

January 8, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NORTHEAST NUCLEAR
ENERGY COMPANY

(Millstone Nuclear Power Station,
Unit No. 3)

)
)
)
)
)
)
)

Docket No. 50-423-LA-3

NRC STAFF RESPONSE OPPOSING
INTERVENORS' MOTION TO REOPEN

INTRODUCTION

On December 18, 2000, Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone (collectively "Intervenors") filed with the Licensing Board a Motion to Reopen and Vacate Decision, by which they seek to reopen the proceedings for development of the record with regard to the disclosure during the week of November 24, 2000, by the licensee, Northeast Nuclear Energy Company ("NNECO"), that it could not confirm the location of two fuel rods at the Millstone Unit 1 spent fuel pool. For the reasons discussed below, the NRC staff ("Staff") opposes the motion.

BACKGROUND

On March 19, 1999, NNECO submitted a license amendment application by which it sought to increase the storage capacity of its spent fuel pool at Millstone Unit 3 by adding racks. On February 9, 2000, the Licensing Board issued a Prehearing Conference Order, LBP-00-02, 51 NRC 25, in which it found that Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone had standing to intervene in a proceeding on that application, and it admitted three of their contentions for litigation, Contentions 4, 5 and 6. On February 22, 2000, NNECO invoked the

hearing procedures of 10 C.F.R. Part 2, Subpart K, in accordance with the Commission's regulations in 10 C.F.R. § 2.1109(a). On July 19-20, 2000, after the submission by the parties of written summaries, the Board heard oral argument on Contention 4 and Contention 6, the other admitted contention, Contention 5, having been settled. On October 26, 2000, the Licensing Board issued LBP-00-26, a Memorandum and Order denying the request of Intervenor for an evidentiary hearing based on the Board's determination that there was no genuine and substantial dispute of fact to be resolved in an evidentiary hearing and terminating the proceeding. LBP-00-26, 52 NRC 181, 197 (2000)

On November 13, 2000, Intervenor filed a petition seeking Commission review of LBP-00-26; on November 22, 2000, both NNECO and the Staff filed responses opposing the petition.¹

As stated above, on December 18, 2000, Intervenor filed before the Licensing Board a Motion to Reopen and Vacate Decision. On December 19, 2000, Intervenor filed before the Commission a Motion for Stay, in which they requested the Commission to stay its consideration of their petition for review of the Licensing Board's decision in LBP-00-26 pending the Licensing Board's action on their Motion to Reopen before the Licensing Board.

On December 19, 2000, NNECO filed a response opposing the Motion for Stay. Also on December 19, 2000, the Licensing Board issued an order scheduling responses to Intervenor's Motion to Reopen, indicating that responses should address the Board's jurisdiction.

On December 20, 2000, the Commission issued an order extending the time for its action on Intervenor's petition for review until January 31, 2001, and, on December 21, 2000, it issued a

¹ Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone Petition for Review of LBP-00-26, November 13, 2000; Northeast Nuclear Energy Company's Answer Opposing the Petition for Review of LBP-00-26, November 22, 2000; NRC Staff Response in Opposition to Petition for Review of LBP-00-26, November 22, 2000.

Memorandum and Order, CLI-00-25, remanding the Motion to Reopen to the Licensing Board, indicating that it would await responses to the Motion for Stay before ruling on that motion.

On December 28, 2000, the NRC Staff filed a response to Intervenor's Motion for Stay.²

The Commission has not yet ruled on the Motion for Stay.

DISCUSSION

I. The Motion Does Not Satisfy the Commission's Requirements for Motions to Reopen.

The Commission's regulations concerning motions to reopen are set forth in 10 C.F.R.

§ 2.734, which states, in pertinent part, as follows:

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

- (1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
- (2) The motion must address a significant safety or environmental issue.
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards set forth in § 2.743(c). Each of the criteria must be separately addressed, with a specific explanation of why it has been met. Where multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

A. The Motion Was Timely Filed.

Intervenor's state that they seek to reopen the proceedings for further development of the record with regard to the disclosure by the Licensee, NNECO, to the NRC during the week of

² NRC Staff Response to Intervenor's Motion for Stay, December 28, 2000.

