January 18, 1982 SECY 82-19

ADJUDICATORY ISSUE

(Information)

For: The Commissioners

From: Martin G. Malsch
Deputy General Counsel

Subject: REVIEW OF DIRECTOR'S DENIAL OF 2.206 PETITION

Facility: All nuclear power plants

Purpose: To inform the Commission of a denial of a petition filed with the Director, Office of NRR, pursuant to 10 CFR 2.206 which, in our opinion, Ex. 5

Review Time Expires: January 28, 1982

Discussion: John Abbotts of Seattle, Washington, submitted a petition dated January 2, 1981, to the Commission pursuant to 10 CFR 2.206. Petitioner believes that licensees have not demonstrated the financial capability to respond to nuclear power plant accidents allegedly required by the NRC's regulations in 10 CFR 50.33(f) and 10 CFR Part 50, Appendix C. The petitioner requests issuance of a "generic show cause order" on all commercial nuclear power plant licensees in order to resolve this issue. Granting of the petition would entail adjudicatory proceedings for each licensee. Mr. Abbotts submitted additional comments pertaining to the "generic show cause order" and a related

Ex. 5

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CONTACT: Beverly S. Segal, OGC
X41465

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notice of proposed rulemaking dealing with financial qualifications by letter dated October 12, 1981. Mr. Abbotts' comments on the proposed rulemaking will be considered along with other similarly filed comments.

On December 4, 1981, the Director denied the instant 2.206 petition for the following reasons:

1. The petitioner's request can be clearly denied with respect to construction permit holders as they are required to demonstrate financial capability only for construction costs and related fuel cycle costs. There is no requirement that construction permit holders demonstrate any financial qualifications to operate or decommission the plant.

2. The NRC's current regulations have never been construed to require operating license holders to demonstrate financial capability to respond to accidents.

3. The petition responds to the Three Mile Island accident rather than any wrongly decided determination by the Commission that a particular licensee is not financially qualified. Without reasons delineating the need for individual adjudications, the issue of financial qualifications is better handled through rulemaking rather than a "generic show cause order." The Commission has indicated that it intends to address the matter raised by the petition by rulemaking.

Ex. 5

Ex. 5

Recommendation: Ex. 5

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Martin G. Malsch
Deputy General Counsel

October 12, 1981

PROPOSED RULE PR-50
(46 FR 41786)

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch
Re: 10 CFR 50 Proposed Rule
(46 FR 41786, August 18, 1981).

Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Petition for a Generic Show Cause Order
(46 FR 17686, March 19, 1981)

Dear Minions of the Forces of Darkness:

Enclosed are my comments on the Commission's proposed rules on financial qualifications (46 FR 41786). This proposal is also relevant to a petition for a generic show cause order before the Commission (46 FR 17686). Accordingly, I am submitting these comments to both dockets. I request acknowledgment that these comments have been received. Thank you for your time.

Yours truly,

John Abbotts

John Abbotts
2610 N.E. 54th Street
Seattle
Washington 98105

copy (w/ enclosure): Mr. William B. Schultz,
Public Citizen Litigation Group

RLL

Comments on the Commission's Regulations on Financial Qualifications

John Abbotts
Seattle, Washington
October 1981

Submitted to the Nuclear Regulatory Commission in regard to:

10 CFR 50 Proposed Rule
(46 FR 41786, August 18, 1981)

and Petition for Generic Show Cause Order
(46 FR 17686, March 19, 1981)

The Commission's proposal to eliminate its regulations on financial qualifications is, quite simply, outrageous, incomprehensible, and unjustifiable. The Commission's proposal is especially objectionable in its relation to a petition presently before the Commission requesting a generic show cause order, on the grounds that licensees fail to fulfill financial qualification requirements because they lack the wherewithal to finance cleanup of an accident of the Three Mile Island type, or worse. Faced with an incontrovertible situation supporting the petition, the Commission has apparently chosen not to address the problem, but to abolish the regulations which the atomic industry is failing to meet. Commission approval of its proposal as a final rule will enhance the image of the Commission as a protector of the atomic power industry, not of the public. The comments below develop the observations that: I. Demonstration of Financial Capability is Needed Throughout the Atomic Fuel Cycle; II. The "Ongoing" Decommissioning Rulemaking Provides No Substitute for General Requirement to Demonstrate Financial Capability; III. The Commission's Proposals are Inadequate to Address a Petition before the Commission for a Generic Show Cause Order; IV. The Commission Must Face Up to Its Responsibilities.

Rel.

