

Ms. Cindy Gagne
510 West First Street South
Fulton, NY 13069

June 10, 1997

Ms. Linda Downing
107 Albright Road
Mexico, NY 13114

Dear Ms. Gagne and Ms. Downing:

Your letter of May 14, 1997, to Chairman Jackson of the U.S. Nuclear Regulatory Commission (NRC) regarding the Nine Mile Point Nuclear Station, Unit No. 1 (NMP-1) has been referred to me for reply.

You were correct that NMP-1 has 60 days from the May 9, 1997, restart date to submit the required technical specification (TS) change for reactor coolant water chemistry.

Your inquiry about public participation allowed during the NMP-1 amendment process is addressed in detail in Title 10 of the Code of Federal Regulations, Part 50, Section 91 (§50.91). We are enclosing a copy of this part of the regulations, highlighted for your convenience. As discussed in the regulations, the public will have an opportunity to participate. The schedule and deadlines for commenting are published in the Federal Register and will be available in your local public document room (PDR). The PDR for Nine Mile Point is located at the Reference and Documents Department of the Pennfield Library, State University of New York, Oswego, NY 13126, (315) 341-3563/3564. After the comment period expires, the NRC will inform the commentors of the receipt of their comments. The staff will review the comments and will incorporate them, as appropriate, into the safety evaluation.

Interested members of the public also have an opportunity to request a formal adjudicatory hearing on a proposed license amendment. A hearing may be requested by following the procedures described in 10 CFR 2.714 (copy enclosed), in 10 CFR 50.91 and in the notice of proposed license amendment that will be published in the Federal Register. Note that a hearing may be held before or after issuance of the proposed amendment, depending on whether the amendment in question involves significant hazards considerations.

In addition, the Project Manager for NMP-1 will inform you when the licensee's TS amendment request is received by the NRC. I trust that this information is responsive to your concerns regarding NMP-1.

Sincerely,
/s/

Steven A. Varga, Director
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

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PDR ADDCK 0500220
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Enclosure: As Stated
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OFFICE	ADPR:NRR*	D:NRR*	EDO*	OCH:SJ*	
NAME	RZimmerman	SCollins	LCallan	SJackson	
DATE	05/22/97	05/22/97	05/22/97	06/10/97	

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001
June 10, 1997

Ms. Cindy Gagne
510 West First Street South
Fulton, NY 13069

Ms. Linda Downing
107 Albright Road
Mexico, NY 13114

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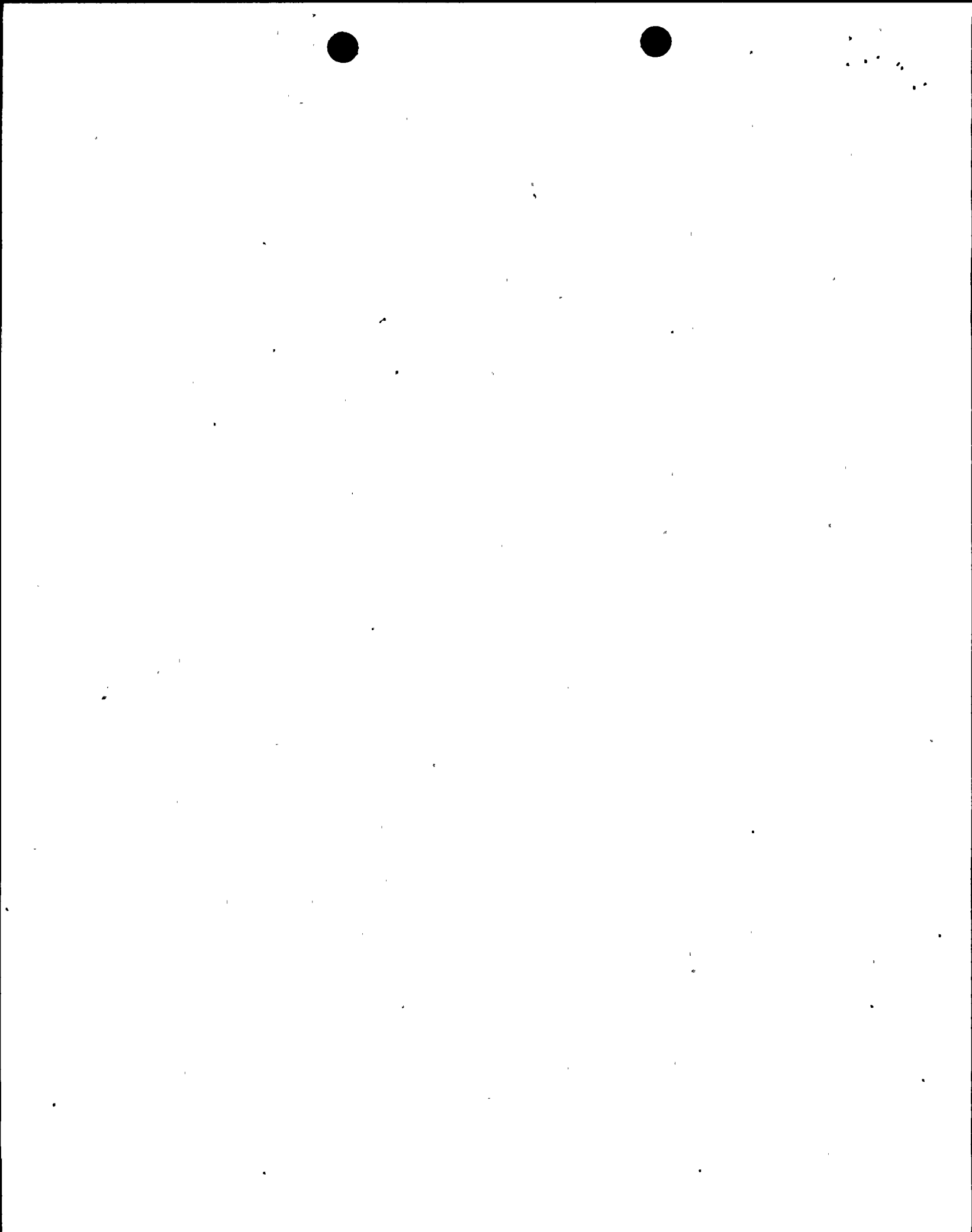
In addition, the Project Manager for NMP-1 will inform you when the licensee's TS amendment request is received by the NRC. I trust that this information is responsive to your concerns regarding NMP-1.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Varga".

