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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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MEETING OF PETITION REVIEW BOARD

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WEDNESDAY

JUNE 1, 2005

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ROCKVILLE, MARYLAND

+ + + + +

The meeting convened at 2:00 p.m.

MEMBERS:

DONNA SKAY

PAT MILANO

DAN FRUMKIN

HERB BERKOW

JENNY LONGO

MIKE MARSHALL

BONNIE LEWIS

JOHN BOSHKA

MIKE CASH

TOM BARTH

1 ALSO PRESENT:

2 PAUL GUNTER, Nuclear Information and Resource
3 Service

4 DEB KATZ, Citizens Awareness Network

5 JIM WARREN, North Carolina WARN

6 MIKE FLETCHER, Harris Nuclear Power Plant

7 ALEX MARION, Nuclear Energy Institute

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P-R-O-C-E-E-D-I-N-G-S

(2:00 p.m.)

MS. SKAY: My name is Donna Skay. I'm the NRC's 2.206 Coordinator, and I'm the Acting Petition Manager today. Sandy Patel will be the Petition Manager, but he is out this week.

Before we start, I would like to go around the room here in Headquarters and introduce all the folks that are here.

MR. MILANO: Yes. Pat Milano with -- Project Director at One.

MR. FRUMKIN: Dan Frumkin, Fire Protection, Plant (inaudible).

MR. BERKOW: Herb Berkow, Petition Review Board Chairman.

MS. LONGO: Jenny Longo, Office of General Counsel.

MR. MARSHALL: Michael Marshall, Section Chief. I'm the immediate supervisor of the petition manager.

MS. LEWIS: I'm Bonnie Lewis, (inaudible).

MR. BOSHKA: John Boshka, Project Manager.

PARTICIPANT: (Inaudible.)

MR. MARION: Alex Marion, NEI.

MR. CASH: Mike Cash, Office of the

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1 Inspector General.

2 MR. BARTH: Tom Barth, Office of the
3 Inspector General.

4 MS. SKAY: All right. And I know you
5 introduced yourselves on the phone. Just to make sure
6 we get it on the transcript, could you all go through
7 again and introduce yourself and which organization
8 you're with?

9 MR. GUNTER: Paul Gunter, Nuclear
10 Information and Resource Service. I apologize for not
11 being there in person. I had intended to, but I have
12 schedule conflicts.

13 MS. KATZ: Deb Katz, Citizens Awareness
14 Network.

15 MR. WARREN: Jim Warren, North Carolina
16 WARN, or Waste Awareness and Reduction Network.

17 MR. FLETCHER: I'm Mike Fletcher with the
18 Harris Nuclear Plant.

19 MS. SKAY: Okay. With that, I will turn
20 it over to Herb Berkow, the Petition Review Board
21 Chairman.

22 MR. BERKOW: Good afternoon. The subject
23 of this teleconference is the 2.206 petition submitted
24 by the Nuclear Information and Resource Service, the
25 Citizens Awareness Network, Indian Point Safe Energy

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1 Coalition, North Carolina Waste Awareness and
2 Reduction Network, Alliance for Affordable Energy, and
3 the Blue Ridge Environmental Defense League. The
4 petition is dated May 12, 2005.

5 The petition addresses potentially
6 inoperable MX and MC fire protection barriers at 14
7 reactors at 10 sites, specifically Shearon Harris,
8 H.B. Robinson, McGuire, Catawba, Ginna, FitzPatrick,
9 Indian Point, Vermont Yankee, Waterford, and Arkansas
10 Nuclear 1.

11 The Petitioners have requested that the
12 NRC take three emergency enforcement actions:
13 1) issue a generic communication to the licensees for
14 the named reactor sites to determine the extent of
15 condition of inoperable fire barriers; 2) the generic
16 communication should require that these licensees
17 provide justification for operation and non-compliance
18 with all applicable fire protection regulations; and
19 3) with the determination that any of the named sites
20 are operating in an unanalyzed condition, or that
21 assurance of public health and safety is degraded, NRC
22 will order suspension of the license or a power
23 reduction of the affected reactors until it can be
24 demonstrated that they are operating in conformance
25 with all applicable fire protection regulations.

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1 The purpose of this teleconference is to
2 allow the Petitioners to address the Petition Review
3 Board. It's an opportunity for the Petitioners to
4 provide additional evaluations in support of the
5 petition. This is also an opportunity for the staff
6 and licensees to ask any clarifying questions.

7 The purpose of this teleconference is not
8 to debate the merits of the petition. Following this
9 phone call, the PRB will meet to determine whether the
10 NRC accepts the petition under the 2.206 process or
11 whether it will be dealt with under another mechanism.
12 The PRB meeting today will not determine whether we
13 agree or disagree with the contents of the petition or
14 with the Petitioners' request.

15 The teleconference is being transcribed,
16 so I ask that anyone making a statement first state
17 their name clearly. The transcript will become a
18 supplement to the petition and will be made publicly
19 available. We have requested that the Petitioners
20 keep their remarks to about 30 minutes.