I. Demonstration of Financial Capability is Needed Throughout the Atomic Fuel Cycle.

As the Commission recognizes in a gross understatement, "there are matters important to safety which may be affected by financial considerations" (46 FR 41786, August 18, 1981). The necessity for demonstrated financial capability is not merely a matter of preventing fly-by-night organizations from constructing and operating atomic power plants. The costs throughout the atomic fuel cycle are so great that they threaten the solvency of even the giants of corporate America. Some of the areas where demonstrated financial qualifications are necessary include the following:

--A nuclear plant on which construction is begun today could easily cost several billion dollars. Questions abound on whether utilities can even finance construction of such a plant, much less provide adequate funding for proper design, construction, and quality control of vital reactor safety systems.

The Commission's arguments about the willingness of utility regulators to grant a guaranteed rate of return would not always apply to reactors under construction. Traditional utility regulation has, rightfully, operated on the principle that only "used and useful" facilities will be allowed in a utility's rate base: Today's consumers should not be forced to pay for power which they may never use. Under this system, utilities might not begin to recover construction costs until a reactor is operational. Thus, in financing construction, utilities may be faced with short cash flow situations, where they may be tempted to look for short cuts to reduce costs in safety as well as non-safety systems.

Nor will such situations be completely alleviated by public utility commissions which misguidedly allow costs for construction work in progress (CWIP) to be included in the rate base. For example, commissions may be reluctant to allow utilities to be reimbursed in cases where company mismanagement or incompetence is responsible for increased costs.

In addition, with high interest rates, tight financial markets, and glutted bond markets, utilities might experience difficulty in raising the cash to continue construction, even if costs can be recovered in the rate base. This latter situation has been dramatically demonstrated with the Washington Public Power Supply System (WPPSS--pronounced "Whoops"). This joint operating agency, established by Washington state statute, is under few constraints of accountability: it makes its own need for power determinations, it sets its own rates, and it issues bonds--backed by guarantees that payment will be made by Washington state citizens--with no requirements for voter approval. Nonetheless, the difficulties of WPPSS in floating bond measures to continue construction have been widely reported even in the pages of the Wall Street Journal. WPPSS has seen cost estimates for its 5 nuclear plants escalate from $4 billion to $24 billion; with interest on bonds, the total cost to Washington state taxpayers could be in excess of $50 billion--an amount that will strain the limits even of a state treasury.

Nor are atomic industry arguments that cutting corners on construction could provide long-term disadvantages for utilities; or that NRC inspection provides sufficient incentive to properly construct atomic power plants, persuasive. The essence of corporate management is to focus on short-term gains; long-term planning is often secondary. One need only note that NRC

fines, even for frequent and continued violations, are almost always less than the hundreds of thousands of dollars which utilities claim are the costs for one day's delay in bringing an atomic power plant on line. With this observation, the likelihood that corporate managers will be tempted to find short cuts in safety-related costs becomes clear. In addition, the numerous cases where NRC inspectors detected violations and shoddy work only after they were reported to the Commission by construction employees or quality control inspectors provide considerable evidence that the Commission's inspections are an inadequate deterrent to corner-cutting.

--With regard to atomic plant operation, financial qualifications are necessary to insure that atomic plant licensees will have sufficient funds to hire qualified operators, and also to properly conduct maintenance and repair on reactor safety systems. Once again, the argument that corner cutting will work to the long-term detriment of a company with an operating license is not persuasive.

Three Mile Island provides at least one indication where the chance for a short-term economic gain might tempt a licensee to act improperly: By rushing TMI Unit 2 into commercial service before the end of calendar year 1978, General Public Utilities reaped income tax benefits of about $40 million. The plant's earlier history of mechanical failures made this rush to operation questionable. (Michael H. Bancroft et al., Death and Taxes, Public Citizen, Washington, D.C., April 5, 1979) The Unit 2 accident of only four months later showed dramatically that plant personnel and components were not yet up to the task of operating the plant safely.

The Three Mile Island accident also revealed that a reactor vendor can pursue short-sighted policies that could prove damaging to licensees in the long run. Babcock & Wilcox Company, atomic vendor for TMI-2, failed to adequately inform General Public Utilities and the Commission of an earlier accident at the Davis-Besse plant which was closely related to the chain of events that occurred later at TMI. The Commission proposed a $100,000 fine for this Babcock & Wilcox failure ("NRC Staff Proposes Fine Against Maker of Nuclear Plant," Wall Street Journal, April 11, 1980, p. 3). The aftermath of the TMI accident makes clear the long-term damage, financial and otherwise, done to Babcock & Wilcox and the atomic industry as a whole, as a result of the Company's actions carried out in response to short-term pressures.

In short, it is an idle argument to assert that atomic licensees will not be tempted to cut corners on reactor safety costs. Short-term considerations can easily lead atomic industry corporations to commit irresponsible acts.

