motion to reopen.<sup>21</sup> (All parties in their filings have addressed the merits of the motion.)

On the merits, DNC claims that the Unit-1 issue remains a matter to be resolved by DNC and the NRC Staff through the normal regulatory process, and that it is a matter very distinct from Contention 4 and would not lead, or be likely to lead, to a different result in this proceeding.<sup>22</sup> DNC and the Staff each assert that CCAM/CAM's arguments are repetitious of claims previously made and rejected in LBP-01-1. DNC characterizes CCAM/CAM's claim that Unit 1 was operated outside its design basis as "premature" and not relevant to the current issue.<sup>23</sup> The Staff also deems the claim to be irrelevant to the contention.<sup>24</sup> DNC further faults CCAM/CAM for ignoring the affidavits of the NRC Staff on which we relied in LBP-01-1, to the effect that NNECO [DNC] has demonstrated--notwithstanding the Unit 1 issue--that it can carry out administrative controls.<sup>25</sup> DNC adds that, in LBP-00-26, we already found that fuel misplacements can

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<sup>21</sup>We note, additionally, that CCAM/CAM's January 29, 2001 Motion for Reconsideration would also appear to satisfy the criteria for a Motion to Reopen the Record, as set forth in 10 C.F.R. § 2.734(a): it was timely filed, given the significance of the events occurring at the January 4, 2001 CNEAC meeting, as well as the advice provided in LBP-01-1, 53 NRC at 81 n.6; it addresses a significant safety issue; and it demonstrates that a materially different result would be or would have been likely had all of the newly proffered evidence been considered initially. Further, as provided by 10 C.F.R. § 2.734(b), the motion was accompanied by affidavits or declarations. The declaration of Mr. Besade, in particular its report of the CNEAC meeting, provides significant material in our consideration of the CCAM/CAM motion.

<sup>22</sup>See DNC Response at 4.

<sup>23</sup>Id. at 5.

<sup>24</sup>NRC Response at 6.

<sup>25</sup>Id. at 5-6.

and do occur and that the Unit-1 issue, taken in its least favorable light, simply supports that assumption.<sup>26</sup>

DNC next counters arguments made in the respective declarations of Mr. Lochbaum and Mr. Besade. With respect to Mr. Lochbaum, DNC attempts to portray the “flawed logic and the lack of supporting analysis” of Mr. Lochbaum, in using the missing fuel pins as an example of their claim that the “added complexity” of administrative controls (one of the elements of Contention 4) can lead to fuel handling errors, and hence criticality in the SFP.<sup>27</sup> DNC asserts that Mr. Lochbaum does not and cannot know what caused the Unit 1 accountability failure and has provided no reasonable basis (human factors or otherwise) to equate the Unit 1 accounting procedures with the Unit 3 fuel handling procedures. The Staff presents a similar argument, attributing DNC’s performance of a criticality calculation as necessary in calculating  $K_{\text{eff}}$  rather than evidence of a potential criticality, as claimed by CCAM/CAM.<sup>28</sup> DNC and the Staff conclude that CCAM/CAM’s argument is not persuasive and certainly not a reason to reconsider LBP-01-1.<sup>29</sup> DNC repeats that, in LBP-00-26, we assumed that fuel handling errors can occur and that the potential for such errors poses no undue risk of criticality. And DNC again states that spent fuel reactivity limits have not been

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<sup>26</sup>As for CCAM/CAM’s assertion that the LER includes a determination on the risk of criticality in the event the unaccounted-for fuel pins were placed next to reactive fuel, and that this is a concession that a failure to adhere to administrative controls “can challenge criticality margins,” DNC deems such assertion to be “absurd,” inasmuch as DNC “routinely considers risks related to hypothetical hazards” (an analysis called for by the LER itself). Id. at 6-7.

<sup>27</sup>Id. at 8.

<sup>28</sup>See Staff Response at 7.

<sup>29</sup>DNC Response at 7-8; Staff Response at 8.

violated at either Unit 1 or Unit 3 and the margin-of-safety against criticality at Unit 3 has been “unequivocally demonstrated.”<sup>30</sup>

Next, DNC and the Staff each assert that, as we found earlier, the procedural issues raised by CCAM/CAM do not warrant reopening the record. DNC reiterates that it has satisfied all its discovery obligations in this proceeding. Both DNC and the Staff claim that the asserted failure of DNC to respond to a Staff request for information should not be considered a failure by DNC inasmuch as, in the circumstances, no response was required.<sup>31</sup> Further, DNC and the Staff each assert that the Licensing Board has no authority to instigate an investigation of this matter, as requested by CCAM/CAM.<sup>32</sup>

Finally, with respect to CCAM/CAM’s claim that we have placed too much reliance on the Millstone recovery period and subsequent startup, inasmuch as it was “heavily managed, supervised and supported” by the NRC Staff,” DNC states that this is an argument that could have been made earlier but was not.<sup>33</sup> In any event, DNC treats the argument as “overwhelmed” by evidence presented in the record.<sup>34</sup>

With respect to the declaration of Mr. Besade, DNC first expresses doubt as to its relevance. DNC characterizes Mr. Besade’s reference to a Millstone-1 asset schedule (as adding support to CCAM/CAM’s claims concerning reporting and

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<sup>30</sup>Id. at 9.

