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NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

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In the Matter of)
)
INNOVATIVE WEAPONRY, INC.)
Albuquerque, New Mexico)

Docket No. 030-30266

EA 96-170

LICENSEE'S RESPONSE AND MOTION TO DENY
NRC STAFF'S MOTION TO TERMINATE PROCEEDING

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INTRODUCTION

On November 12, 1996, the staff of the Nuclear Regulatory Commission (Staff) issued a Board Notification in the above-captioned proceeding. Board Notification 96-06. On December 12, 1996, as a result of the information contained in Board Notification 96-06 and pursuant to 10 C.F.R. § 2.730, the Staff filed a motion with the Commission to terminate the above-captioned proceeding as moot.

Licensee's response to Staff's Motion To Terminate Proceeding is that the Staff's motion is without merit because it mischaracterizes, misinterprets and misapplies the facts and the law in this case. Therefore, Staff's Motion To Terminate Proceeding should be denied.

BACKGROUND

The genesis of the case lies in an enforcement action taken by the NRC pursuant to certain alleged breach of license conditions by the Licensee. The alleged violations were:

- IWI (Licensee) distributed tritium in gunsights not approved by the NRC and not specifically authorized by the license, and
- IWI (Licensee) distributed tritium sources from a manufacturer not authorized on the license.

An enforcement conference was held where the NRC Staff and Licensee agreed that Licensee would take certain actions in lieu of or as part and parcel of NRC sanctions. The agreed upon actions were to be and ultimately were set out a Confirmatory Order Modifying License (Effective Immediately) (Confirmatory Order). 61 Fed. Reg. 25,694.

The Confirmatory Order provided that License No. 30-23697-01E was modified to require that: (1) the Licensee develop and submit for NRC approval a training plan; (2) the Licensee submit for NRC approval the name and qualifications of an independent auditor and an audit plan; and (3) the Licensee develop and implement written procedures designed to maintain inventory and accountability of gunsights with sources authorized by the NRC. Confirmatory Order at 4-5; 61 Fed. Reg. at 25,695.

The particulars for meeting the requirements 1 and 2 were met in letters of June 11 and July 18, 1996, from Licensee to the appropriate NRC authorities. Licensee's plans were approved in letters of July 9 and July 23, 1996.

On September 25, 1996, Licensee applied for an amendment to its license to change its base of operations from Albuquerque, New Mexico to Fort Worth, Texas. In so doing,

Licensee indicated that it would continue to follow the requirements imposed by the Confirmatory Order, specifically stating that:

"[t]he storing and containment of the tritium will be the same and the audit plan and training plan will also be the same as before. . . . All procedures will remain intact."

Instead of issuing the amendment, as Licensee requested, the NRC issued a new license. The reason given by NRC staff is that license numbers are coded to reflect the state in which a licensee operates. Since Licensee was moving from New Mexico to Texas, NRC issued a new license to reflect the new state location.

License Condition 16 of the new License No. 42-23850-02E provides that the Licensee shall conduct its program in accordance with the statements, representations, and procedures contained in certain documents, including the September 25, 1996 letter. See License No. 42-23850-02E, Condition 16. Consequently, the requirements which came out of the enforcement proceeding, were codified in the Confirmatory Order, and were the subject of Licensee's Request for Hearing, as amended, are now placed in a new license.

Key to the mootness issue is the question of whether the subject of Licensee's complaint survives the transfer of requirements from the Confirmatory Order to the new license. The following discussion demonstrates that the Licensee's complaint does survive and, therefore, the Staff's Motion To Terminate Proceeding should be denied.

DISCUSSION

The Staff's motion to terminate the proceeding is without merit because it mischaracterizes, misinterprets and misapplies the facts and the law in this case. Moreover,

mischaracterization, misinterpretation and misapplication by the Staff appears to have shaped the Staff case from the beginning of its participation, i.e., in its October 15, 1996 filing entitled "NRC Staff's Answer To Response To Commission Order To Particularize Contentions and Request To File Nontimely Response." (Staff's Answer). To demonstrate the historical significance of the Staff's mistakes in this regard, it is necessary to briefly revisit Staff's Answer and put it to the test of fact, law and logic.

At page 12 of the Staff's Answer of October 15, 1996, Staff correctly notes Licensee's revised contention reads:

The pattern of the NRC actions underlying this [Confirmatory] Order and the Order itself are beyond the agency's jurisdiction.