November 24, 2000, that it could not confirm the location of two fuel rods at the Millstone Unit 1 spent fuel pool, a disclosure that was made public by the NRC in the NRC Weekly Information Report for the week ending November 24, 2000. Motion at 1. Intervenor further state that they were not aware of this situation until they learned of it through this public disclosure. Motion at 2. Intervenor state that their motion is not untimely. The Staff agrees that Intervenor's motion was timely filed.

B. Intervenor Do Not Address the Safety or Environmental Issue Raised by the New Information, Nor Do They Argue the Significance of That Information.

Intervenor have not addressed or met the requirements of 10 C.F.R. § 2.734 regarding motions to reopen. They have not argued the significance of any safety or environmental issue they believe to be raised by the new information. As discussed below, the matter has no significance in regard to the potential for criticality. Also, as discussed below, Intervenor's Contention 4 concerns criticality in the Millstone Unit 3 spent fuel pool and alleges that the administrative controls required to implement the amendment trade reliance on physical protection for administrative controls to an extent that poses an undue and unnecessary risk of a criticality accident. LBP-00-26, 52 NRC at 190.

Intervenor have not satisfied 10 C.F.R. § 2.734(a)(2) concerning the significance of the new material on which they seek reopening, inasmuch as they have made no showing as to the significance of that information.

C. The Motion Fails To Show That a Materially Different Result Would Have Been Reached Had the Material Been Considered Initially.

1. The Analysis Addressed in the Affidavit of Dr. Laurence I. Kopp and Dr. Anthony C. Attard, Filed on June 30, 2000, Bounds Any Criticality Concerns Raised by the New Information.

Intervenor state that it is their position that had the Licensing Board been made aware that NNECO was unable to account for two highly radioactive spent fuel rods at Millstone Unit 1, the Board would not have been able to make the finding that NNECO had demonstrated that it could

adhere to administrative controls, with adequate safety margin and defense-in-depth, without posing an undue and unnecessary risk to plant workers or the public. Motion at 3. In support of this position, they merely assert that the fact that the two fuel rods cannot be accounted for is clearly material to these proceedings. *Id.* However, they fail to demonstrate that a materially different result would have been likely had the new information been considered; they merely assert that this is so.

As Dr. Laurence I. Kopp and Dr. Anthony C. Attard state in their affidavit, which is attached to this response, consideration of this new information does not change the conclusions set forth in their affidavit in support of the Staff's Brief and Summary filed in this proceeding on June 30, 2000. That affidavit addresses the misloading of a fresh fuel assembly in the Millstone Unit 3 spent fuel pool. They state that, as part of the NRC review of the NNECO amendment request to establish three regions (Regions 1,2, and 3) for fuel storage in the spent fuel pool, the Staff reviewed the Holtec Report, which presented the criticality evaluation for the misloading of a fresh fuel assembly in the Millstone Unit 3 spent fuel pool. Kopp/Attard Affidavit, June 30, 2000, ¶ 25. They further state that, based on the analysis described in the Holtec Report, NNECO determined that a soluble boron content of only 425 ppm would be sufficient to maintain a 5% subcriticality margin in the event of a fuel assembly misloading event (i.e., a fresh PWR assembly enriched to 5 weight-percent U-235 inadvertently loaded into an empty cell in Region 3 with the remainder of the rack fully loaded with fuel of the highest permissible reactivity) and that the Millstone Unit 3 spent fuel pool will be maintained with 800 ppm soluble boron. *Id.* Based on their experience in evaluating the criticality safety of spent fuel pools, Dr. Kopp and Dr. Attard found the methods of calculation and assumptions acceptable. *Id.* Thus, Dr. Kopp and Dr. Attard state in their affidavit in support of this response that their consideration of the misloading of an assembly of the highest reactivity bounds any criticality concern posed by the hypothetical presence of two BWR fuel rods in the Millstone Unit 3 spent fuel pool. Kopp/Attard Affidavit, ¶ 6. Two fuel rods constitute a very

small fraction of an assembly. *Id.* Further, the two fuel rods in question are less reactive than any fuel in the Millstone Unit 3 pool. *Id.*

Had the Board considered the risk of criticality raised by the two fuel rods, its conclusion would not have been different from the conclusion it reached without considering this matter.

2. The New Information Does Not Change the Conclusions of James C Linville, Jr. and Antone C. Cerne Stated in their Affidavits Filed Previously.

