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February 13, 2001
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
Northeast Nuclear Energy Company) Docket No. 50-423-LA-3
)
(Millstone Nuclear Power Station,)
Unit No. 3))

NORTHEAST NUCLEAR ENERGY COMPANY'S
RESPONSE IN OPPOSITION TO MOTION FOR
RECONSIDERATION OF LBP-01-01

I. INTRODUCTION

On January 29, 2001, the Connecticut Coalition Against Millstone and the Long Island Coalition Against Millstone (collectively, "the Coalitions") filed with the Atomic Safety and Licensing Board ("Licensing Board") a Motion for Reconsideration of the Licensing Board's January 17, 2001, Memorandum and Order (Denying Motion to Reopen Record on Contention 4) ("LBP-01-01").¹ Consistent with 10 C.F.R. §§ 2.730(c) and 2.771(b), Northeast Nuclear Energy Company ("NNECO") herein responds to and opposes the Motion for Reconsideration. The Coalitions fail to show any error in the Licensing Board's decision in LBP-01-01 that warrants reconsideration.

¹ The Coalitions filed their original "Motion to Reopen and Vacate Decision" with respect to Contention 4 on December 18, 2000 ("Motion to Reopen").

II. BACKGROUND

The Motion for Reconsideration relates to Contention 4 in this proceeding. In Contention 4 the Coalitions asserted that the additional spent fuel racks proposed for Millstone Unit 3 would involve trading physical protection against criticality for a "complex array" of "administrative controls," and that a failure of the administrative controls associated with the Millstone Unit 3 spent fuel storage racks could lead to a criticality event. In the Initial Decision in this proceeding,² the Licensing Board determined that Contention 4 does not meet the criteria of Subpart K for an issue to be designated for further evidentiary hearings. The Licensing Board concluded, "[a]fter an exhaustive review of the entire record on this contention," that:

- The Coalition's claim "that fuel misplacements do indeed occur is not disputed." Initial Decision, slip op. at 22.
- In the incidents in the industry cited by the Coalitions the reactivity limit (K_{eff}) of 0.95 was not breached. Id.
- Safety margins relative to a criticality event are maintained by the regulatory requirement that rack reactivity be less than 0.95. Id. The use of soluble boron adds defense-in-depth against an accidental criticality. Id. at 26.
- NNECO has demonstrated that it can adhere to administrative controls, with adequate safety margin and defense-in-depth, without posing an undue or unnecessary risk to plant workers or the public. Id.

The Coalitions' Motion to Reopen was premised upon NNECO's recent report that two fuel pins at Millstone Unit 1 had been determined to be unaccounted for, based upon a review of Unit 1 records. NNECO responded on January 8, 2001, and included an Affidavit from Joseph J. Parillo.³ NNECO demonstrated, among other things, that the Unit 1 issue would

² Memorandum and Order, LBP-00-26, dated October 26, 2000 ("Initial Decision").

³ "Northeast Nuclear Energy Company's Response in Opposition to Motion to Reopen Record and Vacate Decision," dated January 8, 2001 ("NNECO's Response") with attached Affidavit of Joseph J. Parillo ("Parillo Affidavit").

not lead, and would not have been likely to lead, to a materially different result on Contention 4 because:

- In the incidents cited by the Coalitions, even including the Unit 1 issue, there still has been no case in which a fuel assembly was placed in a storage region where it was not qualified;⁴
- The Unit 1 issue does not change the substantial safety margin provided by the Unit 3 storage plan—as demonstrated by undisputed, quantitative criticality analyses;
- The Unit 1 issue relates to handling and tracking spent fuel pins, not to handling intact fuel assemblies, and therefore does not bear on the administrative controls used to implement the Unit 3 reactivity limits; and
- The Unit 1 issue relates to unusual circumstances that appear to have occurred about twenty years ago and therefore does not bear on NNECO's current ability to adhere to administrative controls.