<sup>31</sup>See DNC Response at 11-12; Staff Response at 5-6. As set forth by both parties, a response would have been required only were Millstone-1 to be restarted.

<sup>32</sup>See DNC Response at 11-12; Staff Response at 10-11.

<sup>33</sup>DNC Response at 12.

<sup>34</sup>See id.

discovery) as misplaced. According to DNC, “[t]he schedule merely reflects NNECO’s belief regarding the contents of the Unit 1 pool, as of the date it was made . . . .”<sup>35</sup>

DNC acknowledges that, over the years, it has conducted periodic inventories. But it claims that, at the CNEAC meeting attended by Mr. Besade (a videotape of which was attached to CCAM/CAM’s motion), the Unit 1 issue was not discovered during the semiannual inventories recorded by the asset schedule but, rather, during records reviews in connection with decommissioning. DNC concludes:

While at this time it is still speculation as to precisely how the issue escaped earlier detection, we can say the periodic inventories are conducted with respect to fuel bundles shown on the [SFP] map. Those inventories would have been conducted against the current records at the time. As discussed in the LER, the two fuel pins . . . have not been shown on the [SFP] map since mid-1980. It appears, therefore, that after mid-1980, because there was no entry on the map, there was no trigger for an inventory to confirm the physical presence of the two pins. Only when the 1980 records discrepancy was identified in 2000 was further inquiry prompted.<sup>36</sup>

4. Licensing Board Analysis. We indicated earlier that, for the reasons stated, we would not base our decision on CCAM/CAM’s motion on the procedural deficiencies asserted by DNC or the Staff but, rather, on the merits. After reviewing each of the parties’ presentations, it is clear that many of CCAM/CAM’s claims have little merit in terms of reconsidering our prior decision in LBP-01-1 not to reopen the record. For example, none of the new information provided by CCAM/CAM undercuts our prior decision that there was no necessity, following the issuance of LBP-00-26, for NNECO to update its earlier responses to CCAM/CAM discovery following its determination that two fuel rods were missing. The asserted failure of NNECO [DNC] to respond to a

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<sup>35</sup>DNC Response at 13. DNC adds that the “schedule lists a fuel storage container with fuel pins. That container is in the Unit 1 [SFP]. Obviously, the two pins have not been found, at least to date, in that container.” Id. at 13 n.15.

<sup>36</sup>DNC Response at 13-14 (emphasis in original).

particular Staff Millstone-1 inquiry under 10 C.F.R. § 50.54(f) is likewise of no significance, given the lack of any requirement for a response in the particular circumstance.

Similarly, we reject CCAM/CAM's argument that we accorded undue emphasis to DNC's performance following the Millstone-3 restart. Such performance was crucial to our ruling in LBP-01-1, and it will be crucial to our ruling here inasmuch as this was the period during which Millstone-3's management restructuring was put into effect and would reflect its current ability or willingness to carry out administrative controls successfully. Further, we have no authority to initiate our own investigation. Our authority extends only to the resolution of particular issues before us.

Additionally, we also find as not persuasive the argument advanced by CCAM/CAM that, because the LER filed on January 11, 2001, includes a determination of the risk of criticality in the event the unaccounted-for fuel pins were placed next to reactive fuel, a concession has been made [by DNC] that a failure to adhere to administrative controls "can challenge criticality margins."<sup>37</sup> Whenever fissile material is moved, prudence dictates that an analysis of effects on reactivity be made. In the current instance, however, the relatively small amount of fissile material involved provides assurance that existing margins of safety will not be compromised.<sup>38</sup> Quantifying the encroachment on the margins does, of course, require a calculation. Moreover, it is not the potential criticality that imparts significance to the missing fuel rods. Rather, it is the adequacy vel non of the administrative controls needed to identify the location of those fuel rods.

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<sup>37</sup>CCAM/CAM Motion at 7.

<sup>38</sup>See Aff. of Laurence I. Kopp and Anthony C. Attard, dated January 8, 2001, at ¶ 6.

The one matter giving support--indeed, persuasive support--to CCAM/CAM's current motion is the loss of the fuel rods itself and the failure of DNC thus far, after more than four months' search, to have located the rods or accounted for their disposition. This failure in accounting for fuel stored in a SFP has caused us to reexamine our previous reliance, in substantial part, on the aforementioned affidavits of Mr. Linville and Mr. Cerne. Mr. Cerne's affidavit focused on work at Millstone-3 and ignored work at Millstone-1, which has been in the decommissioning process since 1995. As for Mr. Linville, his June 30, 2000 affidavit (updated by his January 8, 2001 affidavit) does refer to errors at Unit 1, although not, of course, to the missing fuel rods under consideration here. In reviewing operations since restart, however, Mr. Linville's affidavits include remarks solely focused on Unit 3 (inasmuch as Unit 1 did not restart). Thus, there is no information in Mr. Linville's affidavits which bears on the relationship, if any, between the errors leading to the misplacement or loss of the two fuel rods from the Millstone-1 SFP and current operations at the Unit-3 SFP. While there was no reason at the time for any of the parties to concern themselves with the record of work at Unit 1, there is now reason--based on reports concerning the CNEAC meeting and the LER itself--to look at such a record to discern, at the least, whether there is any common link either in procedures or execution of procedures between the accountability failure at Unit 1 and the present methods (or personnel) in use at Millstone-3.