James C. Linville, Jr., former Acting Director of the Division of Reactor Projects and, before that, Acting Director of the Millstone Project Directorate, both in Region I, and Antone C. Cerne, Senior Resident Inspector at Millstone Unit 3, provided affidavits in support of the NRC staff's Brief and Summary filed on June 30, 2000. Both Mr. Linville and Mr. Cerne have provided affidavits in support of this response, indicating that their previous conclusions are not affected by the new information.

Mr. Linville points to paragraph 16 of his affidavit of June 30, 2000, in which he addressed NNECO's improved performance in the area of administrative controls and delineated the reasons for his conclusion that recent licensee performance at Unit 3 had been good. He states in his affidavit filed in support of this response that he has read Intervenor's Motion to Reopen and the attachments thereto and that there is nothing in this new information that would change the testimony in his affidavit filed June 30, 2000. Linville Affidavit, ¶¶ 4,5.

Mr. Cerne also states that he has read Intervenor's Motion to Reopen and the attachments thereto and that nothing in this new information would change the testimony in his previously filed affidavit in support of the Staff's Brief and Summary. Mr. Cerne points to paragraph 6 of his affidavit filed June 30, 2000, and states that the opinions expressed there remain valid. Cerne Affidavit, ¶ 4.

Thus, had the Board considered the new information on which Intervenor's urge reopening, its conclusions regarding NNECO's recent performance as it relates to the Licensee's ability to

perform the administrative controls necessary to implement the amendment at issue in this proceeding would not be changed.

D. Intervenor's Motion Cannot be Granted, As They Have Failed to Provide the Required Affidavits.

As noted above, the Commission's regulations in 10 C.F.R. § 2.734 concerning motions to reopen require in paragraph (b) that the motion be accompanied by one or more affidavits. Intervenor's have not provided any affidavits in support of their motion and, thus, it is not possible to determine whether there is a sound factual and technical basis to support their claim that a materially different result would have been reached had the material been considered initially.

Intervenor's Contention 4 concerns the administrative procedures needed to implement the reconfigured pool and the increased risk of criticality that failure to properly implement those procedures might entail. Intervenor's failed to raise a genuine and substantial issue of fact regarding this matter. Instead, they concentrated their efforts on the basis for Contention 4, i.e., Millstone's "history." The Licensing Board considered these matters and concluded that at the heart of Contention 4 was whether the revision of Millstone Unit 3's Technical Specifications to include Figures 3.9-1, 3.9-3 and 3.9-4, detailing the limits on fuel placement, were so complex as to make fuel misplacement likely. LBP-00-26, 52 NRC at 197. The Board also concluded that, although expert testimony on the human factors involved in implementing the revised TS would have been helpful, the parties' arguments had presented no issue of fact to be resolved. *Id.* Intervenor's have not provided the affidavits that are necessary to satisfy the requirements of the regulation nor have they shown how from a human factors perspective the matter of the two fuel rods relates to the implementation of the revised TSs. Absent such affidavits, Intervenor's cannot show how consideration of yet another "error" would have materially changed the Licensing Board's decision.

II. The Board Need Not Reopen on the Other Matters Raised by Intervenor.

In addition to the matter of the fuel rods on which they seek reopening, Intervenor appear to seek to pursue a discovery matter that was resolved, largely in their favor, by the Licensing Board in a Memorandum and Order (Discovery Rulings, 5/26/00 Telephone Conference), dated June 8, 2000. Intervenor mention their deposition of Michael C. Jensen on May 11, 2000, and state their opinion that NNECO knew or should have known of the "gap" in record keeping. Motion at 2-3. From there, they leap to an inference that NNECO was required to supplement discovery responses "immediately upon its discovery that the prior response was incomplete or inaccurate." Motion at 3.

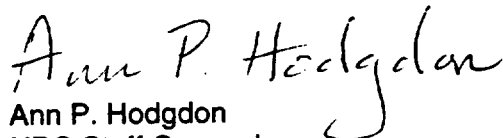
The Licensing Board's Memorandum and Order (Discovery Rulings, 5/26/00 Telephone Conference) concerns a motion for protective order filed by NNECO in response to Intervenor's Third Set of Interrogatories, dated May 18, 2000. The Board agreed with the Intervenor that Mr. Jensen's responses in deposition on May 11, 2000, may have been misleading and, thus, allowed Intervenor the discovery they sought but, in response to NNECO's motion, limited the discovery to Millstone Unit 3 since the last refueling or restart, whichever was earlier. Memorandum and Order (Discovery Rulings, 5/26/00 Telephone Conference). Intervenor's suggestion that NNECO needed to supplement its discovery responses when, in November, 2000, it was unable to confirm the location of two fuel rods at its Unit 1 spent fuel pool is not supported by the Commission's regulations regarding discovery nor by the Federal Rules of Civil Procedure on which the Commission's rules are based, in that neither the Commission's rules nor the Federal Rules of Civil Procedure contemplate supplementation of discovery responses after an initial decision has been rendered. As noted above, the new information on which Intervenor seek reopening is beyond the scope of Contention 4, in that it does not concern criticality, and of the Board's discovery order, in that the new information concerns Unit 1, not Unit 3.

