

cocaine" and, as the FBI's investigation is not yet concluded, that the NRC cannot be fully aware of the extent of the drug problem at the facility.

The June 22 submittal requests, in addition, that the NRC take immediate action to (1) test archive weld metal test samples germane to Unit 4 in accordance with Charpy test parameters; (2) evaluate Charpy test data obtained to ascertain the degree of embrittlement of the Unit 4 reactor vessel; (3) evaluate the embrittlement and determine whether continued operation of the reactor can be safely achieved within the criterion of 10 C.F.R. Part 50, Appendix G; (4) ensure that the licensee will test archive weld metal samples at regular intervals in the future to ensure a close monitoring of the degree of embrittlement; (5) cause the termination of the integrated surveillance testing program currently being utilized by the licensee, whereby Unit 3 archive weld metal test samples are evaluated and determined to be representative of embrittlement conditions germane to Unit 4; and (6) cause an NRC evaluation of the reference temperature criterion of 300 degrees established for the safe operation of a pressurized water reactor to consider whether the criterion should be lowered to offset the effects of pressurized thermal shock. As a basis for these requests, the submittal alleges that Units 3 and 4 are experiencing reactor pressure vessel embrittlement. In support of this, various documentation is relied upon.

The July 3 submittal requests that the NRC take immediate action to modify Operating Licenses DPR-31 and DPR-41 to require that the Turkey Point Operations Superintendent be required to hold a senior reactor operator's license on the pressurized water reactors germane to the facility. As a basis for this request, the submittal alleges that operation of the facility by an Operations Superintendent who is not the holder of such a licensee would involve a significant



increase in the probability and consequences of a nuclear accident, and involve a significant reduction in the margin of safety.

DISCUSSION

A. Substance Abuse

The June 20 submittal requests immediate action to cause the cold shutdown of Turkey Point Nuclear Plant, Units 3 and 4, and the suspension of the associated Operating Licenses DPR-31 and DPR-41. In addition, the submittal requests that the Commission cause an immediate investigation to ascertain the extent of the drug usage problem and to review the corrective measures taken at Turkey Point and order remedial action in accordance with the new Fitness for Duty rule, which authorizes such action where safety is potentially affected because an individual is unfit for duty.

On June 14, 1989, a Turkey Point plant employee was one of three people arrested in connection with a widespread, ongoing FBI narcotics investigation in South Florida. The arrested employee was a fossil plant operator. As the protected area for the Turkey Point nuclear plant also encompasses the fossil plants, the arrested employee had access to the protected area. This access authority was subsequently suspended. However, this employee did not have access to vital areas of the nuclear plants which contain equipment required for safety. The other two people arrested by the FBI were not employed at the Turkey Point plant and did not have authorized access. In addition to the three people arrested, a number of people in the geographical area were interviewed by the FBI.

The NRC staff is closely monitoring the licensee's actions in response to the FBI arrest and the ongoing FBI investigation. The actions taken by the licensee in response to the FBI investigation appear to be prompt and appropriate. These actions include immediate testing of all managers, supervisors, and personnel in positions significant to safety; testing of all other bargaining unit personnel who volunteered; and subjecting all personnel authorized unescorted access to the Turkey Point Nuclear Plant to mandatory random testing for substance abuse, effective June 28, 1989.

Since the arrest of the fossil plant employee on June 14, 1989, and as of August 7, 1989, approximately 1950 persons with authorized access to Turkey Point have been tested for substance abuse. This represents approximately 60 percent of the persons with authorized access to Turkey Point as of that date. Of the approximately 1950 persons tested, 6 were reported as having confirmed positive test results. Authorized access for 3 of the 6 persons who tested positive was suspended for 45 days. During the 45-day suspension, these 3 people can be retested for substance abuse and, if they pass, access will be restored and they will enter into a frequent followup testing program for 1 year. If they fail to be reinstated during the 45-day suspension, they will not be allowed access to Turkey Point and further disciplinary action will be taken by the licensee. Employment for the remaining 3 people who tested positive was terminated.

On the basis of the data received to date, there is no indication of a widespread problem of substance abuse at the Turkey Point Nuclear Plant. The NRC staff will continue to monitor the licensee's actions concerning this matter to ensure that public health and safety are not endangered. No further actions

beyond what is currently being done are deemed warranted by the NRC at this time.^{1/} Therefore, the request in the June 20 submittal related to substance abuse is denied.

