

13514

RELATED CORRESPONDENCE

# WINSTON & STRAWN

DOCKETED  
USN/IC

FREDERICK H. WINSTON (1853-1886)  
SILAS H. STRAWN (1891-1946)

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

(202) 371-5700

FACSIMILE (202) 371-5950

'93 JAN -7 P2:02

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
EDAN/IC

CHICAGO OFFICE  
35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601  
(312) 558-6800

NEW YORK OFFICE  
175 WATER STREET  
NEW YORK, NY 10038-4951  
(212) 269-2500

January 6, 1993

VIA FEDERAL EXPRESS

Ms. Mary Ellen Marucci  
104 Bromnell Street  
New Haven, CT 06511

Re: NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear  
Power Station, Unit No. 2), Docket Nos. 50-336-OLA,  
(ASLBP No. 92-665-02-OLA), (Spent Fuel Pool Design)

Dear Ms. Marucci:

This letter will document our telephone conversation of  
yesterday afternoon.

First, based on his availability, you requested that we  
defer the previously noticed deposition of Dr. Kaku until  
February 22, 1993. I agreed to this schedule change. The  
deposition will be at our offices in New York City at 10:30 a.m.,  
on that date.

As we also discussed, the February 22 date is later than  
the January 21, 1993 date established by the Licensing Board for  
completion of first round discovery. Since you selected this date,  
I will assume that you have no problem treating this as a timely  
deposition, in effect extending the time for first round discovery  
for this purpose only. I will notify the Licensing Board of this  
agreement.

Second, during our phone call we discussed briefly your  
second request for information from Northeast Utilities, dated  
December 16, 1992. As I stated, to the extent that we do not  
object to these new requests, we will provide our responses no  
later than the January 21, 1993 deadline established by the Atomic  
Safety and Licensing Board. We will also endeavor to provide you  
with a partial response to this or your earlier request by  
January 17, 1993.

However, as I also indicated, we do have some objections  
to these second round requests -- on grounds of relevance to the

9301120048 530106  
PDR ADOCK 05000336  
PDR

PS03

Ms. Mary Ellen Marucci  
January 6, 1993  
Page 2

admitted contention and this proceeding, and on grounds of the overbroad scope of some requests. I articulate those specific objections below. As we noted in our December 18, 1992 letter, the Licensing Board has set January 12, 1993 as a date for filing formal objections. To avoid formal objections, we are documenting here our problems with your requests so that we may resolve the matter informally.

First, we object to Request 8.a as being vastly overbroad. Putting aside your definition of "high density" racks, which is not orthodox, the request would encompass documents and studies related to storage of spent fuel practically everywhere, with no clear relevance to the issues in this proceeding. We will read the request, therefore, as pertaining to information within our possession and control relevant to Millstone Unit No. 2 and Amendment 158. Accordingly, in our forthcoming discovery response, we will limit our response in this fashion.

Second, to the extent Request 11 relates to the effects of criticality accidents throughout the "commercial and weapons" industries, we again object to the request as outside the scope of this proceeding and as overbroad. The Licensing Board has already clearly ruled that spent fuel pool accident scenarios and consequences are not within the scope of admitted contentions in this proceeding. See, e.g., Memorandum and Order (Following Prehearing Conference), at 3, dated November 24, 1992. Moreover, even if criticality accidents as you hypothesize have occurred in the industry at facilities other than NU facilities, the records would not be available to us and would not necessarily have any bearing on the Millstone Unit No. 2 spent fuel pool racks. Hence, the request is overbroad.

In our phone conversation you agreed that you were not concerned here with information related to accident consequences, but rather to operating experience that suggests events that could lead to criticality. We will answer the request from this perspective only. However, again we must limit our response to criticality events of some relevance to the Millstone Unit No. 2 spent fuel pool.

For the same reasons as stated for Request 11, we object to Request 12. This request again relates to accident consequences -- a matter of no relevance to this proceeding. The request on its face does not address anything other than accident consequences. Therefore, no response is possible.

Third, Requests 13 and 15 seem to relate to storage of spent fuel beyond the capacity authorized by Amendment 158 (the subject of this proceeding). Issues related to storage of fuel

Ms. Mary Ellen Marucci  
January 6, 1993  
Page 3

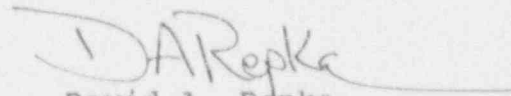
beyond the presently authorized capacity are outside the scope of this proceeding. Accordingly, we will limit our response to these questions to a discussion of the capacity currently authorized by Amendment 158, the operational plans for the Millstone Unit No. 2, and a projection of when -- given those plans -- the spent fuel pool will reach capacity allowing for full core discharge capability.

Finally, in preparing our response to your earlier request (December 5, 1992), Paragraph 1, it has become clear that the request appears to be without limit insofar as it seeks documents related to the Amendment 158 criticality analysis. We are concerned that the request would encompass information such as the models, computer codes, and calculation files that are proprietary to NU's contractor Holtec. That is, these documents are confidential commercial information as defined by 10 C.F.R. § 2.790(a)(4).

At this time, we object to the request to the extent it seeks confidential commercial information. We will provide to you, among other things, input information and output data similar to what has been previously provided to the NRC. In addition, we will provide the contractor's report to NU describing the calculations and models in detail. It is our understanding that the NRC Staff has already utilized this non-proprietary version of the information to have its contractor, Oak Ridge National Laboratory, run an independent criticality analysis for the Millstone Unit No. 2 spent fuel pool, Regions A and B. I suggested during our phone call that, during this round of discovery, we limit our response to this non-proprietary information. If this information is sufficient for your needs, we need not reach the issue of the discovery of the Holtec proprietary information. If not, we agreed that neither your right to re-raise the issue nor our right to object would be waived.

As with our earlier letter, we are proceeding to prepare our responses to your discovery requests consistent with the above. If you do not agree to the approach outlined above, we need to know as soon as possible (and no later than the end of this week) so we can timely file any necessary formal objections with the Licensing Board.

Sincerely,

  
David A. Repka

cc: Service List