Steven A. Varga, Director
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Enclosures: As Stated



DISTRIBUTION:

Docket File (50-220) w/orig. incoming

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EDO# 970364

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S. Collins/F. Miraglia

N. Olson

R. Zimmerman

PDI-1 R/F (w/incoming)

S. Varga

J. Zwolinski

S. Bajwa

M. Thadani

T. Martin

M. Slosson

C. Norsworthy

W. Travers

K. Bohrer

S. Burns, OGC

H. Miller, RI

M. Boyle (email MLB4)

OPA

OCA

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D. Hood (w/incoming)

S. Little



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administrative control during the storage or surveillance period, or a surety method or fund statement of intent be maintained in accordance with the criteria of § 50.75(e); and

(ii) Means be included for adjusting cost estimates and associated funding levels over the storage or surveillance period.

(4) The proposed decommissioning plan must include—

(i) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including the presence of other nuclear facilities at the site.

(ii) A description of the controls and limits on procedures and equipment to protect occupational and public health and safety;

(iii) A description of the planned final radiation survey;

(iv) An updated cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning; and

(v) A description of technical specifications, quality assurance provisions and physical security plan provisions in place during decommissioning.

(5) If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve, by amendment, the plan subject to such conditions and limitations as it deems appropriate and necessary. The approved decommissioning plan will be a supplement to the Safety Analysis report or equivalent.

(6) The Commission will terminate the license if it determines that—

(i) The decommissioning has been performed in accordance with the approved decommissioning plan, and

(ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release.

(c) For a facility that has permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

AMENDMENT OF LICENSE OR CONSTRUCTION PERMIT AT REQUEST OF HOLDER

§ 50.90 Application for amendment of license or construction permit.

Whenever a holder of a license or construction permit desires to amend the license or permit, application for an amendment must be filed with the Commission, as specified in § 50.4, fully describing the changes desired, and following as far as applicable, the form prescribed for original applications.

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility, except for amendments subject to hearings governed by §§ 2.1201–2.1263 of this chapter. For amendments subject to §§ 2.1201–2.1263 of this chapter, the following procedures will apply only to the extent specifically referenced in § 2.1205 (c) and (d) of this chapter:

(a) *Notice for public comment.* (1) At the time a licensee requests an amendment, it must provide to the Commission, in accordance with the distribution requirements specified in § 50.4, its analysis about the issue of no significant hazards consideration using the standards in § 50.82.

(2)(i) The Commission may publish in the Federal Register under § 2.106 an individual notice of proposed action for an amendment for which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, publish a periodic Federal Register notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such periodic notice, or it may publish both such notices.

(ii) For each amendment proposed to be issued, the notice will (A) contain the staff's proposed determination, under the standards in § 50.82, (B) provide a brief description of the amendment and of the facility involved, (C) solicit public comments on the proposed determination, and (D) provide for a 30-day comment period.

(iii) The comment period will begin on the day after the date of the publication of the first notice, and, normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request for which it has made a proposed determination of no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 of this chapter or by publishing such a notice in its periodic system of Federal Register notices. In either event, it will not make and will not publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

61 FR 39278

61 FR 40303

61 FR 39278

51 FR 40303

51 FR 774



51 FR 774

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved in which case the Commission will provide an opportunity for a prior hearing.