Staff's Answer further acknowledges that:

"The Licensee further refines this contention and states, in its Response, that the contention raises the issue of 'whether the NRC has jurisdiction to take regulatory actions in matters which have no health and safety or common defense and security consequences?'"

Staff's Answer continues at page 13 with what it attempts to characterize as the Licensee's support for its position.

"To support its assertion that the Confirmatory Order was not based on the protection of the public health and safety, the Licensee makes two factual assertions. First, the Licensee claims that the Staff informed the Licensee that 'this case' did not involve public health and safety but was a matter of Licensee compliance. (Citing Licensee September 30 filing at 5-6). Second, the Licensee claims that the violations of its license conditions set forth in the Confirmatory Order have no relationship to public health and safety. (Citing Licensee September 30 filing at 6-7).

There are at least two things wrong with this explanation. First, it mischaracterizes the revised contention. Second, it misstates Licensee's factual assertions supporting the revised contention.

Staff's Mischaracterization of Licensee's Revised Contention

Implicitly, the first sentence of the quote suggests that the Staff regards the gravamen of Licensee's case as being the form of the Confirmatory Order and its relationship to the protection of public health and safety. Licensee's case is only partly concerned with the Confirmatory Order. The issues raised are much broader in scope than the Confirmatory Order itself, as a fair reading of the revised contention reveals. The revised contention reads:

The pattern of the NRC actions underlying this [Confirmatory] Order and the Order itself are beyond the agency's jurisdiction. (Emphasis added.)

Thus, the Licensee is primarily challenging "the pattern of NRC actions" in light of "the agency's jurisdiction."

The Confirmatory Order is only significant in that it is a manifestation of the result of NRC's pattern of actions and purports to impose requirements beyond the agency's statutory grant of jurisdiction.

The Staff clearly does not acknowledge the plain language of the revised contention concerning the pattern of NRC actions and the agency's jurisdiction but goes on to state on page 13 in the second paragraph of Staff's Answer:

"The Licensee fails to support the basic assumption of its proffered basis; that the Confirmatory Order lacked a public health and safety basis. The Confirmatory Order explicitly states that the implementation of the commitments offered by the Licensee to correct deficiencies noted in the conduct of its operations and outlined in the Confirmatory Order are necessary in order to assure that licensed activities will be in compliance with NRC requirements in the future and that compliance with these commitments will provide reasonable assurance that the public health and safety are protected. Confirmatory Order at 2-3; 61 Fed. Reg. at 25695."

The Staff's argument that the Confirmatory Order explicitly states that its existence is

necessary to assure public health and safety is an *ipse dixit*. Such statements do nothing to address the pattern of NRC actions underlying the Order nor do Staff's statements provide a rational basis for establishing and exercising jurisdiction to impose the particular requirements and sanctions NRC has imposed and continues to impose upon the Licensee.

In the matter at hand, Staff's Motion to Terminate Proceeding, it is also clear that the Staff continues to confuse the form of the Confirmatory Order with its predicate of activities, the underlying substance of the Confirmatory Order and the continuing effect of the requirements set out in the Confirmatory Order. Licensee is primarily challenging not just the Confirmatory Order, but the predicate of activities, the underlying substance and the continuing effect of the substance of that Order. The form of the Confirmatory Order is important only to the extent that it may have effectuated errors of substance and, especially in this case, exercise of authority by the NRC beyond its statutory jurisdiction.

**Staff's Misstatement of Licensee's Factual Assertions
Supporting the Revised Contention**

As noted above, the Staff states at page 13 of Staff's Answer that the factual assertions supporting the revised contentions are, in summary: (1) the Staff statements that public health and safety were not involved; and (2) the Confirmatory Order had no relationship to public health and safety.

Staff totally ignored and failed to answer the factual assertions set out at pages 6 and 7 of Licensee's September 30 pleading, even though those pages are cited in Staff's pleadings of October 15 and December 12, 1996. Specifically, the Staff ignored the factual situations concerning both violations for which Licensee was cited. At pages 6-7, Licensee states:

Violation 1 states:

IWI distributed tritium in gunsights not approved by the NRC and not specifically authorized in the license.

The underlying NRC staff licensing activities include review of the configuration and manufactured brand of gunsight into which tritium is inserted. This sometimes involves staff suggestions to move the position of the tritium insert right, left, up or down by only a thousandth of an inch, even though such positioning has no effect on public health or safety. Licensee maintains that sight configuration and manufactured brand are irrelevant to health and safety and therefore beyond the jurisdiction of the NRC to regulate. Regulatory prescription beyond that which is necessary to assure health and safety is unlawful.

