

13725

# WINSTON & STRAWN

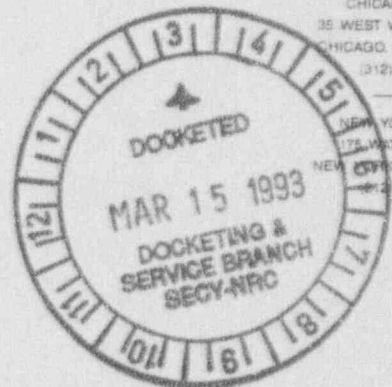
FREDERICK H. WINSTON (1853-1896)  
SILAS H. STRAWN (1891-1946)

1400 L STREET, N.W.  
WASHINGTON, D.C. 20005-3502

(202) 371-5700

FACSIMILE (202) 371-5950

March 10, 1993



CHICAGO OFFICE  
35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601  
(312) 558-5600

NEW YORK OFFICE  
175 WATER STREET  
NEW YORK, NY 10038-4981  
(212) 269-2500

BY HAND DELIVERY

Ivan W. Smith  
Chairman  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Charles N. Kelber  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: NORTHEAST NUCLEAR ENERGY COMPANY, Millstone Nuclear  
Power Station, Unit No. 2, Docket No. 50-356-OLA  
(Spent Fuel Pool Design) 336

Dear Administrative Judges:

As you are aware, due to unavoidable circumstances the parties recently cancelled Northeast Nuclear Energy Company's deposition of Dr. Michio Kaku, the intervenor's witness in this proceeding. Since that time, the parties have attempted to reschedule the interview but have been unable to do so on a schedule satisfactory to all involved.

Based on this development, NNECO has reevaluated its plan to take Dr. Kaku's deposition in this proceeding at this time. (Depositions, of course, are a discovery tool and are discretionary to the party that would take the deposition.) NNECO proposes to defer the deposition in favor of moving forward with previously filed discovery, any remaining discovery, and with further pleadings in this case.

Specifically, as the case now stands, NNECO and the NRC Staff have already responded to CCMN's "interrogatories" and requests for documents. CCMN has not, to date, indicated whether it will seek any additional ("second round") discovery. CCMN for its part, has partially responded to discovery requests of NNECO and the NRC Staff; NNECO and Staff motions to compel are pending.

DS03

March 10, 1993

Page 2

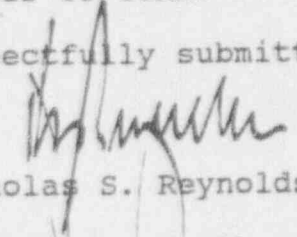
NNECO proposes that the Licensing Board schedule, as soon as convenient to all, a conference call among the parties for purposes of establishing a schedule to move forward. This schedule would include dates for any additional CCMN discovery requests (based on the good cause standard adopted previously by the Licensing Board for such "second round" discovery), a date for final discovery responses, and a date for summary disposition motions. It may be possible to do this by solidifying some of the variable dates established in the schedule previously adopted by the Licensing Board. (For example, additional discovery requests are currently to be filed on a date that springs from "Date B" which is currently undefined.)

With respect to Dr. Kaku's deposition, NNECO proposes to defer this discovery until after Licensing Board rulings on summary disposition motions. To the extent any issue survives summary disposition, a deposition could then be held, as the NRC Staff or NNECO may deem necessary, focused on the remaining "genuine issue in dispute." Such a deposition would then allow the parties to address in direct testimony any concerns of Dr. Kaku regarding the Amendment 158 criticality analysis not articulated in his affidavit previously filed by CCMN.

NNECO proposes this approach at this time due to the logistical difficulties experienced to date, and to reflect the current status of the case. This approach will move this matter forward, in a matter fair to all parties. A prompt resolution of any genuine issues in dispute is in the interest of all involved.

Counsel for NNECO has discussed this proposal with counsel for the NRC Staff. The Staff has indicated no objection to the proposed approach. We also attempted, but were unable, to discuss this matter with Ms. Marucci on behalf of CCMN.

Respectfully submitted,



Nicholas S. Reynolds

Counsel for Northeast  
Nuclear Energy Company

cc: Service List