In LBP-01-01, the Licensing Board correctly denied the Motion to Reopen. The Licensing Board found that the record in this case adequately supports NNECO's managerial capability and willingness to carry out administrative controls, and that the misplacement of two pins at Millstone Unit 3 would not pose a criticality concern.⁵ Therefore, the Coalitions have not established that an evidentiary hearing or any other proceedings on Contention 4 are warranted.⁶

⁴ In addition, as is clear from NNECO's Licensee Event Report of January 11, 2001, in the Unit 1 situation—like the other incidents previously cited by the Coalitions—it has been shown that the reactivity limit of 0.95 has not been breached.

⁵ The Commission's standards for reopening a closed record are codified at 10 C.F.R. § 2.734. Specifically, under Section 2.734(a), a motion to reopen a closed record will not be granted unless the motion demonstrates, among other things, that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

⁶ Under 10 C.F.R. § 2.1115(b), an issue in a Subpart K proceeding may be designated for an evidentiary hearing only if there is a genuine and substantial dispute of fact, *and* the dispute can only be resolved with sufficient accuracy through the introduction of evidence, *and* the ultimate decision is likely to depend on the resolution of the dispute.

III. DISCUSSION

The Motion for Reconsideration, like the Motion to Reopen, argues that the issue of the Unit 1 fuel pins necessitates further proceedings on Contention 4. The Motion for Reconsideration adds two new affidavits—from David Lochbaum and Joseph Besade—without any explanation or showing of good cause why they were not provided with the original Motion to Reopen. Accordingly, the affidavits and arguments based on these affidavits should not be considered by the Licensing Board. Compare Ralph L. Tetrick (Denial of Application for Reactor Operator License), LBP-97-6, 45 NRC 130, 131 (1997), citing Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-10, 19 NRC 509, 517-18 (1984) ("A motion for reconsideration should not include new arguments or evidence unless a party demonstrates that its new material relates to a Board concern that could not reasonably have been anticipated.") As NNECO discussed in response to the Motion to Reopen, the rules requiring affidavits with a Motion to Reopen are very plain and should not have been ignored.

Even if the "new" information is considered, a motion for reconsideration should be denied if it fails to show that the Licensing Board has made a material error of law or fact. International Uranium (USA) Corporation (White Mesa Uranium Mill), LBP-97-14, 46 NRC 55, 59 (1997). The Licensing Board's decision in LBP-01-01 remains correct and appropriate. The Coalitions make several arguments simply embellishing and re-arguing matters they have raised before, but now incorporating Mr. Lochbaum's affidavit and Mr. Besade's affidavit. NNECO addresses each of the Coalitions' various, embellished arguments below. In the end, the Unit 1 issue remains a matter to be resolved by NNECO and the NRC through the normal regulatory process. It is a matter very distinct from Contention 4 and would not lead, or be likely to lead, to a different result in this proceeding.

A. Arguments Based on Mr. Lochbaum's Affidavit

The Coalitions first argue (Motion for Reconsideration, Section A) that NNECO operated Unit 1 outside its design basis for "perhaps twenty years and counting," and that this is a "glaring error" involving a failure of administrative controls. The Coalitions would apparently use this to buttress the same argument they have made on Contention 4 since the contention was first proposed: that is, that NNECO cannot implement administrative controls. Mr. Lochbaum, in Paragraph 5(a) of his Affidavit, characterizes the Unit 1 issue as an addition to "the previously provided history of this licensee not being able to adhere to administrative controls for spent fuel pool configuration." However, on its face, this argument is not new. The Coalitions specifically based their Motion to Reopen on the theory that the Unit 1 issue was not previously considered and that it somehow demonstrates NNECO's inability to implement administrative controls.⁷ Mere repetition of arguments previously presented is not a basis for reconsideration. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-88-03, 28 NRC 1, 3-4 (1988); Nuclear Engineering Company Inc. (Sheffield, Illinois Low-level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980).