Violation 2 states:

IWI distributed tritium sources from a manufacturer not authorized on the license.

Licensee maintains that designation of the tritium manufacturer is also irrelevant to public health and safety and is, therefore, beyond the jurisdiction of the NRC to regulate. The NRC may lawfully regulate performance standards to assure manufactured products meet minimum standards of health and safety. But who manufactures those products and who licensee chooses to buy from is a market issue beyond the scope of NRC jurisdiction and is irrelevant to the protection of public health and safety.

Why the Staff failed to mention these factual assertions in their October 15 pleading and in their current Staff's Motion To Terminate Proceeding is of no real consequence. The fact is, they omitted vital information which materially affects the viability of the revised contention. Moreover, this same information is necessary to properly evaluate Staff's Motion To Terminate Proceeding. The language omitted by the Staff presents a clear case. Justiciable factual and legal issues immediately come to mind.

Did the NRC review gunsight configurations? What did they do? How do those actions fit within the NRC's statutory grant of authority and jurisdiction? What is the public

health and safety issue in taking such actions?

Regarding authorized sources of tritium, what are all of the things NRC Staff does to limit access to manufacturers or prescribe dealings with vendors? How do these actions fit within NRC's grant of statutory authority? Why is vendor designation necessary to protect public health and safety?

These are legitimate factual and legal issues presented by the Licensee's Request for Hearing, as amended. The Staff failed to recognize the issues in both earlier and current pleadings because Staff misinterprets and misstates the nature of the case.

There are a number of other major errors in the Staff Answer of October 15, 1996. However, Licensee wishes to point to only one more such error in order to emphasize the impact upon the current Staff Motion To Terminate Proceeding.

At page 14 of Staff's Answer of October 15, Staff concedes that the letter issued to the Licensee transmitting the NOV and the Confirmatory Order stated, "even though these violations did not result in any actual safety impact, they are nonetheless significant from a regulatory standpoint."

The Staff then offers the following analysis.

"Relying on this language, the Licensee draws the conclusion, despite the explicit language in the Confirmatory Order, that the Confirmatory Order was not based on public health and safety but "was solely a matter of license compliance." See Licensee Response at 6. The Licensee, thus, draws a false dichotomy between safety and compliance. As discussed above, the issue of licensee compliance with the Commission's regulations is a public health and safety concern."

The problem with this analysis starts with the cited quote from Licensee Response at 6," i.e., "was solely a matter of license compliance." This is quoted contrary to context of Licensee's

pleading and seriously misrepresents the facts.

The full sentence from which the quote is extracted starts at the bottom of page 5 and reads as follows:

"First, the NRC staff represented to the licensee that the case did not involve public health and safety but was solely a matter of license compliance."

Placed in context, it was the Staff, not Licensee who took the position that the case involved not public health and safety but was solely a matter of license compliance. Therefore, if a false dichotomy is drawn between safety and compliance, it is the Staff, not Licensee, who made the initial observation.

Moreover, nothing in Licensee's pleading suggests or states that its case depends to any degree on the existence of such a dichotomy. Licensee does state in the last sentence of the paragraph in question that:

Licensee's position is that if public health and safety are not affected, the NRC staff has no jurisdiction to require compliance and any license condition which has no health and safety consequence is beyond the NRC's statutory power and authority to impose.

The Staff appears to be transfixed on the statement that "the Confirmatory Order is based on health and safety" as being the issue in this case. This is not so. The real issue is:

Whether the activities leading up to the Notice of Violations and the Confirmatory Order and which continue in effect are within the proper exercise of agency jurisdiction.

If the answer is no, then the Notice of Violation, Confirmatory Order and the license conditions upon which these actions were based are null and void. If the answer is yes, Licensee must continue to comply with the license conditions imposed.

The issue thus stated, how the respective parties respond, how the evidence is

evaluated and what the ultimate decision turns out to be constitute the heart of the controversy. The existence of a genuine dispute of fact and law is undeniable.

Against this background, special focus and attention is turned to the current NRC Staff's Motion To Terminate Proceedings (Staff's Motion).

NRC Staff's Motion To Terminate Proceedings Should Be Denied

Staff's Motion for termination should be denied for two reasons.

