

**ORAL ARGUMENT HAS NOT BEEN SCHEDULED**

**No. 16-1298**

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In the United States Court of Appeals for the  
District of Columbia Circuit

NATURAL RESOURCES DEFENSE COUNCIL, INC. AND  
POWDER RIVER BASIN RESOURCE COUNCIL,

*Petitioners,*

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and  
THE UNITED STATES OF AMERICA,

*Respondents,*

STRATA ENERGY, INC.,

*Intervenor-Respondent.*

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**ADDENDUM OF STATUTES AND REGULATIONS TO BRIEF FOR  
AMICUS CURIAE NUCLEAR ENERGY INSTITUTE, INC.  
IN SUPPORT OF RESPONDENTS AND AFFIRMANCE**

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## STATUTES AND REGULATIONS

The pertinent statutes and regulations for this case are excerpted as follows:

### **42 U.S.C. § 2239(a)**

#### **Hearings and judicial review**

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections [1] 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

### **10 C.F.R. § 2.103(a)**

#### **Action on applications for byproduct, source, special nuclear material, facility and operator licenses**

(a) If the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, facility, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license.

### **10 C.F.R. § 2.309(f)(1)**

#### **Hearing requests, petitions to intervene, requirements for standing, and contentions**

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted, provided further, that the issue of law or fact to be raised in a request for hearing under 10 CFR 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to 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; and

(vii) In a proceeding under 10 CFR 52.103(b), the information must be sufficient, and include supporting information showing, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This information must include the specific portion of the report required by 10 CFR 52.99(c) which the requestor believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)). If the requestor identifies a specific portion of the § 52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary prima facie showing, then the requestor must explain why this deficiency prevents the requestor from making the prima facie showing.

## **10 C.F.R. § 2.321(a)**

### **Atomic Safety and Licensing Boards**

(a) The Commission or the Chief Administrative Judge may establish one or more Atomic Safety and Licensing Boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom have such technical or other qualifications as the Commission or the Chief Administrative Judge determines to be appropriate to the issues to be decided. The members of an Atomic Safety and Licensing Board shall be designated from

the Atomic Safety and Licensing Board Panel established by the Commission. In proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, the Atomic Safety and Licensing Board shall perform the adjudicatory functions that the Commission determines are appropriate.

#### **10 C.F.R. § 2.332(d)**

##### **General case scheduling and management**

(d) *Effect of NRC staff's schedule on scheduling order.* In establishing a schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. Hearings on safety issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS. In addition, discovery against the NRC staff on safety or environmental issues, respectively, should be suspended until the staff has issued the SER or EIS, unless the presiding officer finds that the commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

#### **10 C.F.R. § 2.340(a)**

##### **Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses**

(a) *Initial decision—production or utilization facility operating license.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for an operating license or renewed license (including an amendment to or renewal of an operating license or renewed license) for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common

defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§2.323 and 2.341.

## **10 C.F.R. § 2.340(e)**

### **Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses**

(e) *Initial decision—other proceedings not involving production or utilization facilities—(1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties.* In a proceeding not involving production or utilization facilities, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and on any matters designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties, but identified by the presiding officer as requiring further examination, must be referred to the Director, Office of Nuclear Material Safety and Safeguards, or as appropriate. Depending on the resolution of those matters, the Director, Office of Nuclear Material Safety and Safeguards or as appropriate, after making the requisite findings, shall issue, deny, revoke or appropriately condition the license, or take other action as necessary or appropriate.

(2) Presiding officer initial decision and issuance of permit or license. (i) In a contested proceeding under this paragraph (e), the Commission or the Director, Office of Nuclear Material Safety and Safeguards, or as appropriate, shall issue, deny, or appropriately condition the permit, license, or license amendment in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding under this paragraph (e), the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or as appropriate, may issue the permit, license, or amendment in accordance with §2.1202(a) or §2.1403(a) before the presiding officer's initial decision becomes effective. If, however, the presiding officer's initial decision becomes effective before the permit, license, or amendment is issued under §2.1202 or §2.1403, then the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or as appropriate, shall issue, deny, or appropriately condition the permit, license, or amendment in accordance with the presiding officer's initial decision.

**10 C.F.R. § 2.342(e)****Stays of decisions**

(e) In determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.

**10 C.F.R. § 2.1202(a)****Authority and role of NRC staff**

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it must notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's explanation why the public health and safety is protected and why the action is in accord with the common defense and security despite the pendency of the contested matter before the presiding officer. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

- (1) An application to construct and/or operate a production or utilization facility (including an application for a limited work authorization under 10 CFR 50.12, or an application for a combined license under subpart C of 10 CFR part 52);
- (2) An application for an early site permit under subpart A of 10 CFR part 52;
- (3) An application for a manufacturing license under subpart F of 10 CFR part 52

.....