Moreover, the Coalitions' argument is not any more persuasive now than it ever has been. The alleged "glaring error" at Unit 1 does not support reconsideration, reopening, or further hearings, because:

- The Coalitions' conclusion that Unit 1 was operated outside its design bases is premature and has no relevance to the current issue;
- The Coalitions add nothing, beyond innuendo and protest, contrary to NNECO's present assessment that the Unit 1 accountability problem

⁷ See, e.g., Motion to Reopen, at 7.

originated in about 1980, and therefore that the issue does not reflect on current Millstone performance;⁸ and

- The Coalitions ignore the affidavits of the NRC Staff, specifically relied upon by the Licensing Board in LBP-01-01 (slip op. at 7-8), to the effect that NNECO has demonstrated—*notwithstanding the Unit 1 issue*—that it can carry out administrative controls.

Furthermore, the Licensing Board in the Initial Decision on Contention 4 has already found that fuel misplacements can and do occur. Initial Decision, slip op. at 22. *The Unit 1 issue, taken in its least favorable light, simply supports an assumption the Licensing Board has already made.* Notwithstanding the assumption, and based on a substantial record, including undisputed criticality calculations, the Licensing Board concluded that the regional storage plan and implementing procedures as used by NNECO for Unit 3 do not pose an undue criticality risk. The Unit 1 issue is no more persuasive than any of the other fuel handling incidents at Millstone previously cited by the Coalitions.

The Coalitions also argue (Motion for Reconsideration, Section C), based on the Lochbaum Affidavit, Paragraph 5(b), that NNECO's Licensee Event Report ("LER") on the Unit 1 issue includes a determination of the risk of criticality in the event the unaccounted for fuel pins were placed next to reactive fuel, and that this is a concession that a failure to adhere to administrative controls "can challenge criticality margins." Accordingly, the Coalitions would conclude that the criticality assessment in the LER supports Contention 4—not because of the results of the assessment, but simply because it was prepared. This argument—while maybe

⁸ Mr. Parillo's Affidavit filed in response to the Motion to Reopen addressed the Unit 1 issue, as does the Licensee Event Report referenced by the Coalitions. See Parillo Affidavit, ¶¶ 6, 10.

new—is, on its face, absurd. NNECO routinely considers risks related to hypothetical hazards.⁹ Indeed, *in this proceeding* NNECO has considered the potential reactivity effects of mishandling complete fuel assemblies and unintended soluble boron dilution events. Those calculations show the substantial safety margin against criticality that exists in the Unit 3 storage racks.¹⁰ The act of analysis does not concede anything. What the analysis shows is what is important—that is, that there is a substantial safety margin. The Coalitions still have nothing to offer in that regard.

Next, the Coalitions make an argument (Motion for Reconsideration, Section D) based on Paragraph 5(c) of the Lochbaum Affidavit. The Coalitions and Mr. Lochbaum now recognize that the Unit 1 issue involves fuel pins separated from fuel assemblies and therefore, at least implicitly, recognize that the administrative controls involved are fundamentally different from the controls used to implement reactivity limits in the Unit 3 spent fuel pool. (See Parillo Affidavit, ¶ 12, on this point.) Nonetheless, the Coalitions and Mr. Lochbaum stretch logic to assert the relevance of the Unit 1 issue to Unit 3, by arguing that the Unit 1 issue shows that added complexity can lead to failures. This again is not a new argument or a persuasive argument. It is merely a truism to state that complexity can lead to problems, and the Coalitions have been advancing that argument since day one in this proceeding. But there is still no support

⁹ In this particular case, the LER was filed in accordance with 10 C.F.R. § 20.2201(b). The regulation (§ 20.2201(b)(1)(iv)) requires that a report include an evaluation of the potential for radiation exposures. In the LER the criticality calculation shows that, if the pins are located in the spent fuel pool and in a conservative configuration, there will be no threat of exposures to the public or plant workers because the reactivity limit is not breached.

¹⁰ This was described in NNECO's June 30, 2000 position paper and in the supporting affidavits, as well as in Mr. Parillo's Affidavit in response to the Motion to Reopen (see e.g., ¶¶ 9, 15-16.

for the proposition that the Unit 3 administrative controls are complex, that they will lead to fuel handling errors, or that there will be challenges to criticality in the Unit 3 spent fuel pool.