Also, Intervenor's were not prejudiced by NNECO's failure to inform them of its discovery in November, 2000, of its inability to confirm the location of two fuel rods in the Millstone Unit 1 spent fuel pool, inasmuch as NNECO informed the NRC, and Intervenor's learned of it through the NRC Weekly Information Report for the week ending November 24, 2000.

CONCLUSION

For the reasons discussed, the Licensing Board should deny Intervenor's' motion to reopen the record in this proceeding.

Respectfully submitted,


Ann P. Hodgdon
NRC Staff Counsel

Dated at Rockville Maryland
this 8th day of January, 2001.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NORTHEAST NUCLEAR ENERGY
COMPANY

(Millstone Nuclear Power Station, Unit 3)

)
)
)
)
)
)
)

Docket No. 50-423-LA-3

AFFIDAVIT OF LAURENCE I. KOPP AND ANTHONY C. ATTARD IN SUPPORT
OF NRC STAFF RESPONSE OPPOSING INTERVENORS' MOTION TO REOPEN

Laurence I. Kopp and Anthony C. Attard, being duly sworn, do hereby state as follows:

1. I, Laurence I. Kopp, have been employed by the U.S. Nuclear Regulatory Commission (NRC), and its predecessor, the Atomic Energy Commission (AEC), since 1965. My current position is Senior Reactor Engineer in the Reactor Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation (NRR). My responsibilities include review and evaluation of the criticality aspects of on-site fuel storage at commercial nuclear power reactors. I have a Ph.D. degree in Nuclear Engineering from the University of Maryland, a Master of Science degree in Physics from Stevens Institute of Technology, and a Bachelor of Science degree in Physics from Fairleigh Dickinson University. I have 42 years experience in the nuclear power industry, including 5 years at the Martin-Marrietta Nuclear Division and 2 years at the Westinghouse Astronuclear Division. My professional qualifications statement was filed with the NRC Staff's Brief and Summary on June 30, 2000, as Exhibit 20.

2. I, Anthony C. Attard, have been employed as a reactor Physicist/Engineer by the U.S. Nuclear Regulatory Commission (NRC) for almost 10 years. My tenure at the NRC has been spent exclusively in the Reactor Systems Branch (SRXB). My assignments cover a wide range of licensing and operating reactor issues, such as reloads, technical specification changes, accident analysis, advanced reactors, boron dilution transients and probabilistic risk assessment methods.

I have a Ph.D. in Nuclear Physics and Engineering from Carnegie-Mellon University and a Bachelor of Science degree in Mathematics and Physics from the University of Michigan. I have 25 years experience in the nuclear power industry, commercial and military reactors. My professional qualifications statement was filed with the Staff's Brief and Summary June 30, 2000, as Exhibit 21.

3. We provided an affidavit in support of the NRC Staff's Brief and Summary of Relevant Facts, Data and Arguments, filed June 30, 2000, in this proceeding.

4. The purpose of this affidavit is to address Intervenors' Motion to Reopen and Vacate, filed December 18, 2000, as it relates to the previously filed affidavit referenced above.

5. We have read Intervenors' Motion to Reopen and Vacate and the attachments thereto. There is nothing in this new information that would change the testimony we gave in our affidavit filed June 30, 2000.

