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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ivan W. Smith, Chairman  
Dr. Charles N. Kelber  
Dr. Jerry R. Kline

SERVED MAR 26 1993

In the Matter of

NORTHEAST NUCLEAR ENERGY  
COMPANY

(Millstone Nuclear Power  
Station, Unit No. 2)

Docket Nos. 50-336-OLA  
FOL No. DPR-65  
(ASLBP No. 92-665-02-OLA)  
(Spent Fuel Pool Design)

March 25, 1993

MEMORANDUM AND ORDER  
(Denying Staff Motion to Compel Discovery)

Background

The Board has before it the third motion by the NRC Staff to compel discovery of Cooperative Citizen's Monitoring Network (CCMN).<sup>1</sup> In our order of March 15, 1993, the Board granted the first two motions as well as a similar motion by Northeast Nuclear Energy Company (NNECO). We have since been informed that on March 11, 1993 CCMN filed a response to the Staff's discovery requests. CCMN's response was not served upon the Board although the attached certificate of service states that the chairman had been

<sup>1</sup>NRC Staff Motion to Compel Discovery, March 24, 1993.

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served. We did not learn of CCMN's March 11 response until we received the NRC Staff's March 24 motion to compel. In that motion the Staff asserts that the March 11 response still fails to answer fully the Staff's interrogatories. Accordingly, the Staff seeks another order directing CCMN to respond.

#### Discussion

The Board has on many occasions during this proceeding cautioned CCMN's representative that its filings must be on time and must in each instance be served upon the parties and the Board. CCMN's response was very late without any explanation, and as we stated above, it was not served upon the Board.<sup>2</sup>

If the Board were to grant the Staff's present motion, CCMN would be granted an additional and potentially disruptive opportunity to comply with or disregard the discovery rules and orders. Instead, we reject CCMN's March 11 filing as being late without good cause and because CCMN failed to serve it properly. Therefore the Staff's March 24 motion to compel discovery is denied as moot.

Our order of March 15 compelling CCMN to respond to the Staff and NNECO's discovery requests still stands. In accordance with the terms of that order, CCMN must respond

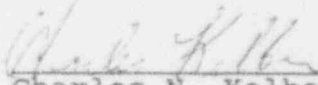
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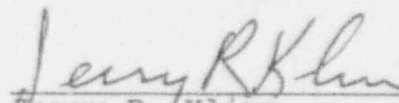
<sup>2</sup>Counsel for NNECO provided a copy of CCMN's March 11 filing to the Board.

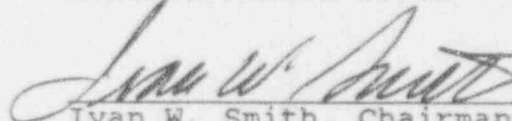
and any failure to respond fully may be subject to sanctions as discussed in that order.

We express no opinion as to the quality of CCMN's March 11 response to the Staff's discovery. CCMN may, if it chooses, file a new response, resubmit the March 11 response, or supplement the March 11 response. CCMN would be well advised to consider carefully the Staff's March 24 motion to compel. CCMN's response in accordance with the Board order of March 15 is due on March 31, 1993. A copy of this order will be mailed to CCMN by Express Mail today.

ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles N. Kelber  
ADMINISTRATIVE JUDGE

  
Jerry R. Kline  
ADMINISTRATIVE JUDGE

  
Ivan W. Smith, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

March 25, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTHEAST NUCLEAR ENERGY COMPANY

(Millstone Nuclear Power Station,  
Unit No. 2)

Docket No.(s) 50-336-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O DENYING STAFF MOTION... have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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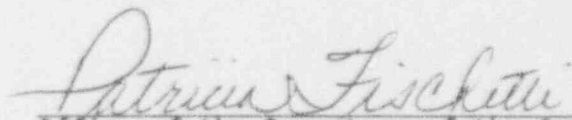
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Dated at Pockville, Md. this  
26 day of March 1993

  
Office of the Secretary of the Commission