Mr. Lochbaum draws a thin parallel between the Unit 1 issue and the Unit 3 contention based on the following logic: separating fuel pins from assemblies increased the complexity of the Unit 1 administrative controls; this increased complexity caused those Unit 1 controls to fail; in parallel, the Unit 3 regional storage will be more complex than it was previously; therefore, the Unit 3 administrative controls will also fail. At each step of the logic, there is no disciplined analysis—only a leap of conjecture. Mr. Lochbaum does not and cannot know what caused the Unit 1 accountability issue. And, he has provided no reasonable basis (human factors or otherwise) to equate the Unit 1 materials accounting procedures with the Unit 3 fuel handling procedures or to otherwise assess the complexity of the Unit 3 procedural controls. And, even if he had shown increased complexity, his conclusion that the controls would fail does not necessarily follow. This is not persuasive argument. It is certainly not a reason for the Licensing Board to reconsider LBP-01-01.

Furthermore—regardless of the flawed logic and the lack of supporting analysis—as we have stated previously the Licensing Board in its Initial Decision *has already assumed that the fuel handling errors can occur and that the potential for such errors poses no undue risk of criticality*. A detailed inquiry into the Unit 1 issue will not shed any further, decisive light onto the issue of Contention 4: that is, whether failures of administrative controls related to reactivity limits could lead to a criticality in the Unit 3 spent fuel pool. Whether or not complexity lead to the Unit 1 problem, whether or not the Unit 3 reactivity limits are similarly complex, and whether or not that "complexity" (at whatever level) would lead to failure of the Unit 3 controls may be interesting academic questions, but the Coalitions are raising those questions divorced

from the context of known facts: that is, spent fuel pool reactivity limits have not been violated at either Unit 1 or Unit 3 and the margin-of-safety against criticality at Unit 3 has been unequivocally demonstrated.

The Coalitions similarly argue (Motion for Reconsideration, Section E), based on Mr. Lochbaum's Affidavit, Paragraph 5(d), that the "new" administrative controls involved in the Unit 3 spent fuel storage plan are more likely to fail than the Unit 1 controls that apparently failed. Mr. Lochbaum argues that, at Unit 1, any failure may have been due to confusion between fuel pins and other components that are more easily distinguishable than two fuel assemblies. Therefore, Mr. Lochbaum concludes, the Unit 3 controls would unduly increase "the likelihood that one or more fuel assemblies is/are mislocated with the resulting challenge to criticality margins." Lochbaum Affidavit, ¶ 5(d). This argument again is not new. It is a variation on previous arguments on Contention 4, and indeed a variation on the argument of Contention 6.¹¹ In this version of the argument the Coalitions and Mr. Lochbaum again ignore the substantial record showing that the Unit 3 controls are neither new nor unduly complex, and that the dual verification procedures and the physical features of the rack layout reduce the potential for misloaded fuel assemblies. See, e.g., Parillo Affidavit, ¶¶ 9-11. But beyond those failures, as they have repeatedly done, the Coalitions and Mr. Lochbaum choose to ignore the record that shows that even multiple fuel misloads will not significantly challenge criticality margins in the Unit 3 pool.

¹¹ Paraphrasing, in Contention 6 the Coalitions argue that "complexity" is so undesirable, it must indeed be illegal.

B. Procedural and Other Arguments

Apart from Mr. Lochbaum's affidavit, the Coalitions raise other—largely procedural—issues. First, the Coalitions question (Motion for Reconsideration, Section B) the accuracy of NNECO's statements regarding the discovery of the Unit 1 issue and NNECO's responses to discovery in this proceeding. These again are questions that the Coalitions raised previously in the Motion to Reopen, and therefore this is not a new argument. Nonetheless, in Mr. Parillo's Affidavit in response to the Motion to Reopen, and in the Unit 1 LER filed with the NRC and served on the Licensing Board, NNECO has accurately, to the best of its knowledge, explained what it has determined as of the dates of those documents regarding the Unit 1 spent fuel pins. NNECO also believes that it has fully and timely made the required regulatory reports. Furthermore, any question as to reporting would be a regulatory issue for which NNECO is accountable to the NRC outside the context of this proceeding. In this proceeding, the reporting issue is irrelevant to Contention 4 and beyond the scope of the license amendment at issue. In LBP-01-01, the Licensing Board implicitly recognized the lack of significance to Contention 4 of the reporting question, noting simply (slip op. at 7, n.2) that it had no opinion as to whether NNECO's reporting satisfied requirements applicable to Unit 1.