We particularly note paragraph 25 in our Affidavit in which we addressed criticality concerns. In paragraph 25 we state:

As part of the NRC review of the NNECO amendment request to establish three regions (Regions 1, 2, and 3) for fuel storage in the spent fuel pool, the Staff reviewed the Holtec report, which presented the criticality evaluation for the misloading of a fresh fuel assembly in the Millstone 3 spent fuel pool. Application, Exh. 1, Att. 5. Based on the analysis described in this report, NNECO has determined that a soluble boron concentration of only 425 ppm would be sufficient to maintain a 5% subcriticality margin in the event of a fuel assembly misloading event (i.e., a fresh PWR assembly enriched to 5 weight-percent U-235 inadvertently loaded into an empty cell in Region 3 with the remainder of the rack fully loaded with fuel of the highest permissible reactivity). The Staff notes that, for conservatism, NNECO has chosen a value of 800 ppm in the proposed TS. Based on experience in evaluating the criticality safety of spent fuel pools, we find the calculational methods and the assumptions made in these analyses to be acceptable and conservative.


6. The recent disclosure by NNECO that it could not confirm the location of two BWR fuel rods at its Millstone, Unit 1 spent fuel pool (SFP) does not pose a criticality concern. Even if, hypothetically, these two rods were in the Millstone, Unit 3 SFP, we have offered in our testimony filed June 30, 2000, and set forth above that the proposed boron concentration for the Millstone, Unit 3 SFP effectively precludes criticality in the event of an error that results in a misplaced fuel

assembly. Intervenor's Motion to Reopen concerns only two fuel rods at Millstone, Unit 1. Two fuel rods are a small fraction of a fuel assembly. Thus, the analysis discussed in paragraph 25 of our June 30, 2000 affidavit bounds the effect of the two fuel rods that are of concern here. Further, the two fuel rods in question are less reactive than any fuel in the Millstone Unit 3 SFP. Our previous testimony on criticality issues regarding the Millstone Unit 3 SFP remains valid.

7. We both provided the information contained in this affidavit and we hereby certify that the foregoing is true and correct to the best of our knowledge, information and belief.

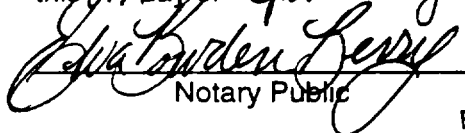


Laurence I. Kopp



Anthony C. Attard

Subscribed and sworn to before me
this 8th day of January 2000



Notary Public

ELVA BOWDEN BERRY
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 1, 2003

My commission expires: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHEAST NUCLEAR ENERGY)	
COMPANY)	
)	Docket No. 50-423-LA-3
(Millstone Nuclear Power Station,)	
Unit No. 3))	
)	

AFFIDAVIT OF JAMES C. LINVILLE, JR., IN SUPPORT OF
NRC STAFF RESPONSE OPPOSING INTERVENORS' MOTION TO REOPEN

James C. Linville, Jr., being duly sworn, does hereby state as follows:

1. I have been employed by the Nuclear Regulatory Commission since 1980. At present, I serve as Chief of Branch 6 of the Division of Reactor Projects in Region I, King of Prussia, Pennsylvania. Previously, I served as the Acting Director of the Division of Reactor Projects and before this, Acting Director of the Millstone Project Directorate, also in Region I. In the Division of Reactor Projects, I also previously served as technical assistant, section chief and branch chief from 1985 until I became Acting Director of the Millstone Inspection Directorate in May 1999. In those capacities, I managed inspection programs at up to 10 commercial nuclear reactors with a staff of up to 25, including 19 professionals and 5 clerical at up to 5 field offices. I was Senior Resident Inspector at the Salem Nuclear Generation Station (PWR), Hancocks Bridge, New Jersey, from 1983 to 1985, and a Senior Resident Inspector/Resident Inspector at the James A. FitzPatrick Nuclear Power Plant (BWR), Scriba, New York, from 1980 to 1983. Prior to coming to the NRC, I was employed by the Stone and Webster Engineering Corporation in Cherry Hill, New Jersey, as a Licensing Engineer/Design Review Coordinator for the Nine Mile Point, Unit 2 (BWR) Project from 1977 to 1980. I served in the United States Navy from 1970 to 1977 where I, among other things, was Assistant Professor of Naval Science, NROTC Unit, at the University of California

at Berkeley. I am a graduate of the United States Naval Academy in Annapolis, Maryland, where I received a Bachelor of Science degree in 1970. In 1971, I completed Navy Nuclear Propulsion Training. I served in the engineering department of a nuclear cruiser from 1972 to 1975. I also hold a Master's degree in Business Administration from Drexel University in Philadelphia, Pennsylvania.

2. I provided an affidavit in support of the NRC staff's Brief and Summary of Relevant Facts, Data and Arguments, filed on June 30, 2000, in this proceeding.