Based on the record before us, the loss could credibly be attributable to a failure of the administrative controls governing accountability for fuel rods in the Millstone-1 SFP. Indeed, as emphasized by CCAM/CAM, the reference by Mr. Ford (on behalf of NNECO/DNC) at the CNEAC meeting to a periodic inventory system at Millstone-1 (CNEAC transcript (Jan. 4, 2001) at 15), together with NNECO's acknowledgment that the missing rods were only identified through the decommissioning process and not

through the inventory (id. at 48), appears to suggest a failure of the governing administrative controls at Millstone-1. In such a case, we would need to determine the extent to which the failure of administrative controls at the Millstone-1 SFP could carry over to the successful implementation of administrative controls at the Millstone-3 SFP.<sup>39</sup>

Taking into account these considerations, and in view of the significance of the loss of control over Special Nuclear Material (see 10 C.F.R. Part 74, Subpart A), we find it appropriate to grant CCAM/CAM's motion for reconsideration of LBP-01-1 at this time and to reopen the record on Contention 4, to the extent it bears upon both the adequacy of administrative controls at the Millstone-3 SFP and DNC's ability or willingness to implement such controls successfully. The scope of this reconsideration is limited to the procedures or controls for management of the SFPs and their modes of execution that may be common to Millstone-1 and Millstone-3.

Further, we solicit the parties' views on the next step to follow. We are hereby scheduling a telephone prehearing conference for Thursday, May 24, 2001, beginning at 9:30 a.m. (EDT), to consider such matters as:

(1). The procedural requirements of the reopened hearing--i.e., whether affidavits or declarations (together with oral argument), as contemplated by Subpart K, are sufficient to resolve this issue or, alternatively, whether a full evidentiary hearing (as sought by CCAM/CAM) is necessary or warranted. Further, the parties are invited to

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<sup>39</sup>There may, of course, be reasons for loss of the fuel rods that have nothing to do with the exercise of administrative controls over movement and storage of fuel in a SFP--for example, a failure to make a proper record of an off-site shipment of fuel would not constitute a failure of such type of administrative controls.

address whether further discovery may be necessary or warranted and, if so, under what standards and schedule.

(2). Should further hearing activities await the conclusion of DNC's investigation and its report on its search for the missing fuel rods?

(3). The effect of this ruling on the Board's immediate effectiveness finding. See LBP-00-26, 52 NRC at 214, Part F, ¶¶ 2 and 4. In other words, should the current authorization for DNC to use administrative controls in the Millstone-3 SFP remain in effect pending the ongoing litigation in the reopened hearing. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Unit 2), CLI-89-17, 30 NRC 105 (1989); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 784-85 (1977).

(4) Other matters that may bear on the reopened hearing.

5. Order. For the reasons set forth above, it is, this 10th day of May 2001,

ORDERED:

1. The Licensing Board hereby grants CCAM/CAM's motion for reconsideration of LBP-01-1, or alternatively its renewed motion to reopen the record on Contention 4, limited to the issue set forth above.

2. The views of all parties are invited with respect to the appropriate procedures to be followed at the reopened hearing. Such views on procedures should be filed (and furnished by e-mail) no later than Tuesday, May 22, 2001. Parties should discuss procedural options and further discovery among themselves prior to submitting their recommendations as to procedures, so that, if possible, there will be no disagreement as to procedures to be followed.

3. A telephone prehearing conference is hereby scheduled for Thursday, May 24, 2001, beginning at 9:30 a.m. EDT, to resolve any disagreements, particularly with



respect to procedures. At that time, the Board expects to prescribe procedures for the reopened hearing and to establish (if necessary) further discovery schedules.

The Atomic Safety and Licensing Board

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Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

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Dr. Richard F. Cole  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Charles N. Kelber  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 10, 2001

[Copies of this Memorandum and Order have been transmitted this date by e-mail transmission to counsel for each of the parties.]

UNITED STATES OF AMERICA  
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 (CCAM/CAM MOTION FOR RECONSIDERATION OF LBP-01-1) (LBP-01-17) 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 20555-0001	Administrative Judge Charles Bechhoefer, Chairman Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001
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Administrative Judge Richard F. Cole Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23	Administrative Judge Charles N. Kelber Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001
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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 20555-0001	Lillian M. Cuoco, Esq. Dominion Nuclear Connecticut, Inc. Millstone Nuclear Power Station Building 475/5 Rope Ferry Road (Route 156) Waterford, CT 06385
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Docket No. 50-423-LA-3  
LB MEMORANDUM AND ORDER (CCAM/CAM  
MOTION FOR RECONSIDERATION OF LBP-  
01-1) (LBP-01-17)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 10<sup>th</sup> day of May 2001