RAS 3955

February 25, 2002
DOCKETED 02/26/02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Dominion Nuclear Connecticut, Inc.	)	
	)	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 DISCOVERY REQUESTS DIRECTED TO INTERVENORS IN THE REOPENED PROCEEDING

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.740(f) and 2.740b, the NRC Staff ("Staff") hereby moves the Licensing Board to compel Intervenors Connecticut Coalition Against Millstone ("CCAM") and Long Island Coalition Against Millstone ("CAM") (collectively, "Intervenors") to provide the answers required by the NRC Staff's First Set of Discovery Requests Directed to Intervenors in the Reopened Proceeding, dated January 25, 2002.

BACKGROUND

The NRC Staff served its First Set of Discovery Requests Directed to Intervenors in the Reopened Proceeding by mail, with a copy by electronic mail, on January 25, 2002. Thus, Intervenors were required to respond by February 13, 2002, allowing the fourteen days established by 10 C.F.R. § 2.740(b) plus the five days for service by mail established by 10 C.F.R. § 2.710. The "First Set" consisted of two general interrogatories and two specific interrogatories plus requests for documents related to the answers to the four interrogatories. By these interrogatories the staff sought information regarding the persons that Intervenors expect to provide sworn affidavits or declarations for the written presentation required in this Subpart K proceeding by

10 C.F.R. § 2.1113. This written presentation is scheduled to be filed on March 18, 2002. The Staff also sought to discover the basis for Intervenors' assertion that the loss of accountability of two fuel rods at Millstone Unit 1bears on the adequacy of administrative controls currently in place at the Millstone Unit 3 spent fuel pool. (A copy of the Staff's "First Set" is attached to this motion as Exhibit 1.) As of this date, the Staff has not received answers to its interrogatories, nor has it received objections or a motion for a protective order.

ARGUMENT

The discovery sought by the Staff is appropriate and Intervenors' responses should be compelled.

The regulations pertinent to interrogatories require that each interrogatory be answered unless objected to, in which case the reasons for objection are to be stated in lieu of an answer. 10 C.F.R. § 2.740b(b). Intervenors have neither answered nor objected 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). Interrogatories may 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 . .. ." 10 C.F.R. § 2.740(b)(3). Thus, the Staff's interrogatories are proper, as they are designed to discover the names and qualifications of the expert witnesses who will provide the affidavits that Intervenors must file on March 18, 2002, as well as the subject matter of and supporting documentation for Intervenors' written filing.

Intervenors' failure to provide information on which their experts will rely improperly denies the Staff the opportunity to develop its case. *See Tenbarge v Ames Taping Tool Systems*, 190 F.3d 862, 865 (8th 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 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.

CONCLUSION

For the foregoing reasons, the Intervenors' failure to respond to Staff's interrogatories is without merit. Therefore, the Licensing Board should order Intervenors to answer the above-described requests. Because parties are scheduled to file the written presentations required by 10 C.F.R. § 2.7113 in Subpart K proceedings on March 18, 2002, some three weeks from today, the Staff requests expedited consideration of this motion.

Respectfully submitted,

/RA/
Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 25th day of February, 2002

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DOMINION NUCLEAR CONNECTICUT, INC.	)	Docket No. 50-423-LA-3
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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 DISCOVERY REQUESTS DIRECTED TO INTERVENORS IN THE REOPENED PROCEEDING" 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 deposit in the U. S. Postal Service with copies by electronic mail as indicated by a double asterisk this 25th day of February, 2002.

Charles Bechhoefer, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-Mail copy to CXB2@nrc.gov.)

Dr. Charles N. Kelber*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-Mail copy to CNK@nrc.gov)

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-Mail copy to RFC1@nrc.gov)

Office of the Secretary*
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-Mail copy to HEARINGDOCKET@nrc.gov)

Office of the Commission Appellate Adjudication
Mail Stop: O 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Atomic Safety and Licensing Board Panel
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lillian M. Cuoco, Esq.**
Northeast Utilities Service Co.
107 Selden Street
Berlin, CT 06037
(E-Mail copy to cuocolm@nu.com)

David A. Repka, Esq. **
Winston & Strawn
1400 L. Street, N.W.
Washington, DC 20005-3502
(E-Mail copy to drepka@winston.com)

Nancy Burton, Esq.**
147 Cross Highway
Redding Ridge, CT 06876
(E-Mail copy to nancyburtonesq@hotmail.com

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-Mail copy to dcurran@harmoncurran.com)

/RA/

Ann P. Hodgdon
Counsel for NRC Staff