3. The purpose of this affidavit is to address Intervenor's Motion to Reopen and Vacate filed December 18, 2000 as it relates to the previously filed affidavit referenced above.

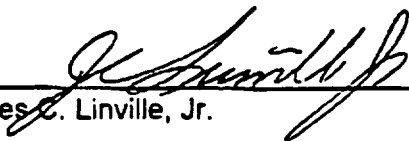
4. I have read Intervenor's Motion to Reopen and Vacate, and the attachments thereto. There is nothing in this new information that would change the testimony I gave in my affidavit filed June 30, 2000. I particularly want to note paragraph 16 in my affidavit in which I address NNECO's improved performance in the area of administrative controls. In paragraph 16, I state:

Recent Licensee performance at Unit 3 has been good. There have been few operational challenges, and operators have made deliberate actions and conservative decisions when required in response to equipment problems and adverse weather conditions. The number of unplanned entries into Technical Specification Action Statements, has been very low, with conservative interpretation of surveillance or design criteria, rather than failed or unavailable equipment, the typical cause. The Licensee's Condition Report process often identified potential procedural problems prior to the use of the procedure. While procedural adherence problems are occasionally documented in Condition Reports, the unit staff, particularly the licensed operators, have properly controlled activities. A questioning attitude by the operators on shift has led to situations where work has been suspended while procedural inconsistencies were corrected. This higher standard of operations is also in evidence in the control of protected train activities. The Licensee will defer work rather than create dilemmas for the operators with respect to the conduct of surveillance or maintenance procedures with equipment out of service. While some procedure errors could remain undetected until implementation, the recent performance history has shown that these are few and that they have been satisfactorily addressed by the Licensee staff at the time without adverse consequences. Some operational procedure issues have been identified and corrected, case by case, consistent with existing plant conditions. The Licensee's corrective action processes, as well as the higher standard of operational controls and procedure implementation expectations, have supplemented programmatic procedure reviews in providing assurance that procedure quality does not represent a problem. Overall, the Unit 3 procedures are adequate.

-3-

5. The recent disclosure by NNECO that it could not confirm the location of two BWR fuel rods at its Millstone, Unit 1 spent fuel pool (SFP) does not the change the conclusions stated in my affidavit filed on June 30, 2000. Thus, my previous testimony regarding NNECO's adherence to administrative controls remains valid.

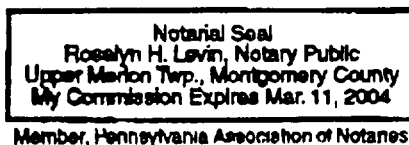
6. I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.


James C. Linville, Jr.

Subscribed and sworn to before me
this 8th day of January 2001


Rosalyn H. Levin
Notary Public

My commission expires: 3/11/2004



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
NORTHEAST NUCLEAR ENERGY)
COMPANY)
) Docket No. 50-423-LA-3
(Millstone Nuclear Power Station,)
Unit No. 3))

AFFIDAVIT OF ANTONE C. CERNE, JR., IN SUPPORT OF
NRC STAFF RESPONSE OPPOSING INTERVENORS' MOTION TO REOPEN

Antone C. Cerne, being duly sworn, does hereby state as follows:

1. As stated in previously filed documents, I am the Senior Resident Inspector at Millstone Unit 3. I have more than twenty-two years of nuclear experience, including approximately twenty years in the U.S. Nuclear Regulatory Commission's resident inspector program, including the past four years at Millstone Unit 3. Prior assignments were at Seabrook Station and the Pilgrim Nuclear Power Station. At the NRC, I served, on a temporary basis, as Commissioner Kenneth Carr's technical assistant and I have been detailed to the agency's special review effort for Comanche Peak, the NRC Regulatory Group, the NRR South Texas Project Task Force, and the NRR group reviewing the Construction Inspection Program for Future Reactors. I have participated in more than thirty NRC team inspections at nuclear power plants around the country, with designation as team leader or assistant team leader on some of these inspections. I was senior resident inspector at Millstone 3 during the conduct of the Independent Corrective Action Verification Program, recovery and startup activities, and had the responsibility for managing the "significant items list" inspection and closure, as part of the U.S. Nuclear Regulatory Commission's Inspection Manual Chapter 0350 process. I am qualified as both a Construction and Operations (Pressurized Water Reactor) Senior Resident Inspector. My U.S. Nuclear Regulatory Commission agency-level award recognitions include NRC Resident Inspector of the Year, 1985, the first time