With regard to the Three Mile Island accident, an additional consideration for financial qualification is the need to demonstrate an assured capability of properly handling decontamination of reactor accidents. The demonstrated probability of a Three Mile Island type accident after a few hundred reactor-years of operation is one. Prudence therefore dictates that atomic licensees show the capability of financing such a cleanup. This matter, which is before the Commission in the form of a petition, is discussed later.

--Sizeable costs are involved in handling the radioactive waste and byproducts which present a significant threat to public health and safety for many years after any reactor has ceased to operate. Two such categories are of concern for the operation of atomic power plants: decommissioning and

atomic waste management. In both of these cases, the time periods for which adequate management is required are very long--on the order of many thousands of years. The Commission must establish financial requirements to assure that these activities will be managed into the distant future. Atomic industry licensees must be held accountable for their radioactive byproducts.

The issue of decommissioning used reactors was placed before the Commission by several citizen groups in a petition for rulemaking in 1977, and is discussed in the following section. In addition, radioactive waste management is a clear and recognized cost produced by reactor operation.

The Commission has been licensing atomic reactors under the assumption that radioactive wastes will be properly managed. Even if the Commission were to resolve all technical questions which challenge this assumption, it has still not addressed a serious financial question: What mechanism has the Commission established to ensure that adequate funding, contributed by the licensees that produced the atomic waste, will be available to manage the waste for countless generations?

If the Commission were serious in its desire to protect public health and safety, it would not be proposing to eliminate financial capability regulations, which the Commission has never applied to nuclear waste. Rather, the Commission should be expanding its regulations by requiring applicants to place in escrow funds deemed sufficient to provide for management of atomic waste for the ages.

II. The "Ongoing" Decommissioning Rulemaking Provides No Substitute for General Requirements to Demonstrate Financial Capability.

In proposing to eliminate its regulations on financial qualifications, the Commission provides no consolation by referring to its "ongoing rulemaking" on decommissioning (Commission Press Release 81-130, August 20, 1981) as a situation where specific financial capability requirements might be implemented. The Commission neglected to add that this rulemaking has been "ongoing" for over four years. On this issue, the Commission has acted with lethargy in addressing a recognized and unresolved issue where financial capability is necessary to protect public health and safety.

In 1977, the actions of other organizations forced the Commission to address this matter: In June of that year, the U.S. General Accounting Office (GAO) released a report identifying decommissioning as an unresolved "multibillion dollar problem." As one of its recommendations, GAO noted:

> We believe the cost of decommissioning should be paid by the current beneficiaries, not by future generations.. .private companies have an obligation to accumulate funds for decommissioning during the life of their projects. NRC should make advance planning for decommissioning mandatory at the time of licensing, including provision for funding.
> (Cleaning Up the Remains of Nuclear Facilities--A Multibillion Dollar Problem, U.S. General Accounting Office, Washington, D.C., June 16, 1977, p. 25.)

In July 1977, the Public Interest Research Group (PIRG), and several other nonprofit organizations, basing their petition in part on the GAO report, asked the Commission to establish reactor decommissioning regulations. The petition included the request that the Commission require utilities to set funds aside, prior to beginning reactor operation, to cover estimated decommissioning costs, including the long-term costs of managing radioactive material.

In March 1978, the Commision published an advance notice of proposed rulemaking to address decommissioning issues (43 FR 10370, March 13, 1978). Now, the Commission holds out the promise that it may--if it meets its present schedule--promulgate regulations on the financing of decommissioning by March 1982 (46 FR 41787). It should be noted that the Commission's schedule has already slipped on this issue: An earlier Commission publication promised a draft environmental impact statement by December 1979, and publication of a proposed rule by March 1980 (Plan for Reevaluation of NRC Policy on Decommissioning of Nuclear Facilities, NUREG-0436, Revision 1, U.S. Nuclear Regulatory Commission, Washington, D.C., December 1978, pp. 53, 68).

It has already been more than four years since the PIRG et al. petition forced the Commission to address financial issues related to decommissioning. In the interim years, the Commission has continued to license reactors while failing to resolve this issue. Now, [illegible] it has still not resolved the specific financial capability issues of decommissioning, the Commission proposes to eliminate general financial capability requirements.

This proposal puts the cart before the horse. The Commission should instead retain its general requirements, and apply them to the specific issue of decommissioning. The present financial qualification regulations require license applicants to show capability for funding "the estimated costs of permanently shutting the facility down and maintaining it in a safe condition" (10 CFR 50.33(f)). The Commission long ago could have applied this regulation to establish funding mechanisms for decommissioning. Reference to the decommissioning rulemaking thus provides no reassurance that the Commission will act to plug the voids that would be produced in other areas of the atomic fuel cycle if the Commission were to eliminate its general financial capability requirements.