B. Reactor Vessel Materials Surveillance

The June 22 submittal requests immediate action to cause the suspension of Operating Licenses DPR-31 and DPR-41 and to take immediate actions concerning the licensee's program for reactor vessel materials surveillance and analysis. The Petitioner asserts, as a basis for the request, that the reactor vessels at Turkey Point Units 3 and 4, are experiencing vessel embrittlement. In support of this assertion, numerous documents are cited.^{2/}

For the purposes of this discussion, the Petitioner's requests have been separated into the following categories:

- (1) Terminate the integrated surveillance program for Turkey Point Units 3 and 4 whereby Unit 3 archive weld test samples are evaluated and

^{1/} On May 24, 1989, the Commission issued the final rule, "Fitness for Duty Programs" (54 FR 24468). This rule mandates the establishment of a program to deter and detect instances of substance abuse on the part of persons authorized unescorted access to nuclear power plants. The effective date for implementation of the new rule by licensees is January 3, 1990. Thus, the Petitioner's reliance on the rule as a basis for immediate action is misplaced.

^{2/} By letter dated August 12, 1989, the Petitioner submitted a listing of 38 documents which he requested be considered as an "amendment" to his June 22 submittal, to be considered as additional evidence in support of the basis and justification for the June 22 submittal. This "amendment" consists solely of a listing of documents, without any explanation as to how these documents support the Petitioner's assertions. As the Petitioner has not provided any specific information with regard to these documents, further action with regard to his August 12 submittal is unwarranted. See, e.g., Philadelphia Electric Co., (Limerick Generating Station, Units 1 and 2), DD 85-11, 22 NRC 149, 154 (1985).

determined to be representative of embrittlement conditions germane to Unit 4, require the testing and evaluation of weld metal test samples germane to Unit 4 in accordance with Charpy test parameters and criteria, and analyze the test results to ascertain the degree of Unit 4 reactor vessel embrittlement. In this connection, the Petitioner asserts, among other matters, that reasonable doubt exists that the fracture toughness requirements of Appendix G to 10 C.F.R. Part 50 for upper-shelf energy have been met.

- (2) Ensure that future archive weld metal samples will be tested by the licensee at regular intervals to ensure a close monitoring of embrittlement and safe operation pursuant to 10 C.F.R. Part 50, Appendix G.
- (3) Analyze the reference temperature criterion of 300°F established by the Commission for safe operation to consider whether it should be lowered.

With respect to Category (1) above, the licensee requested, in letters dated February 8 and March 6, 1985, a license amendment to combine the existing reactor materials surveillance program at the Turkey Point units into a single integrated program that conforms to the requirements of 10 C.F.R. Part 50, Appendix H. Notice of the requested amendment was published in the Federal Register on March 12, 1985 (50 FR 9919). On April 22, 1985, the NRC staff issued Amendment 112 to Operating License DPR-31 and Amendment 106 to Operating License DPR-41, which authorized, in accordance with Section II.C of 10 C.F.R. Part 50, Appendix H, the use of the integrated surveillance program at Turkey Point.

The Petitioner, in raising this issue, is seeking to use 10 C.F.R. §2.206 procedures to reopen a matter that was the subject of an amendment that was noticed in the Federal Register and fully considered. The Petitioner had the opportunity to request a hearing and failed to do so. The principle is firmly established that parties must be prevented from using 10 C.F.R. §2.206 procedures as a vehicle for reconsideration of issues previously decided, or for avoiding an existing forum in which they more logically should be presented. E.g., General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Units 1 and 2) (Oyster Creek Nuclear Generating Station), CLI-85-4, 21 NRC 561, 563 (1985).

The Petitioner has not provided new evidence that would cause the NRC staff to reconsider its approval of the subject program. Surveillance samples will be removed from the reactor vessels in Units 3 and 4 and tested in accordance with the approved integrated surveillance program and the results will be evaluated by the licensee and separately by the NRC staff. No immediate action is required to test samples germane to Unit 4.