- (1) Staff's Motion is based upon a misperception of the case and controversy presented by Licensee's Request For Hearing, as amended.
- (2) Staff's Motion misapplies the law on mootness.

Each will be discussed in turn.

Staff's Motion To Terminate Proceedings Should Be Denied Because The Motion Is Based Upon A Misperception Of The Case And Controversy Presented By Licensee's Request For Hearing, As Amended.

The Staff's misperception of the case and controversy presented by Licensee is explicated in previous sections of this pleading entitled "Staff's Mischaracterization of Licensee's Revised Contentions" and "Staff's Misstatement of Licensee's Factual Assertions Supporting the Revised Contention." Licensee's arguments and analyses were made there with the intent of laying the groundwork for demonstrating that Staff's Motion To Terminate Proceeding is without merit.

In brief, Licensee's position is that the Staff's mischaracterizations and misstatements appear to be derived from a misperception of the case and controversy presented by Licensee.

A fair reading of Staff's October 15 pleading and the one at hand suggests that Staff believes the case to be about the Confirmatory Order and particularly the form of that Order.

Moreover, Staff appears to argue by fiat, that any Confirmatory Order issued by the NRC Staff is lawful because its stated purpose is to protect the public health and safety.

The Staff's position in this regard is untenable. Licensee's revised contention states:

The pattern of the NRC actions underlying this [Confirmatory] Order and the Order itself are beyond the agency's jurisdiction.

The clear language of the contention, notably the first phrase, unequivocally places into controversy "the pattern of the NRC actions underlying" the Confirmatory Order as well as the Confirmatory Order itself. The last five words of the contention, "are beyond the agency's jurisdiction," also clearly establish that Licensee is challenging jurisdiction of the NRC to take the actions it has taken, to impose the license conditions it has imposed and to continue to regulate what it purports to lawfully regulate.

The Staff's motion to terminate errs in two other respects in addition to the Staff's misunderstanding of the clear meaning of the contention. First, Staff places unwarranted importance of form over substance in arguing that the Confirmatory Order is merged into the license and, therefore, no longer exists for the purposes of litigation.

It is well established in the law that the legal effect of any document is determined by its content, not by the title of the document. To suggest, as the Staff's Motion To Terminate Proceeding does, that the Confirmatory Order no longer exists because its content has been transferred to the license places an unwarranted value of form over substance. The Staff is essentially saying that all they need do to avoid litigation is to change the name of what is being done or move the substance of what is being contested from one part of the regulatory

regime to another. This is patently contrary to fair play and acceptable administrative practice. The fact that the substance of the Confirmatory Order now rests in the license does not alter the justiciability of the issues raised by Licensee.

Second, the Staff's position in this regard fails to consider that Licensee's issues, as the contention states, are based upon "the NRC actions underlying the Order" and "the Order itself." The professed movement of the Confirmatory Order into regulatory oblivion does not have any effect on Licensee's challenge to the "pattern of the NRC actions underlying the Order" because this pattern of action has a present and future effect.

In addition, when the Licensee challenges the "Order itself," Licensee is challenging the substance of the Order, not what the documented is entitled. The inclusion of the requirements of the Order in the license does not make those issues go away. If anything, it may be argued that the shift of substance from Order to license condition raises the stature of the issues.

In fact, issues raised by Licensee's contention have always been directed toward license conditions. The Confirmatory Order was only a vessel which substantively transported license conditions from one form, the Confirmatory Order, to another, incorporated by reference in a new license.

The Licensee's recognition that the substance of the Confirmatory Order constituted license conditions is readily apparent by even a cursory review of Licensee's September 30 pleading particularizing contentions. For example, paragraphs 1 and 2 on page 6 of that pleading state:

Licensee's position is that if public health and safety are not affected, the NRC staff has no jurisdiction to require compliance and any **license condition** which

has no health and safety consequence is beyond the NRC's statutory power and authority to impose.

Point two is, the two alleged violations set out in the order have no reasonable relationship to public health and safety and are, therefore, unenforceable **license conditions**. The NRC staff's concession that there were no actual safety impacts tends to support this position. Just as important, however, is the nature of the **license conditions** themselves. (Emphasis added).