21 If the PRB decides that the petition will
22 be considered under 2.206, then the NRC will issue an
23 acknowledgement letter to the Petitioners. The
24 Petition Manager will keep the Petitioners and the
25 licensee periodically informed of the status of the

1 review.

2 And with that, Mr. Gunter, I'll turn it
3 over to you. I assume you're going to be the
4 principal spokesperson.

5 MR. GUNTER: Initially, yes.

6 MR. BERKOW: Okay.

7 MR. GUNTER: Thank you. This is Paul
8 Gunter. I'm Director of the Reactor Watchdog Project
9 for Nuclear Information and Resource Service here in
10 Washington, D.C. I think that we all realize that the
11 U.S. Nuclear Regulatory Commission requires all
12 operating licensees to conform with 10 CFR 50.48,
13 which requires that operating licenses comply with
14 General Design Criteria 3 of Appendix A to 10 CFR 50.

15 You know, that breaks down to those
16 licensees who were licensed to operate January 1,
17 1979, to conform with 10 CFR 50, Appendix R3(g)(2), as
18 it implies in this case. And post January 1, 1979,
19 licensees must comply with similar provisions in their
20 license agreement.

21 Again, the appropriate sections that we're
22 addressing today with regard to the Hemick (phonetic
23 and MT fire barriers regards Appendix R3(g)(2),
24 specifically Sections A and C for -- A being the
25 three-hour barrier and C being the one-hour

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1 application.

2 The Hemick barriers basically apply to
3 one-hour applications, and the MT is a three-hour
4 application. And as we understand it, the operability
5 requirements for these fire barriers, as designed in
6 3(g)(2) were brought into question in 1999 as a result
7 of inspections requested for other fire barriers in a
8 followup to inoperable thermal lag fire barriers
9 identified a decade earlier and declared inoperable in
10 1992.

11 NRC further identified conflicted testing
12 with regard to the operability of this fire barrier
13 material and communicated it to the industry on
14 June 20, 2001. This was finalized into a performance
15 testing program for operability requirements with
16 Hemick/MT on January 16, 2003, utilizing standardized
17 ASTM E 119, Time/Temperature Profile Tests. And these
18 tests were to be conducted on basic configurations of
19 safe shutdown equipment, including electrical
20 conduits, ladderback cable trays, junction boxes, and
21 structural supports.

22 Those tests were finally conducted on
23 March 11th and the 25th of 2005, and April 25th, 2005.
24 And the pass/fail test results were announced on
25 March 28, 2005, and in a stakeholders conference

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1 April 29, 2005.

2 The test results -- to boil it down very
3 quickly -- I think anybody that wants to know can find
4 out very easily. But they reported dramatic failures
5 of the fire barriers, ranging from on the one-hour
6 test the structural support fire protection failed 13
7 minutes into a one-hour test, and on the three-hour
8 fire barrier structural supports fire protection
9 failed 56 -- 58 minutes into the test.

10 What is equally troubling is once again
11 they identified widespread failure of industry quality
12 assurance/quality control programs for fire barrier
13 systems where earlier fire tests apparently conducted
14 in stain were used to install the bogus fire barrier
15 material in wide applications throughout the industry.

16 It is equally troubling to the Petitioners
17 with regard to NRC's slowness in recognizing the
18 situation and failure to hold licensees to fire
19 protection requirements and an inability to apply
20 timely enforcement. The question that troubles us
21 with regard to the test results was: why did it take
22 NRC nearly six years to arrive at test results from
23 the initial identification of the problem?

24 Which brings us to the question of the
25 current compensatory actions that are being proposed

1 or substituted for this set of inoperable fire
2 barriers. As we understand, roving Fire Watch
3 personnel are now installed with these Hemick and MT
4 fire barrier applications.

5 And while there is a history of the use of
6 Fire Watch in the industry, it must be recognized
7 that, first of all, it's expensive, it's a real
8 strain, and it's something that amounts to little more
9 than a surveillance program rather than actually
10 compensating for physical fire protection features for
11 safe shutdown equipment.

12 In performing roving Fire Watch rounds,
13 the licensee's personnel are absent from a particular
14 fire area more than they are present. As Commissioner
15 Ivan Sellin (phonetic) testified before Congress on
16 March 3, 1993, with regard to thermal lag fire
17 barriers, Fire Watch are not expected to be relied
18 upon for two or three years.

19 However, Fire Watch were deployed for
20 inoperable thermal lag fire barriers for six years
21 before confirmatory action orders were issued by NRC
22 for thermal lag fire barriers. And this is of
23 significant concern, because we feel that the nuclear
24 industry, particularly under the direction of the
25 Nuclear Energy Institute, plans to contest the

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1 inoperability and cable functionality for this
2 particular fire barrier, and as a result is -- what
3 we've seen with regard to thermal lag, the process
4 could become contentious, dragging on for years as was
5 the case in the thermal lag fire barrier issue.

