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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

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

SERVED DEC 29 1992

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)

December 28, 1992

MEMORANDUM AND ORDER
(Denying CCMN's Motion
to Reconsider Discovery Schedule)

In our unpublished Memorandum and Order of November 24, 1992, we set January 21, 1993 as the date for filing responses to uncontested discovery requests filed no later than December 18, 1992. We noted that the discovery schedule established in that order captured the essence of CCMN's respective proposal and that all parties had agreed to the discovery schedule concept. Id. at 6 n.3.

By motion dated December 20, 1992, CCMN requested the Board to reconsider its November 24 scheduling order and to direct the parties to "submit answers to December 8 [sic - should be December 5], 1992 uncontested discovery requests no later than January 5, 1993."¹ CCMN explains that its expert, Dr. Kaku, is available to review answers to CCMN's discovery requests only between January 5 and 9, 1993.

CCMN's motion to reconsider is denied for the following reasons:

1. The motion appears to be late without good cause. CCMN does not allege any recent change in circumstances to justify a very late compression of the discovery schedule. CCMN should have moved for reconsideration of our November 24 order by the fastest means possible (FAX, express mail, or telephone) immediately following that order or as soon as it learned that Dr. Kaku could not review answers to discovery requests following the January 21, 1993 due date.

2. The request is unreasonable; the relief sought is impracticable. CCMN's motion was filed in the slowest manner (first class mail) without any indication that the NRC Staff and Licensee were consulted. Assuming for argument that CCMN's motion for reconsideration could have

¹On December 16, 1992, CCMN filed a continuation of its December 5 discovery requests. Answers to these requests presumably would fall within the ambit of Dr. Kaku's review. However, CCMN does not refer to the December 16 filing in the instant motion. Nevertheless we include it in our request to the Staff and Licensee below.

been granted instantly by the Board on December 23 (the day it was received by the Board Chairman),² there would be only six business days available to the other parties to respond to CCMN's discovery requests. This assumes even further that the Board could have instantly communicated its ruling to the other parties who, in turn, just happened to be already prepared to meet the unexpected new deadline.

3. CCMN's discovery requests are very broad and technical. The Staff and Licensee may need at least until January 21, 1993 to identify which discovery requests should be answered and which will be resisted by objections and then to prepare answers.

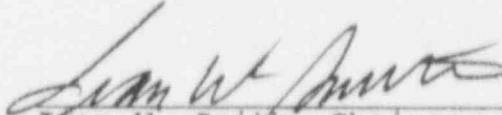
For the reasons stated above, the Board denies the substance of CCMN's motion for reconsideration. However, we take note of the problem respecting Dr. Kaku's availability. We request the NRC Staff and the Licensee, in the spirit of accommodation, to send to Dr. Kaku any substantive answers to CCMN's discovery requests (December 5 and 16, 1992) for his review between January 5 and 9, 1993, if such information is ready for sending. In other words, the Board requests the Staff and Licensee to forgo any perceived litigation advantage and mere convenience by waiting until

²Answers to CCMN's motion would not have been due until January 4, 1993 (by Licensee) and January 11, 1993 (by NRC Staff). The Board has explained to CCMN's representative several times that CCMN's pleadings must take into account the right of other parties to answer.

the January 21 filing deadline. In the long run, Dr. Kaku's careful consideration of the factual issues may simplify and shorten the proceeding.

It is so ordered.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Ivan W. Smith, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

December 28, 1992

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NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTHEAST NUCLEAR ENERGY COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (DENYING CCMN'S 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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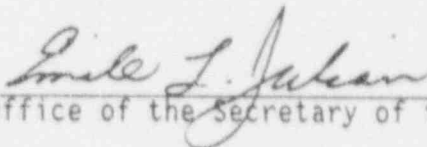
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Dated at Rockville, Md. this
29 day of December 1992


Office of the Secretary of the Commission