

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/21/00

COMMISSIONERS:

SERVED 12/21/00

Richard A. Meserve, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

Docket No. 50-423-LA-3

In the Matter of)
)
NORTHEAST NUCLEAR ENERGY)
COMPANY)
)
(Millstone Nuclear Power Station, Unit No. 3;)
Facility Operating License NPF-49))
_____)

CLI-00-25

MEMORANDUM AND ORDER

Northeast Nuclear Energy Company ("NNECO") is seeking a license amendment to increase the storage capacity of its spent fuel pool from 756 assemblies to 1860 assemblies. The Connecticut Coalition Against Millstone ("CCAM") and the Long Island Coalition Against Millstone ("CAM") (collectively, "CCAM/CAM") oppose the requested amendment. CCAM and CAM were granted standing as intervenors and three of their contentions were admitted in a proceeding under 10 C.F.R. Part 2, Subpart K (10 C.F.R. §§ 2.1101-2.1117).⁽¹⁾ On October 26, 2000, the Licensing Board issued a Memorandum and Order that adopted an agreed upon license condition, denied the request for an evidentiary hearing on other issues, and terminated the proceeding. See LBP-00-26, 52 NRC ____.

The Board ruled that there was no genuine dispute of fact or law meriting an evidentiary hearing regarding CCAM/CAM's Contention 4, relating to the risk of criticality accidents because of increased reliance on controls CCAM/CAM deems administrative rather than physical. The Board also denied an evidentiary hearing as to Contention 6, a legal question relating to the use of administrative controls to prevent criticality in the spent fuel pool. CCAM/CAM has filed a joint petition for Commission review of LBP-00-26 concerning contentions 4 and 6. They do not seek review of the Board's decision, stemming from the third admitted contention, to adopt an agreed-upon license condition.⁽²⁾ Both NNECO and the NRC staff oppose the petition for review.

On December 18, 2000, CCAM/CAM filed a motion to stay appellate proceedings and a motion to reopen the record, based on recent reports of two fuel rods allegedly missing at NNECO's Millstone Unit No. 1. CCAM/CAM seeks primarily to develop the record further as to Contention 4. Notwithstanding the Board's termination of proceedings before it,⁽³⁾ we expressly remand the motion to reopen to the Board for its consideration in the first instance, given the Board's greater familiarity with the record in this case.⁽⁴⁾ We will await responses to the motion for a stay of appellate proceedings before acting on that motion.

For the foregoing reasons, the Commission *remands* CCAM/CAM's motion to reopen to the Licensing Board for disposition.

IT IS SO ORDERED.

For the Commission

[Original signed by
Annette L. Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of December, 2000.

1. See Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), LBP-00-02, 51 NRC 25 (2000). The Board admitted Contentions 4, 5, and 6 -- all dealing with criticality questions -- and rejected eight other contentions.
2. The agreed-upon license condition provides that soluble boron concentration in the spent fuel pool be maintained at greater than or equal to 800 ppm whenever fuel assemblies are present. In addition, verification of the boron concentration is required every seven days. See LBP-00-26, 52 NRC at ___, slip op. at 27.
3. The Board lacks jurisdiction to consider a motion to reopen after a petition to review a final order has been filed. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755 (1983); cf. Curators of the University of Missouri (TRUMP-S Project), CLI-95-1, 41 NRC 71, 93-94 (1995). Although CCAM/CAM improperly filed its motion to reopen with the Board, we will treat the motion as though it had been correctly filed with the Commission.
4. Regarding responses to the motion to reopen, the parties shall meet the filing schedule set by the Board in its December 19, 2000 order; however, they need not address the jurisdiction issue, which is resolved, supra.