- (6) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

**10 C.F.R. § 2.1203(a)****Hearing file; prohibition on discovery**

(a)(1) Within thirty (30) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall file

in the docket, present to the presiding officer, and make available to the parties to the proceeding a hearing file.

### **10 C.F.R. § 1210(c)**

#### **Initial decision and its effect**

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment as provided in §§2.1207 or 2.1208. The initial decision must include:

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact or law admitted as part of the contentions in the proceeding;

(2) The appropriate ruling, order, or grant or denial of relief with its effective date;

(3) The action the NRC staff shall take upon transmittal of the decision to the NRC staff under paragraph (e) of this section, if the initial decision is inconsistent with the NRC staff action as described in the notice required by §2.1202(a); and

(4) The time within which a petition for Commission review may be filed, the time within which any answers to a petition for review may be filed, and the date when the decision becomes final in the absence of a petition for Commission review or Commission sua sponte review.

### **10 C.F.R. § 1213**

#### **Application for a stay**

(a) Any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing under this subpart must be filed with the presiding officer within five (5) days of the issuance of the notice of the NRC staff's action under §2.1202(a) and must be filed and considered in accordance with paragraphs (b), (c) and (d) of this section.

(b) An application for a stay of the NRC staff's action may not be longer than ten (10) pages, exclusive of affidavits, and must contain:

...

(c) Within ten (10) days after service of an application for a stay of the NRC staff's action under this section, any party and/or the NRC staff may file an answer supporting or opposing the granting of a stay. Answers may not be longer than ten (10) pages, exclusive of affidavits, and must concisely address the

matters in paragraph (b) of this section as appropriate. Further replies to answers will not be entertained.

(d) In determining whether to grant or deny an application for a stay of the NRC staff's action, the following will be considered:

...

(e) Any application for a stay of the effectiveness of the presiding officer's initial decision or action under this subpart shall be filed with the Commission in accordance with §2.342.

(f) Stays are not available on matters limited to whether a no significant hazards consideration determination was proper in proceedings on power reactor license amendments.

### **10 C.F.R. § 40.41(e)**

#### **Terms and conditions of licenses**

The Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary in order to:

- (1) Promote the common defense and security;
- (2) Protect health or to minimize danger of life or property;
- (3) Protect restricted data;
- (4) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the act and regulations thereunder

### **10 C.F.R. § 50.58(b)**

#### **Hearings and report of the Advisory Committee on Reactor Safeguards**

(b)(1) The Commission will hold a hearing after at least 30-days' notice and publication once in the Federal Register on each application for a construction permit for a production or utilization facility which is of a type described in §50.21(b) or §50.22, or for a testing facility.

(2) When a construction permit has been issued for such a facility following the holding of a public hearing, and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30-days' notice and publication once in the Federal Register, or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment

to a construction permit or operating license without a hearing, upon 30-days' notice and publication once in the Federal Register of its intent to do so.

(3) If the Commission finds, in an emergency situation, as defined in §50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and comment and may issue the amendment. If the Commission finds that exigent circumstances exist, as described in §50.91, it may reduce the period provided for public notice and comment.

(4) Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards consideration is involved.

(5) The Commission will use the standards in §50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the type described in §50.21(b) or §50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

(6) No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

## **10 C.F.R. § 50.92**

### **Issuance of amendment**

(a) In determining whether an amendment to a license, construction permit, or early site permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license, provided however, that if the application involves a material alteration to a nuclear power reactor manufactured under part 52 of this chapter before its installation at a site, or a combined license before the date that the Commission makes the finding under §52.103(g) of this chapter, no application for a construction permit is required. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action:

(1) Under §2.105 of this chapter before acting thereon; and

(2) As soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, under the procedures in §50.91, that a proposed amendment to an operating license or a combined license for a facility or reactor licensed under §§50.21(b) or 50.22, or for a testing facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

## 10 C.F.R. § 51.22

### **Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review**

(a) Licensing, regulatory, and administrative actions eligible for categorical exclusion shall meet the following criterion: The action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment.

(b) Except in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraph (c) of this section. Special circumstances include the circumstance where the proposed action involves unresolved conflicts concerning alternative uses of available resources within the meaning of section 102(2)(E) of NEPA.

(c) The following categories of actions are categorical exclusions:

(1) Amendments to parts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter, and actions on petitions for rulemaking relating to parts 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter.

