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February 26, 1993

USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
NORTHEAST NUCLEAR ENERGY CO.	)	Docket No. 50-336-OLA
	)	(Spent Fuel Pool Design)
(Millstone Nuclear Power Station,	)	
Unit No. 2)	)	

NORTHEAST NUCLEAR ENERGY COMPANY'S  
MOTION TO COMPEL DISCOVERY  
FROM COOPERATIVE CITIZENS MONITORING NETWORK

I. INTRODUCTION

Pursuant to 10 C.F.R. 2.740(f), Northeast Nuclear Energy Company ("NNECO") moves that the Atomic Safety and Licensing Board ("Licensing Board") enter an Order compelling the Cooperative Citizens Monitoring Network ("CCMN") to answer "Northeast Nuclear Energy Company's Interrogatories and Requests for Production of Documents," served on December 18, 1992 ("NNECO's Discovery"). CCMN mailed a response to NNECO's Discovery on February 11, 1993 -- but the response is completely inadequate.

II. BACKGROUND

In its November 24, 1992, Memorandum and Order (Following Prehearing Conference), the Licensing Board set the schedule for

discovery in this proceeding to be as follows: Discovery begins December 4, 1992; parties must file discovery requests no later than December 18, 1992; responses to uncontested discovery requests are due on or before January 21, 1993; and objections to discovery are to be filed by January 12, 1993.

NNECO served its discovery requests on CCMN on December 18, 1992. Regarding CCMN's response to NNECO's Discovery, a series of delays ensued, leading to a response from CCMN ultimately received by NNECO's counsel on February 19, 1993. In the time between the original due date and the eventual, inadequate response, several informal discussions took place between CCMN, as represented by Ms. Mary Ellen Marucci, and NNECO's counsel. These discussions were documented in a February 9, 1993, letter from NNECO's counsel to the Licensing Board.

In sum, by January 21, CCMN requested of the parties an extension of time to file answers until February 1. NNECO agreed, and we understand counsel for the NRC staff also agreed. CCMN indicated that it would notify the Licensing Board of its need for more time and of the parties' agreement. NNECO has no indication that this was ever done. Then, CCMN did not meet the February 1 date. In a subsequent conversation, CCMN notified NNECO that it expected to respond imminently, either late during the week of February 1 or early during the week of February 8. CCMN also noted that it would not respond to some interrogatories in favor

of having Dr. Kaku respond during his scheduled deposition. NNECO accepted this new schedule. Subsequently, on February 8, with no response in hand, NNECO agreed in a conversation with Ms. Marucci to allow CCMN until February 12 to respond. During that conversation, CCMN agreed to waive any argument regarding timeliness of a motion to compel, if such a motion by NNECO subsequently became necessary. Counsel for NNECO documented these developments in the February 9 letter to the Licensing Board.

On February 19, 1993, counsel received CCMN's response, dated February 11, 1993, to NNECO's discovery request. The response purports to be a general response to the discovery requests of both NNECO and the NRC Staff. However, the response, in actuality, does no more than turn over documents largely previously available to NNECO, and several of which were actually provided to CCMN by NNECO. It makes no attempt to respond to the specific interrogatories and document requests set forth in NNECO's Discovery, nor does it distinguish between NNECO's Discovery and the NRC Staff's separate discovery requests. The response implies that it is not a "final response". However, NNECO is not aware of any further requests for an extension of time by CCMN. Likewise, NNECO is not aware of any informal objections or formal objections being filed by CCMN.

### III. DISCUSSION

Under the Commission's regulations, 10 C.F.R. §§ 2.740, 2.740b, and 2.741, parties submitting interrogatories and requests for production of documents are entitled to answers or objections within fourteen days after service. In this case, the responses were due in accordance with the schedule established by the Licensing Board. NNECO served CCMN with its discovery request on December 18, 1992, and informally agreed to liberal extensions of time until February 12. CCMN failed on multiple occasions either to object or respond within this liberal time period. CCMN has likewise never followed through with its stated intent to notify the Licensing Board of its need for more time or of NNECO's prior agreements to allow more time.

CCMN's ultimate response, dated February 11, 1993, is woefully inadequate. It makes no attempt to respond to relevant inquiries, and falls far short of providing the bases for CCMN's assertions in this proceeding.

NNECO's Discovery included several general and specific interrogatories and requests for documents, accompanied by instructions (reflecting the requirements of 10 C.F.R. § 2.740(b)) that "[e]ach interrogatory should be answered separately. . . . Each interrogatory shall be answered fully, in writing, under oath or affirmation." CCMN's February 11 response included fifteen documents, ten of which had been sent to Ms. Marucci or CCMN by

NNECO, its affiliates, or counsel. CCMN did not answer or object to NNECO's interrogatories, many of which relate to the bases for CCMN's contention, and which are necessary for NNECO to ascertain the facts, refine the issues, and prepare adequately for a more expeditious hearing. (Ms. Marucci did inform NNECO that only she and Dr. Kaku would appear as witnesses at the hearing. This responds to NNECO's Discovery for identification of witnesses.) CCMN's February 11 response provided essentially no information responsive to NNECO's discovery requests. NNECO is entitled to obtain discovery concerning the bases of CCMN's contentions, and CCMN must furnish such information promptly. See Commonwealth Edison Company (Byron Station, Units 1 and 2), LBP-81-30A, 14 NRC 364, 369 (1981).

CCMN's tardiness in this proceeding has been a chronic cause of delay, as documented, for example, in the Licensing Board's September 17, 1992, Memorandum and Order (Imposing Sanctions upon CCMN and Striking Petitions), LBP-92-26. The Licensing Board there noted CCMN's pattern of repeatedly failing to comply with NRC regulations and with the Licensing Board's directives pertaining to the filing and service of pleadings. The pattern was again chronicled in the Licensing Board's December 28, 1992, denial of CCMN's December 20, 1992, "Motion to Reconsider Order for Discovery Schedule and Further Hearing Preparation." The Licensing Board denied CCMN's motion for being late without good

cause, and for being filed in the slowest manner, without indication that NRC Staff or Licensee were consulted.

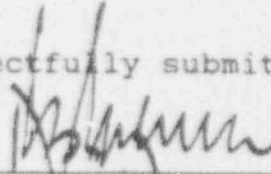
NNECO is, quite obviously, entitled to responses to discovery requests within a reasonable time. NNECO still plans to depose Dr. Kaku (at NNECO's own expense) and will have that opportunity to discover information relevant to CCMN's case. Nonetheless, the deposition does not relieve CCMN of its obligation to respond fully to other proper discovery. For these reasons, NNECO moves the Licensing Board to Order CCMN to respond to NNECO's Discovery on an expedited basis.

#### IV. CONCLUSION

For the above reasons, NNECO respectfully requests that the Licensing Board issue an Order compelling CCMN to respond to NNECO's Discovery. NNECO also requests that the Licensing Board again remind CCMN of its obligations in this proceeding and

provide clear warning of sanctions that may follow for future breaches.

Respectfully submitted,



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Dated at Washington, D.C.,  
this 26th day of February, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Millstone Nuclear Power Station )  
Unit No. 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NORTHEAST NUCLEAR ENERGY COMPANY'S  
MOTION TO COMPEL DISCOVERY FROM COOPERATIVE CITIZENS MONITORING NETWORK"  
have been served on the following by deposit in the United States Mail,  
first class, this 26th day of February, 1993:

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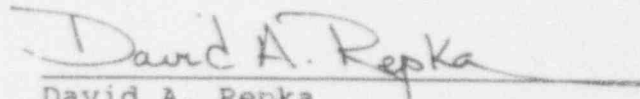
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