Clearly, Licensee's case is and always has been directed toward the jurisdictional basis of the NRC to impose certain license conditions as any fair reading of Licensee's pleadings reveals. The "pattern of NRC Staff activities" referred to in Licensee's revised contention concerns license conditions which were the subject of enforcement action. And the Confirmatory Order was only one of several mechanisms used by the NRC Staff in the enforcement process to carry out the activities which are the subject of Licensee's revised contention.

It is strange, indeed, that the NRC Staff should suggest that this case is moot because new mechanisms for enumerating license conditions have replaced old mechanisms for doing the same things with the same present and future effects. Such a position appears to challenge both rationality and established legal principles.

Attention is now turned to the legal arguments of NRC Staff's Motion To Terminate Proceeding.

Staff's Motion To Terminate Proceeding Should Be Denied Because It Misapplies The Mootness Doctrine

The Licensee takes no exception to the principles of the mootness doctrine set out in NRC Staff's Motion To Terminate Proceedings at pages 3-5. However, those principles are

misapplied by the Staff. Licensee will demonstrate here how those principles, well understood and properly applied, support Licensee's position that the case is not moot.

Although the Advanced Medical Systems case is not factually in point,¹ the legal principles on the mootness doctrine are applicable to Licensee's case. For example, the principle cited by NRC Staff in Murphy v. Hunt, 455 U.S. 478, 481 (1982), is:

A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.

What Murphy suggests is that mootness turns on the extent to which issues survive certain events or the extent to which certain events may cancel out the parties cognizable interest in the outcome of the case if litigation continues.

In the case at hand, Licensee's issues pass the test on both counts. The events upon which NRC Staff bases its arguments for mootness concern the effect of the transfer of the requirements in the Confirmatory Order to the new license. Specifically, at page 5 of its motion, Staff states:

Thus, these programs are now required under License No. 42-23850-02E. Since License No. 42-23850-02E now contains the substantive requirements of the Confirmatory Order, a determination whether the Confirmatory Order may compel the licensee to develop and maintain training and audit plans and written procedures is no longer necessary. Inasmuch as this proceeding only involves the Licensee's challenge to the Confirmatory Order, the proceeding is moot and should be terminated.

¹Advanced Medical Systems, Inc., CLI-93-8, 37 N.R.C. 181 (1993), involved the issue of decommissioning. Once decommissioning became a *fait accompli*, that licensee had no cognizable interest in any issue because no issue survived the completion of decommissioning. This can be distinguished from the case at hand because here, the issues raised by licensee have merely been transferred from one administrative form to another, i.e., from Confirmatory Order to new license condition. Hence, the issue lives. Moreover, Licensee's case has always been directed toward license conditions and exercise of jurisdiction by the agency. No events have eliminated these matters as issues in the case.

The Staff is wrong because, as previously discussed, they misperceive and mischaracterize the issues presented by Licensee.

Contrary to NRC Staff's assertion that "this proceeding only involves the Licensee's challenge to the Confirmatory Order," Licensee's case is built on a range of issues of law and fact. Licensee's issues concern the original license conditions which prompted the enforcement action, the subsequent NRC Staff pattern of activities leading up to the Confirmatory Order and the requirements of the Confirmatory Order itself. All of these matters continue to exist except, perhaps, the shell of the Confirmatory Order.

Concomitantly, the substance of the Confirmatory Order lives on in the new license by reason of the incorporation of its requirements in the new license.

Regarding the second point in the Murphy quote, Licensee continues to have a cognizable interest in the outcome of the litigation. Because all of the matters raised in Licensee's Request For Hearing, as amended, continue to exist, the regulatory exercise of authority beyond the agency's jurisdictional limits continues to adversely affect Licensee's ability to engage in commerce and the free market economy. One possible outcome is that the NRC could be found without jurisdiction to impose the requirements in question. This outcome would preclude past, present and future enforcement action in association with such requirements. Moreover, Licensee would have greater flexibility to compete in a free market economy and could engage in commerce with fewer encumbrances. Licensee's interest in such an outcome militates against a finding of mootness and in favor of denying NRC Staff's Motion To Terminate.

At pages 3 and 4 of its Motion To Terminate NRC Staff cites County of Los Angeles

v. Davis, 440 U.S. 625, 631 (1979), in support of the legal principle:²

"[A] case is moot when there is no reasonable expectation that the matter will recur and that interim relief or intervening events have eradicated the effects of the allegedly unlawful action."