As NNECO discussed in its response to the Motion to Reopen, NNECO also maintains that it has met its obligations with respect to discovery in this proceeding.¹² As previously discussed, NNECO does not construe the Unit 1 issue as relevant or material to Contention 4 because 1) the issue relates to handling fuel pins, not fuel assemblies, 2) any error that occurred appears to have occurred in about 1980, and 3) in any event, the issue does not bear

¹² See NNECO's Response to the Motion to Reopen, dated January 8, 2000, at 5, n.4.

on criticality in the Unit 3 pool. The Coalitions' would attach significance to indications that NNECO was evaluating the Unit 1 fuel pool inventory prior to the reports to NRC on the matter. In fact, however, the company's records reviews lead to an internal condition report on November 16, 2000, and the NRC was notified shortly thereafter that the issue had been identified and was under evaluation. The issue was determined to be reportable on December 14, 2000, tolling the 30-day clock for the LER filed pursuant to 10 C.F.R. § 20.2201(b) on January 11, 2001. Given the evolving nature of this issue, this sequence of events should not be surprising and is not inappropriate. The Coalitions' suggestions and suspicions do not justify further proceedings and will not change the Initial Decision on Contention 4.¹³

The Coalitions also request (Motion for Reconsideration, Section G) that the Licensing Board initiate a sua sponte investigation under 10 C.F.R. § 2.760(a) into the Unit 1 issue and into the timing of NNECO's discovery of those issues. Under the Commission's regulations and policy, the threshold for such a sua sponte action is very high. See, e.g., Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22-23

¹³ The Coalitions also suggest, obliquely, that the company's reports on the Unit 1 issue are inconsistent with Mr. Jensen's deposition in this proceeding. (See Motion for Reconsideration at 2-3). The information, however, is easily reconciled. Mr. Jensen testified in his deposition, based on his knowledge in the summer of 2000, that the Unit 1 spent fuel pool had been inventoried in 1997. Obviously, he was not aware of the present Unit 1 issue at that time. In his deposition he specifically acknowledged at least the possibility that there could have been other fuel handling issues that he was not aware of or that were not entered into the current databases of reportable conditions. His statements in this regard are not new information.

The Coalitions also reference in their Motion for Reconsideration a specific incident at Unit 1 involving fuel assembly MS-508 that was damaged in 1974. The 1997 report on this issue was provided to the Coalitions in discovery and was discussed during Mr. Jensen's deposition. This issue has no relationship to the current Unit 1 issue involving two pins from assembly MS-557.

(sua sponte authority is to be exercised "only in extraordinary circumstances" and with the approval of the Commission). The Commission's threshold has not been met here. NNECO has reported the Unit 1 issue and is pursuing resolution in an expeditious, responsible, and open fashion. Moreover, the NRC Staff is closely monitoring these efforts and the issue remains subject to enforcement (if warranted). These are matters well beyond the scope of the license amendment at issue and therefore beyond the scope of this proceeding.¹⁴

Finally, returning to the theme of NNECO's ability to implement administrative controls, the Coalitions argue (Motion for Reconsideration, Section F) that the Licensing Board placed undue reliance on the Millstone recovery period and subsequent startup, because the startup was "heavily managed, supervised and supported by on and off site NRC Staff as well as outside support provided by the nuclear industry." This is certainly an argument that could have been made earlier. The Licensing Board previously made it clear, on numerous occasions, that it would use startup from the recovery as an important milestone with respect to assessing NNECO's managerial capabilities. But beyond that, and without conceding the validity of the assumptions in the Coalitions' argument, the Coalitions' view is again overwhelmed by the evidence of record. Both NNECO and the NRC Staff have provided affidavits addressing the improved performance at Millstone. The NRC Staff in particular is in a position to assess this issue based on recent day-to-day observations and assessments. The NRC Staff's conclusions are

¹⁴ Similarly, with respect to a motion to reopen, the Commission has previously held that the appeal board had no authority to set up "exploratory hearings" to obtain additional information to determine whether the reopening standard was satisfied. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-7, 23 NRC 233, 235 (1986), citing Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 6 (1986).

well-founded and contrary to the bald assertions of the Coalitions. There is no basis here for reconsideration.