The subject of reactor vessel embrittlement in Unit 4 was recently reviewed by the NRC staff in conjunction with the issuance of Amendment 134 to Operating License DPR-31 and Amendment 128 to Operating License DPR-41. In a letter dated September 21, 1988, the licensee requested that the subject amendments incorporate revised heatup and cooldown pressure-temperature limit curves that would be applicable up to 20 effective full-power years (EFPYs) of service life. The curves in the Technical Specifications at the time of the request were applicable up to 10 EFPYs. Notice of the requested amendments was published in the Federal Register on October 19, 1988 (53 FR 40988). The subject amendments were issued by the NRC staff on January 10, 1989. As discussed in the Safety

Evaluation issued for the amendments, the NRC staff found that (1) the revised pressure-temperature limits were in compliance with the fracture toughness requirements of Appendix G to 10 C.F.R. Part 50; (2) the integrated surveillance program complies with Appendix H to 10 C.F.R. Part 50, and (3) the reactor vessel critical materials at Units 3 and 4 will remain below the pressurized thermal shock (PTS) screening criteria for their licensed life in compliance with the requirements of 10 C.F.R. §50.61.

In response to the Federal Register notice dated October 19, 1988, concerning the issuance of Amendment 134 to Operating License DPR-31 and Amendment 128 to Operating License DPR-41, a Petition for Leave to Intervene dated November 17, 1988, was filed by the Center for Nuclear Responsibility, Inc., and Joette Lorion, which raised contentions relating to the Petitioner's June 22 submittal. In a "Memorandum and Order (Ruling Upon Contentions)," 29 NRC 493 (LBP-89-15) dated June 8, 1989, two contentions were admitted by the Atomic Safety and Licensing Board, as follows:

- a. Contention 2 asserted that capsule material in Unit 3 has been irradiated for a significantly shorter time than capsule material in Unit 4. This contention was admitted, limited to the relevance of the difference in operating time between Units 3 and 4.
- b. Contention 3 was admitted, limited to whether the correct copper percentage was used in predicting the reference temperature (RT_{NDT}) of the critical beltline materials for setting pressure-temperature limits.



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As stated in the Atomic Safety and Licensing Board order, hearings on the admitted contentions are scheduled to commence on December 12, 1989. All documentation associated with the hearings will be placed in the Local Public Document Room and will be available for the Petitioner's review. ^{3/}

As described above, the NRC staff evaluated reactor vessel embrittlement in Unit 4 in conjunction with Amendments 134 and 128 to Operating Licenses DPR-31 and DPR-41, respectively, and determined that there are no public health or safety concerns associated with the continued operation of Unit 4. If any concerns raised in the hearing are determined to be valid, the staff will take the appropriate action at that time. Moreover, all of the documentation relied on by the Petitioner was considered when the amendments were issued. Therefore, further action on this concern is not warranted. General Public Utilities Nuclear Corp., supra, 21 NRC at 563.

The submittal also asserts that reasonable doubt exists that the fracture toughness requirements of Appendix G to 10 C.F.R. Part 50 for the Charpy upper-shelf energy have been met. The basis for this statement is a letter from the staff to the licensee dated May 31, 1988, which indicates that additional data and analysis are necessary for the staff to complete its review of the fracture toughness analysis of the beltline welds for the Turkey Point reactor vessels. The licensee's fracture toughness analysis was submitted in letters dated May 3, 1984, and March 25, 1986, to comply with the requirements in

^{3/}The Petitioner has filed a petition before the Atomic Safety and Licensing Board to make a limited appearance during the hearing. In a document entitled "Amended Petition for a Limited Appearance Statement" filed August 30, 1989, the Nuclear Energy Accountability Project has indicated that it will represent the Petitioner's interests in the proceeding.

Section V.C. of Appendix G to 10 C.F.R. Part 50. The requirements of this section apply to reactor vessels that have had their Charpy upper-shelf energy reduced below 50 ft-lbs by neutron irradiation. This section requires that the licensee (1) perform a volumetric examination of 100 percent of the beltline materials that do not satisfy the requirements of Section V.B., (2) provide an analysis to demonstrate equivalent margins of safety for continued operation, and (3) provide test data from supplementary fracture toughness tests.

The licensee has satisfied these requirements by (1) performing ultrasonic examinations of beltline welds in Unit 3 and Unit 4 during July 1981 and November 1982, respectively, (2) submitting fracture mechanics analyses in letters dated May 3, 1984, and March 25, 1986, and (3) providing supplementary fracture toughness data from the Heavy-Sectional Steel Technology program in its letter of March 25, 1986.