6 And all this time the public safety rides
7 on whether or not the compensatory measures are
8 adequate, even though we can provide numerous licensee
9 event reports where fire barrier watch rounds were
10 falsified, where fire barrier watch personnel were
11 found nesting throughout the plant rather than
12 performing their duties, and even cases of drug
13 overdose by Fire Watch personnel.

14 So the whole issue of whether or not,
15 particularly in a drawn-out process towards resolution
16 of this particular issue, we are quite concerned. But
17 this brings us to our final point, and that is the
18 enforcement of 10 CFR 50, Appendix R3(g)(2).

19 Simply put, the NRC needs to demonstrate
20 it is willing and able to take effective enforcement
21 action, given the dramatic failure of this fire
22 barrier material to meet requirements. It is
23 particularly of concern to us that if the Hemick/MT
24 fire barrier problem follows the same route as the
25 thermal lag issue, even though orders were issued by

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1 NRC and confirmed and consented to by industry in
2 1998, by the year 2000 the functional fire protection
3 inspections, later known as the triennial fire
4 protection inspections, found that despite the orders
5 industry substituted unapproved, largely unanalyzed,
6 and, therefore, illegal operator manual actions in the
7 place of meeting the NRC fire protection requirements
8 and -- as they were under orders.

9 The Nuclear Regulatory Commission has the
10 opportunity to take enforcement action with regard to
11 these inoperable Hemick/MT fire barriers and
12 demonstrate that it has a commitment to public safety
13 in the area of fire protection for safe shutdown
14 equipment, particularly in light of the fact that this
15 is an area of risk that has already been demonstrated
16 by a fire.

17 Thank you.

18 MR. BERKOW: Thank you. Are any of the
19 other Petitioners -- this is Herb Berkow. Any of the
20 other Petitioners wish to say anything?

21 MS. KATZ: This is Deb Katz from the
22 Citizens Awareness Network. We take this as a very
23 serious issue, and we are very concerned about the
24 unanalyzed condition that may exist at these reactors,
25 and the fact that it's not clear the extent to which

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1 this material has been used at these reactors, and,
2 therefore, has the potential to compromise health and
3 safety, and also compromise our ability to have
4 confidence in the NRC that they're actually protecting
5 our health and safety.

6 We feel it's very important that the
7 petition be acted on, that in fact an inventory be
8 done, so that the extent of compromised fire barrier
9 material is known, and it is determined how
10 compromised safety is by the inoperable fire barrier.

11 MR. BERKOW: Thank you.

12 Mr. Gunter, any other comments from the
13 Petitioners?

14 MR. GUNTER: Well, I would just add in
15 closing that the -- a request that the Petition Review
16 Board put this particular fire barrier material into
17 context of an overall picture of the extent of
18 condition for fire barrier protection under 3(g)(2) at
19 U.S. nuclear power stations.

20 I believe this was raised by the Noonan
21 Coalition in an earlier Petition Review Board that was
22 site-specific to Vermont Yankee. But we believe that
23 it is important to consider this particular
24 inoperability requirement in context of a number of
25 other issues with regard to 3(g)(2), particularly with

1 regard to the fact that we don't believe that it's
2 justifiable for NRC or industry to wait on a potential
3 ruling with regard to operator manual actions which
4 may or may not come.

5 MR. BERKOW: Okay. Thank you.

6 This is Herb Berkow. Any members of the
7 staff have any questions for the Petitioners?

8 MS. SKAY: Just one question. This is
9 Donna Skay.

10 Mr. Gunter, will you be representing all
11 of the Petitioners? Can we consider you the primary
12 contact on this petition?

13 MR. GUNTER: Yes. I can -- I can convey,
14 and have conveyed, communications from NRC to all of
15 the Petitioners on this particular 2.206.

16 MS. SKAY: Okay. Thank you.

17 MR. BERKOW: Thank you.

18 Mr. Fletcher, do you have any questions?

19 MR. FLETCHER: No, I don't, not at this
20 time. Thank you.

21 MR. BERKOW: Okay. Well, I guess then
22 that terminates the phone call.

23 MS. SKAY: Any questions?

24 MR. MARION: No, I just have a comment.

25 This is Alex Marion from NEI. Mr. Gunter's statement

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1 may --

2 PARTICIPANT: Excuse me. Could you speak
3 up? I cannot hear you.

4 MR. MARION: Alex Marion from the Nuclear
5 Energy Institute. In Mr. Gunter's comments, he made
6 a statement that NEI plans to contest the NRC action
7 on the Hemick fire barrier system material, and that
8 is not true.

9 MR. BERKOW: Okay. Thank you.

10 This is Herb Berkow. Are there any more
11 comments or questions? If not, we thank the
12 Petitioners, and we will be getting back to you.

13 (Whereupon, at 2:21 p.m., the proceedings
14 in the foregoing matter were concluded.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: 2.206 Petition Review Board

Docket Number: n/a

Location: Rockville, MD

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings as recorded on tape(s) provided by the NRC.



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