C. Arguments Based on Mr. Besade's Affidavit

The Coalitions also rely on the Affidavit of Mr. Besade. The relevance of this document is not immediately clear. It appears, however, that the Coalitions are citing a schedule of Millstone assets, listing the contents of the Unit 1 spent fuel pool, taken from the Millstone Purchase and Sale Agreement, as support for their reporting and discovery claims discussed above. The asset schedule, however, adds nothing to those arguments. The schedule merely reflects NNECO's belief regarding the contents of the Unit 1 pool, as of the date it was made, based on the nuclear materials records in use on that date.¹⁵

Additionally, NNECO has over the years conducted periodic inventories of Unit 1 special nuclear materials as required by regulation. See 10 C.F.R. § 70.51(d). As discussed at the public meeting of January 4, 2001, videotaped by Mr. Besade, the Unit 1 issue was not discovered during these semi-annual inventories, but during records reviews in connection with decommissioning of the unit. (See Videotape, at approx. 1:00:15.) While at this time it is still speculation as to precisely how the issue escaped earlier detection, we can say the periodic inventories are conducted with respect to fuel bundles shown on the spent fuel pool map. Those inventories would have been conducted against the current records at the time. As discussed in the LER, the two fuel pins from assembly MS-557 have not been shown on the spent fuel pool map since mid-1980. It appears, therefore, that after mid-1980, because there was no entry on

¹⁵ The schedule lists a fuel storage container with fuel pins. That container is in the Unit 1 spent fuel pool. Obviously, the two fuel pins have not been found, at least to date, in that container.

the map, there was no trigger for an inventory to confirm the physical presence of the two pins. Only when the 1980 records discrepancy was identified in 2000 was further inquiry prompted.

Mr. Besade and the Coalitions also appear to attach some significance to the fact that NNECO never responded, for Millstone Unit 1, to the NRC Staff's 1995 request, pursuant to 10 C.F.R. § 50.54(f), for information from NNECO related to Unit 1's conformance with the design and licensing basis. However, there is no significance to that fact. By its terms, the NRC Staff's § 50.54(f) request required a response prior to restart of the unit. However, Unit 1 never restarted.¹⁶

D. Summary and Conclusion

In sum, the Coalitions have provided affidavits they could have and should have submitted before. They have embellished arguments they did make earlier regarding the complexity of the Unit 3 reactivity limits and the implementing procedures. They have restated their unsupported beliefs regarding the challenge they think this presents to criticality margins. They have again questioned the timing of NNECO's reports on this issue. In contrast, however, the record in this case is substantial. The Unit 1 issue does not stand for the proposition that the Unit 3 reactivity limits are unduly complex, or for the proposition that NNECO cannot implement the Unit 3 administrative controls, or for the proposition that failures of controls at Unit 3 will challenge criticality margins. The facts support the Initial Decision. The facts support the Licensing Board's previous conclusion that the Unit 1 issue does not provide a reason

¹⁶ A copy of the NRC's Section 50.54(f) request for Unit 1 (dated December 12, 1995) is attached. NNECO did respond to similar NRC requests with respect to Units 2 and 3. For Unit 1, NNECO filed its certification of permanent cessation of operations and de-fueling on July 21, 1998.

to reopen this proceeding. Based on the facts, there is no reason for the Licensing Board to reconsider LBP-01-01.

IV. CONCLUSION

For the reasons above, the Licensing Board should deny the Motion for Reconsideration.