(5) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a situation, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106 of this chapter, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration if it determines that the licensee has abused the emergency provision by failing to make timely application for the amendment and thus itself creating the emergency. Whenever an emergency situation exists, a licensee

requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failing to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a Federal Register notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it:

(i)(A) Will either issue a Federal Register notice providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment; or

(B) Will use local media to provide reasonable notice to the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(2) of this section, consulting with the licensee on the proposed media release and on the geographical area of its coverage;

(ii) Will provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly, and, in the case of telephone comments, have these comments recorded or transcribed, as necessary and appropriate;

(iii) When it has issued a local media release, may inform the licensee of the public's comments, as necessary and appropriate;

(iv) Will publish a notice of issuance under § 2.106;

(v) Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention called for in § 2.714 of this chapter;

(vi) Will require the licensee to explain the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

51 FR 774

(7) Where the Commission finds that significant hazards considerations are involved, it will issue a Federal Register notice providing an opportunity for a prior hearing even in an emergency situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR Part 2.

(b) *State consultation.*

(1) At the time a licensee requests an amendment, it must notify the State in



§ 2.714 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to § 2.105, any person whose interest may be affected may also request a hearing. The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, or as provided in § 2.102(d)(3). Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d)(1) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

(3) Any person who has filed a petition for leave to intervene or who has been admitted as a party pursuant to this section may amend his petition for leave to intervene. A petition may be amended without prior approval of the presiding officer at any time up to fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference. After this time a petition may be amended only with approval of the presiding officer, based on a balancing of the factors specified in paragraph (a)(1) of this section. Such an amended petition for leave to intervene must satisfy the requirements of this paragraph (a) of this section pertaining to specificity.

(b)(1) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(2) Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

(c) Any party to a proceeding may file an answer to a petition for leave to intervene or a supplement thereto within ten (10) days after service of the petition or supplement, with particular attention



to the factors set forth in paragraph (d)(1) of this section. The staff may file such an answer within fifteen (15) days after service of the petition or supplement.

(d) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in part 60 of this chapter. In all other circumstances, such ruling body or officer shall, in ruling on--

(1) A petition for leave to intervene or a request for a hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

(e) If the Commission or the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or presiding officer.

(f) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, presiding officer or the designated atomic safety and licensing board may direct in the interests of:

- (1) Restricting irrelevant, duplicative, or repetitive evidence and argument,
- (2) having common interests represented by a spokesman, and (3) retaining authority to determine priorities and control the compass of the hearing.

(g) In any case in which, after consideration of the factors set forth in paragraph (d)(1) of this section, the Commission, or the presiding officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit his participation accordingly.

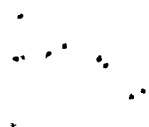
(h) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (f) of this section.

(i) Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

(j) The provisions of this section do not apply to license applications docketed under subpart J of this part.

54 FR 33168

54 FR 33168



Smith

ACTION

EDO Principal Correspondence Control

FROM: DUE: 05/28/97

EDO CONTROL: G970364
DOC DT: 05/14/97
FINAL REPLY:

Cindy Gagne
Fulton, NY

Linda Downing
Mexico, NY

TO: Chairman Jackson

FOR SIGNATURE OF : ** GRN **
Office Director

CRC NO: 97-0481

DESC: AMENDMENT OF THE OPERATING LICENSE FOR NINE MILE
POINT 1

ROUTING:
Callan
Jordan
Thompson
Norry
Blaha
Burns
Miller, RI

DATE: 05/16/97

ASSIGNED TO: NRR CONTACT: Collins

SPECIAL INSTRUCTIONS OR REMARKS:

Put EDO and Chairman on for concurrence.
Chairman's office to review response prior to
dispatch.

NRR RECEIVED: MAY 16, 1997
NRR ACTION: DRPE:VARGA

NRR ROUTING: COLLINS
MIRAGLIA
ZIMMERMAN
MARTIN
SLOSSON
TRAVERS
BOHRER

ACTION
DUE TO NRR ACTION OFFICE
BY Gay 22, '97



11-11-68

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-97-0481 LOGGING DATE: May 15 97
ACTION OFFICE: EDO
AUTHOR: CINDNY EUGNE'
AFFILIATION: NEW YORK
ADDRESSEE: CHAIRMAN JACKSON
LETTER DATE: May 14 97 FILE CODE: IDR-5 NINE MILE POINT
SUBJECT: AMENDMENT OF THE OPERATING LICENSE FOR NINE MILE
POINT 1
ACTION: Direct Reply
DISTRIBUTION: CHAIRMAN
SPECIAL HANDLING: SECY TO ACK
CONSTITUENT:
NOTES: OCM #8513 CHAIRMAN SHOULD REVIEW RESPONSE PRIOR TO
DISPATCH
DATE DUE: May 30 97
SIGNATURE: . DATE SIGNED:
AFFILIATION: .



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