Based on this principle, the Staff then concludes:

Since the Licensee is now required, through Condition 16 of License No. 42-23850-02E, to meet the commitments made in its September 25, 1996 letter to maintain the audit and training plans, developed and approved by the Staff pursuant to the Confirmatory Order, and the written procedures developed pursuant to the Confirmatory Order, a determination whether or not the Confirmatory Order itself should be sustained is no longer necessary. The proceeding regarding the Confirmatory Order is, therefore, moot. See De Funis, 416 U.S. at 317.

This conclusion misses the mark because, as the last phrase of the first sentence

²Footnote 5, page 4 of Staff's Motion states:

In County of Los Angeles, the Supreme Court recognized that as a general rule "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case." 440 U.S. at 631. Where, however, there is no reasonable expectation that the matter will recur and that interim relief or intervening events have eradicated the effects of the allegedly unlawful action, a case may become moot because "neither party has a legally cognizable interest in the final determination of the underlying questions of fact and law."

Two points can be made. First, the quote concerning "cessation of allegedly illegal conduct " goes not just to mootness, but to the issue of effect of consent on Licensee's right to be heard. Temporary concession to NRC authority does not confer jurisdiction. The question is, whose conduct is illegal, the Licensee's for not following the license conditions or the NRC's for imposing and enforcing license conditions which are beyond its jurisdiction to impose and enforce. Second, so long as the license conditions originally challenged exist as they do, there is a reasonable expectation that similar matters could recur, no matter how earnestly the Licensee pursues compliance. Moreover, there has been no interim relief or intervening events which have eradicated the effects of the wrongful action. To the contrary, Licensee has received notice of a \$7,500 fine and the NRC Staff persists in pressing the offending license conditions beyond the agency's jurisdictional authority to do so. Therefore, Licensee has a "legally cognizable interest in the final determination of the underlying questions of fact and law" as stated in County of Los Angeles.

indicates, the Staff continues to erroneously characterize the controversy as being limited to a determination on whether the Confirmatory Order should be sustained. This is not the case.

The controversy is about the original license conditions which prompted the enforcement action, the subsequent pattern of NRC Staff activities leading up to the Confirmatory Order and the requirements of the Confirmatory Order itself. All of these issues still exist by reason of the fact that the license conditions challenged continue to exist in the new license. In fact, the Staff establishes the nexus between the issues originally raised and the new license in the first part of Staff's conclusion quoted above which ties together the new license, the commitments in the September 25, 1996 letter and the written procedures developed pursuant to the Confirmatory Order. Therefore, there is fundamental error in NRC Staff's conclusion that "the proceeding regarding the Confirmatory Order is, therefore, moot."

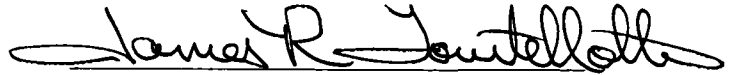
In closing, it may be noted that NRC Staff also cites De Funis v. Odegaard, 416 U.S. 312, 316 (1972), citing North Carolina v. Rice, 404 U.S. 244 (1971), for the legal principle that:

"federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them."

The continued existence of license conditions which extend the exercise of agency power beyond statutory jurisdictional limits clearly affects the rights of Licensee. The De Funis case, like Murphy and the County of Los Angeles provide legal support for Licensee's right to be heard and conclusively weigh against the NRC Staff's Motion To Terminate Proceeding.

CONCLUSION

For the reasons stated, the NRC Staff's Motion To Terminate Proceeding should be denied.



James R. Tourtellotte
Attorney-at-Law
IWI Counsel

Proof of Service

Service is made in accordance with 10 C.F.R. § 2.701 by delivery to the NRC Public Document Room on December 27, 1996.

A handwritten signature in black ink, reading "James R. Tourtellotte". The signature is written in a cursive style with a horizontal line underneath the name.

James R. Tourtellotte
Attorney-at-Law

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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Fort Worth, Texas)

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Certificate of Service

I hereby certify that copies of the foregoing Licensee's Response and Motion to Deny NRC Staff's Motion To Terminate Proceeding have been served upon the following persons by delivery to the NRC Public Document Room in accordance with the requirements of 10 C.F.R. § 2.701.

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Leonard J. Callan, Administrator
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611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011

Dated at Arlington, Virginia, this
27th day of December, 1996.

A handwritten signature in black ink, reading "James R. Tourtellotte". The signature is written in a cursive style and is positioned above a horizontal line.

James R. Tourtellotte
Attorney-at-Law
IWI Counsel