(2) Amendments to the regulations in this chapter which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations, and actions on petitions for rulemaking relating to these amendments.

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 37, 39, 40, 50, 51, 52, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

4) Entrance into or amendment, suspension, or termination of all or part of an agreement with a State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

(5) Procurement of general equipment and supplies.

(6) Procurement of technical assistance, confirmatory research provided that the confirmatory research does not involve any significant construction impacts, and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

(7) Personnel actions.

(8) Issuance, amendment, or renewal of operators' licenses pursuant to part 55 of this chapter.

(9) Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter; or the issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes an inspection or a surveillance requirement; provided that:

(i) The amendment or exemption involves no significant hazards consideration;

...

(d) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under part 60 or 63 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under subparagraph (E) or (F) of section 102(2) of NEPA.

## **10 C.F.R. § 51.101**

### **Limitations on actions**

(a) Until a record of decision is issued in connection with a proposed licensing or regulatory action for which an environmental impact statement is required under §51.20, or until a final finding of no significant impact is issued in connection with a proposed licensing or regulatory action for which an environmental assessment is required under §51.21:

(1) No action concerning the proposal may be taken by the Commission which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives.

(2) Any action concerning the proposal taken by an applicant which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license. In the case of an application covered by §§30.32(f), 40.31(f), 50.10(c), 70.21(f), or §§72.16 and 72.34 of this chapter, the provisions of this paragraph will be applied in accordance with §§30.33(a)(5), 40.32(e), 50.10 (c) and (e), 70.23(a)(7) or §72.40(b) of this chapter, as appropriate.

(b) While work on a required program environmental impact statement is in progress, the Commission will not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Absent any satisfactory explanation to the contrary, interim action which tends to determine subsequent development or limit reasonable alternatives, will be considered prejudicial.

(c) This section does not preclude any applicant for an NRC permit, license, or other form of permission, or amendment to or renewal of an NRC permit, license, or other form of permission, (1) from developing any plans or designs necessary to support an application; or (2) after prior notice and consultation with NRC staff, (i) from performing any physical work necessary to support an application, or (ii) from performing any other physical work relating to the proposed action if the adverse environmental impact of that work is de minimis.

## **10 C.F.R. § 51.102(a)**

### **Requirement to provide a record of decision; preparation**

(a) A Commission decision on any action for which a final environmental impact statement has been prepared shall be accompanied by or include a concise public record of decision.

**10 C.F.R. § 51.103(c)****Record of decision—general**

(c) The record of decision may incorporate by reference material contained in a final environmental impact statement.

**10 C.F.R. § 51.107****Public hearings in proceedings for issuance of combined licenses; limited work authorizations**

a) In addition to complying with the applicable requirements of §51.104, in a proceeding for the issuance of a combined license for a nuclear power reactor under part 52 of this chapter, the presiding officer will:

(1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the combined license should be issued as proposed by the NRC's Director, Office of New Reactors or Director, Office of Nuclear Reactor Regulation, as appropriate.

(b) If a combined license application references an early site permit, then the presiding officer in the combined license hearing shall not admit any contention proffered by any party on environmental issues which have been accorded finality under §52.39 of this chapter, unless the contention:

(1) Demonstrates that the nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit;

(2) Raises any significant environmental issue that was not resolved in the early site permit proceeding; or

(3) Raises any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which new and significant information has been identified.

(c) If the combined license application references a standard design certification, or proposes to use a manufactured reactor, then the presiding officer in a combined license hearing shall not admit contentions proffered by any party concerning severe accident mitigation design alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification or underlying manufacturing license for the manufactured reactor.

(d)(1) In any proceeding for the issuance of a combined license where the applicant requests a limited work authorization under §50.10(d) of this chapter, the presiding officer, in addition to complying with any applicable provision of §51.104, shall:

(i) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and the regulations in this subpart have been met, with respect to the activities to be conducted under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) Determine whether the redress plan will adequately redress the activities performed under the limited work authorization, should limited work activities be terminated by the holder or the limited work authorization be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the combined license application;

(iv) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(v) In a contested proceeding, determine whether, in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed by the Director of New Reactors or the Director of Nuclear Reactor Regulation, as applicable.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work

authorization, new and significant information on the environmental impacts of those activities, so that the limited work authorization should not be issued as proposed by the Director of New Reactors or the Director of Nuclear Reactor Regulation, as applicable.

(3) In making the determination required by this section, the presiding officer may not address or consider the sunk costs associated with the limited work authorization.

(4) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section on the combined license