The information requested in NRC's letter of May 31, 1988 was needed to evaluate the licensee's conservative analysis (contained in its letters of March 3, 1984, and March 25, 1986) which was submitted to justify continued operation up to 40 EFPYs. Currently, the Turkey Point plants have operated for approximately 10 EFPYs. Amendments 134 and 128 to Operating Licenses DPR-31 and DPR-41, respectively, authorized operation only up to 20 EFPYs. Operation beyond 20 EFPYs will require the submittal of another amendment and further evaluation by the NRC staff. As discussed previously, there are no public health or safety concerns associated with operation up to 20 EFPYs. Therefore, the information requested in the May 31, 1988, letter to justify 40 EFPYs of operation is not required immediately and no action by the NRC is necessary at this time.

With respect to Category (2) above, the requirements for future testing of archive weld metal samples are specified in the integrated surveillance program

that is contained in the Turkey Point Technical Specifications, Section 4.20. Compliance with the Technical Specifications is required as a condition of Operating Licenses DPR-31 and DPR-41 for Turkey Point Units 3 and 4, respectively. As such, compliance with the Technical Specifications is subject to verification by the NRC through periodic audits and review. Therefore, no further action is warranted regarding this concern.

With respect to Category (3) above, the reference temperature value of 300°F (for circumferential weld materials) which is used in PTS screening is specified in 10 C.F.R. §50.61. The Petitioner's request is, in effect, a request to change the requirements of 10 C.F.R. §50.61, and, as such, is not appropriate for consideration under 10 C.F.R. §2.206. Rather, it may constitute a petition for rulemaking that should be submitted in accordance with 10 C.F.R. §2.802. Under 10 C.F.R. §2.802, any interested person may petition the Commission to issue, amend or rescind any regulation. The Petitioner may wish to review the requirements for a petition for rulemaking contained in 10 C.F.R. §2.802 and consider submittal of the request to revise the reference temperature criterion of 300°F under 10 C.F.R. §2.802.

C. Operations Superintendent Qualification

The July 3 submittal requests immediate action to modify the licensee's Operating Licenses DPR-31 and DPR-41 to require that the Turkey Point Operations Superintendent hold a senior reactor operator's (SROs) license on the pressurized water reactors germane to the facility.

In a letter dated September 12, 1988, the licensee requested that the Technical Specifications be changed to permit the holding of an SRO license from