Respectfully submitted,



David A. Repka
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005-3502
(202) 371-5700

Counsel for NORTHEAST
NUCLEAR ENERGY COMPANY

Lillian M. Cuoco
NORTHEAST NUCLEAR
ENERGY COMPANY
107 Selden Street
Berlin, Connecticut 06037
(860) 665-3195

Dated at Washington, D.C.
this 13th day of February, 2001

ATTACHMENT

**NRC Letter (William T. Russell) to Northeast Utilities Services Company
(Robert E. Busch), Docket No. 50-245, dated December 12, 1995.**



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 10, 1995

Mr. Robert E. Busch
President - Energy Resources Group
Northeast Utilities Service Company
c/o Mr. Richard M. Kacich
P.O. Box 128
Waterford, CT 06385

Dear Mr. Busch:

On August 21, 1995, as supplemented August 28, 1995, the NRC received a petition under 10 CFR 2.206 which requested NRC shutdown Millstone Unit 1 and take enforcement action based upon alleged violations of licensed activities related to operation of spent fuel pool cooling systems and refueling practices. At a public meeting on December 5, 1995, in New London, Connecticut, the NRC Acting Inspector General (IG) stated that certain of your activities may have been conducted in violation of license requirements and that refueling activities may not have been conducted consistent with the Millstone Unit 1 Updated Final Safety Analysis Report (UFSAR). The staff will review the IG investigation report, when issued, in order to determine what enforcement action, if any, is appropriate. As you are aware, NRC's Office of Investigations is also conducting an investigation of these matters.

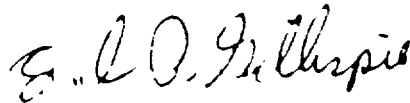
The NRC's approval of Amendment No. 89 to the Millstone Unit 1 operating license to authorize full-core offload to the spent fuel pool as a normal end-of-cycle event was based upon design changes, procedure revisions and enhanced administrative controls which did not exist during prior refueling activities.

While we have not yet completed our investigations and reviews related to past refueling activities, the NRC requires that additional information be submitted under oath or affirmation, pursuant to Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), no later than seven (7) days prior to Millstone Unit 1 restart from its current refueling outage (i.e., not later than 7 days prior to reactor criticality). This information will be used to decide whether or not the license of Millstone Unit 1 should be suspended, modified or revoked, or other enforcement action taken. Specifically, you should describe what actions you have taken to ensure that future operation of Millstone Unit 1 will be conducted in accordance with the terms and conditions of the Millstone Unit 1 operating license, the Commission's regulations, including 10 CFR 50.59, and the Millstone Unit 1 UFSAR.

R. Busch

This requirement affects nine or fewer respondents and, therefore, is not subject to the Office of Management and Budget review under P.L. 95-511.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. T. Russell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

William T. Russell, Director
Office of Nuclear Reactor Regulation

Docket No. SD 245

cc: See next page

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of: |) | |
| |) | |
| Northeast Nuclear Energy Company |) | Docket No. 50-423-LA-3 |
| |) | |
| (Millstone Nuclear Power Station, |) | |
| Unit No. 3) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NORTHEAST NUCLEAR ENERGY COMPANY'S RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION OF LBP-01-01" in the captioned proceeding have been served upon the following by deposit in the United States mail, first class, this 13th day of February, 2001. Additional e-mail service has been made this same day as shown below.

Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(e-mail: cxb2@nrc.gov)

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(e-mail: rfc1@nrc.gov)

Dr. Charles N. Kelber
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(e-mail: cnk@nrc.gov)

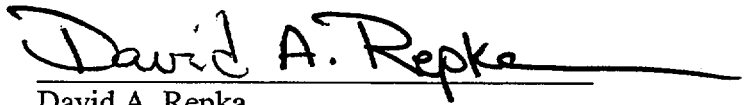
Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff
(e-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Ann P. Hodgdon, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(e-mail: aph@nrc.gov)

Nancy Burton, Esq.
147 Cross Highway
Redding Ridge, CT 06876
(e-mail: nancyburtonsq@hotmail.com)


David A. Repka
Counsel for NNECO

February 13, 2001