the award was given; NRC Meritorious Service Award for Resident Inspector Excellence, 1992; NRC Distinguished Service Award for Senior Resident Inspector Excellence, 1999. I hold a Bachelor of Science degree from the United States Military Academy (West Point), 1968, where I was in the top one percent of my graduating class, and a Master of Science degree in Nuclear Engineering from the Massachusetts Institute of Technology (MIT), 1972. In 1989, I pursued the Program of Science, Technology and Society at MIT on a Mellon (post-graduate) Fellowship.

2. I provided an affidavit in support of the NRC staff's Brief and Summary of Relevant Facts, Data and Arguments, filed June 30, 2000, in this proceeding.

3. The purpose of this affidavit is to address Intervenor's Motion to Reopen and Vacate filed December 18, 2000 as it relates to the previously filed affidavit referenced above.

4. I have read Intervenor's Motion to Reopen and Vacate, and the attachments thereto. There is nothing in this new information that would change the testimony I gave in my affidavit filed June 30, 2000. I particularly want to note paragraph 6 in my affidavit in which I address NNECO's improved performance in the area of administrative controls:

The problems and violations referenced as a basis for Contention 4 are not directly related to Millstone Unit 3. None of the specific violations cited by the NRC in the December 1997 Notice of Violation and Proposed Imposition of Civil Penalties involved spent fuel pool issues at Millstone Unit 3. Notice of Violation and Proposed Imposition of Civil Penalties - \$2,100,000 - NRC Inspection Report Nos. 50-245/50-336/50-423: 95-44, 95-82, 96-01, 96-03, 96-04, 96-05, 96-06, 96-08, 96-09, 96-201 (Dec. 10, 1997)(Exhibit 11). Trained personnel can make mistakes, as is discussed by the Licensing Board in admitting Contention 4. LBP-00-02, 51 NRC at 34. This is evidenced at Millstone Unit 3 by two incidents. Plant information Report No. 3-94-079, "Fuel Misplacement," (Jan, 14, 1991) [This date is not correct. It should be Apr. 26, 1994.] (Exhibit 12); Adverse Condition Report Transmittal Sheet, ACR# 710, "SFP Crane Operator Went to Wrong Location [;] Stopped by Checker," (Apr. 27, 1995)(Exhibit 13). It is noteworthy, however, that these are the only two personnel errors documented with respect to Unit 3 spent fuel movement issues. Moreover, both errors were identified during the spent fuel movement process and corrected before any assemblies were physically stored in an incorrect location. Report No. 3-94-079, Exh. 13, at 3; ACR # 710, Exh. 13, at 3-4. Also, these incidents occurred prior to the 1996 Unit 3 shutdown and initiation of the recovery process that led to a significant Millstone Station culture change and improvements that permitted the authorization of the restart of Unit 3 by the Commission in 1998.

5. I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.

Antone C. Cerne
Antone C. Cerne

Subscribed and sworn to before me
this 8 day of January, 2001

Diane M. Phillips
Notary Public

My commission expires: 12/31/2005



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NORTHEAST NUCLEAR
ENERGY COMPANY

(Millstone Nuclear Power Station,
Unit No. 3)

)
)
) Docket No. 50-423-LA-3
)
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE OPPOSING INTERVENORS' MOTION TO REOPEN" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service as indicated by a double asterisk, with copies by electronic mail as indicated, this 8th day of January, 2001:

Charles Bechhoefer, Chairman*
Atomic Safety and Licensing Board
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
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
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail copy to rfc1@nrc.gov)

Office of the Secretary*
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Docketing and Service
(E-mail copy to HEARINGDOCKET@nrc.gov)

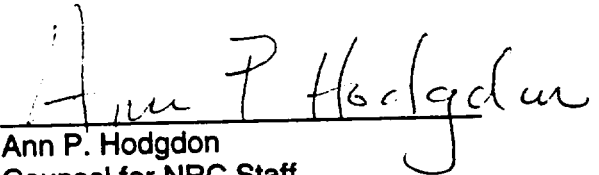
Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

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

David A. Repka**
Donald P. Ferraro
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 - m a i l c o p y t o
nancyburtonesq@hotmail.com)


Ann P. Hodgdon
Counsel for NRC Staff