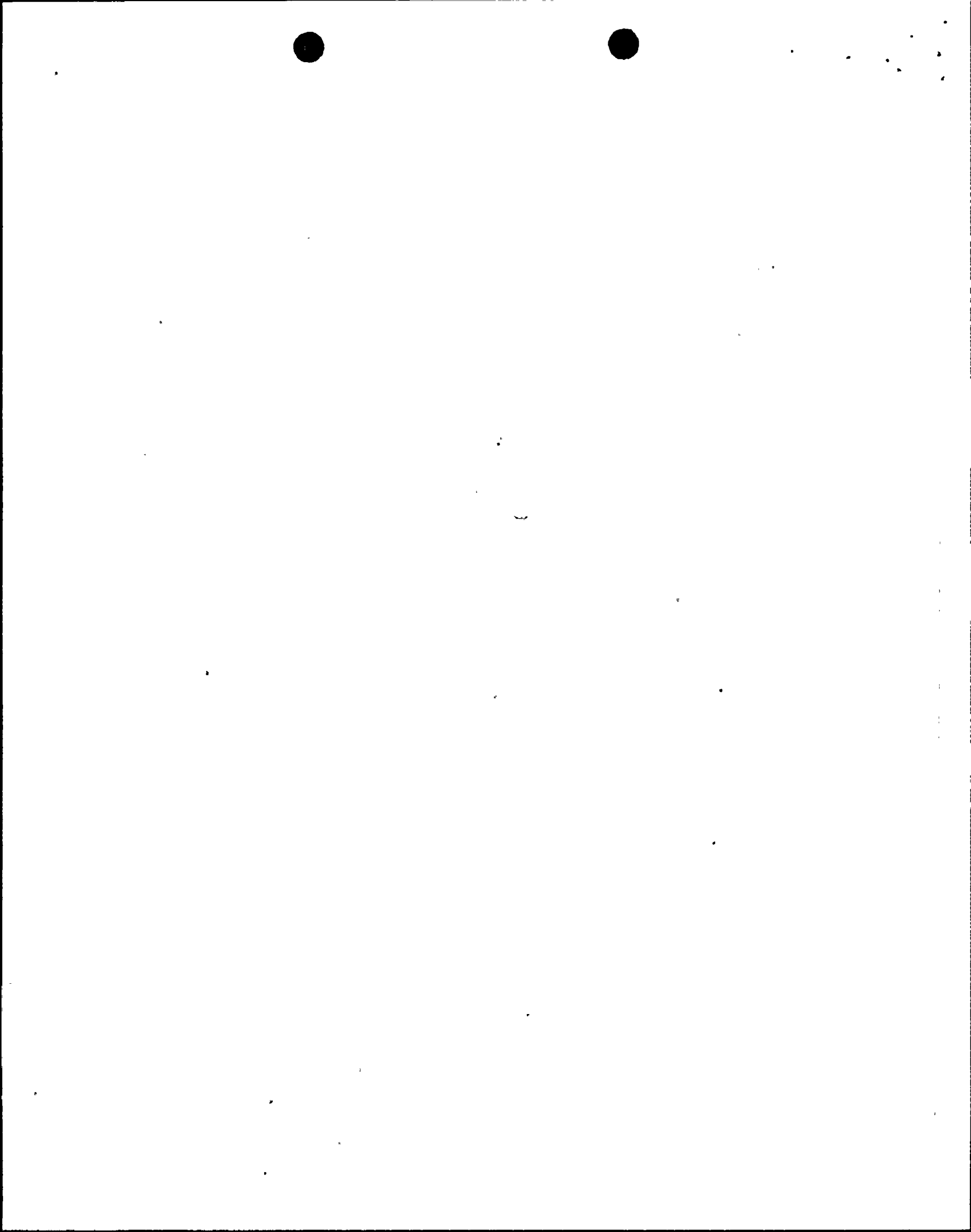
a similar plant (i.e., another pressurized water reactor) to serve as an acceptable qualification for the Operations Superintendent at Turkey Point. Notice of consideration of issuance of the requested amendments was published in the Federal Register on November 2, 1988 (53 FR 44250). No requests for hearing or petitions for leave to intervene were filed. On March 27, 1989, the Commission issued Amendment 135 to Operating License DPR-31 and Amendment 129 to Operating License DPR-41 approving the requested change in qualification requirements for the Operations Superintendent.

On May 16, 1989, the Petitioner submitted a Request for Hearing and Petition for Leave to Intervene (amended May 18) with respect to these amendments. In the Commission's Order Denying Request for Hearing dated May 30, 1989, the Petitioner's request was denied as untimely, indicating that no good cause was shown for such untimeliness.

The July 3 submittal appears to be an attempt to circumvent the rules for timeliness. The submittal raises the same issues raised in the Request for Hearing and Petition for Leave to Intervene dated May 16, 1989, which was denied by the Commission on May 30, 1989. Furthermore, the submittal does not raise any new issues not previously considered by the Commission in the issuance of the amendments. Therefore, further action regarding this concern is not warranted.

CONCLUSION

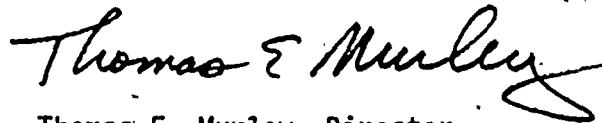
The institution of proceedings pursuant to 10 C.F.R. §2.202 is appropriate only when substantial health and safety issues have been raised. See Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8; 2 NRC 173, 176 (1975) and Washington Public Power System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). This is the standard that has been applied to determine whether the actions requested in the Petition are



warranted. For the reasons discussed above, no basis exists for taking the actions requested in the Petition, since no substantial health and safety issues have been raised by the Petition. Accordingly, the Petitioner's request for action pursuant to 10 C.F.R. §2.206 is denied.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 C.F.R. §2.206(c).

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in cursive script that reads "Thomas E. Murley". The signature is written in black ink and is positioned above the printed name and title.

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 25 day of September 1989.