III. The Commission's Proposals are Inadequate to Address a Petition before The Commission for a Generic Show Cause Order.

This Commission proposal cannot be viewed in isolation, since financial qualifications are relevant to another matter before the Commission. In January 1981, I mailed to the Office of Nuclear Reactor Regulation a petition requesting the Commission to issue generic show cause orders, on the grounds that licensees, by failing to demonstrate the capability of funding decontamination efforts for Three Mile Island type accidents, failed to meet Commission regulations on financial qualifications. This petition was noticed in the Federal Register on March 19, 1981 (46 FR 17686).

The Commission's regulations at 10 CFR 2.206 require action on a show cause petition "within a reasonable time." At this writing, I have received no formal response from the Office of Nuclear Reactor Regulation. Presumably, Commission staff members dealing with issues of financial qualifications are aware both of my petition and of these proposed regulations. Since the proposed regulations are relevant to issues raised in the show cause petition, one must consider this proposal as at least related to a Commision response to the petition.

The petition contended that General Public Utilities, by its warnings of bankruptcy, by its appeal to the Commission for $4 billion in damages, and by its proposals to require ratepayers and taxpayers to fund decontamination efforts, has demonstrated that it is manifestly incapable of financing the clean-up necessitated by the company's self-inflicted accident at Three Mile Island in March 1979. Nor is any other utility likely to be able to finance such a decontamination effort, if a similar accident were to occur at another atomic plant. Therefore, no utility is able to meet the Commission's regulations on financial qualifications, and a generic show cause order should accordingly be issued.

It should first be noted that the Commission's proposal for an interim rule requiring licensees to obtain the maximum amount of property damage insurance available does not meet the concerns raised in the petition. General Public Utilities did hold the maximum available property insurance before the TMI accident. The company's self-inflicted economic problems have come because it caused an accident generating damage much greater than available insurance coverage. To meet the concerns of the show cause petition and to meet its own responsibilities, the Commission must require funded reserves far in excess of available property insurance.

The Commission is thus faced with incontrovertible evidence that the atomic industry is incapable of meeting the regulations on financial qualifications. Rather than address the problem raised by the TMI accident, the Commission, incredibly, has proposed to remove the violated regulations. The Commission should be complimented for its imaginative sleight-of-hand, but for nothing else. With previous petitions filed by non-industry organizations, the Commission has avoided granting credit for the petition by changing its rules in another proceeding, then denying the petition as "moot," or by granting the relief sought, but failing to recognize the petition in its order (see, for example, letter from Public Interest Research Group, Washington, D.C., to NRC Chairman Hendrie, May 1978). But this latest Commission proposal, to avoid the violation of regulations by removing the regulations, reaches a new height of legerdemain. The problem of inadequate financial capability to clean up accidents will not go away, however, despite the Commission's shenanigans.

It is not the Atomic Industry Protection Association, nor the Atomic Licensing Expedition Organization--titles which the Commission, in its rush to ignore the lessons of Three Mile Island, seems to be pursuing.

The Commission's responsibility, quite simply, is to regulate the atomic industry. To do so, the Commission must not only retain its financial qualification regulations, but expand them to include costs for waste management and decommissioning. The Commission must meet the financial questions raised by Three Mile Island not by proposing an inadequate interim rule as part of a lethargic rulemaking, but by granting the petition for a generic show cause order.

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Mr. John Abbotts
2610 N.E. 54th Street
Seattle, Washington 98105

Dear Mr. Abbotts:

This is in response to your petition requesting issuance of a "generic show cause order" to all commercial nuclear power plant licensees to demonstrate their ability to pay the cleanup costs of a severe accident. Your petition has been considered under 10 C.F.R. 2.206 of the Commission's regulations. For the reasons set forth in the attached "Director's Decision Under 10 C.F.R. 2.206", your petition has been denied.

A copy of this decision will be referred to the Secretary for the Commission's review in accordance with 10 C.F.R. 2.206(c). A copy of a notice to be published in the Federal Register is also included for your information.

Sincerely,

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure: a/s

cc:
William J. Schultz
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Harold R. Denton, Director

In the Matter of PETITION CONCERNING FINANCIAL QUALIFICATIONS OF NUCLEAR POWER PLANT LICENSEES	)	(10 C.F.R. 2.206)

DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

John Abbotts of Seattle, Washington, has petitioned the Commission pursuant to 10 C.F.R. 2.206 for issuance of a "generic show cause order" on the financial qualifications of commercial nuclear power plant licensees. The petition has been referred to the Director of the Office of Nuclear Reactor Regulation for action. Notice of receipt of the petition was published in the Federal Register, 46 Fed. Reg. 17686 (Mar. 19, 1981). Mr. Abbotts submitted additional comments pertaining to his petition and a rulemaking action by a letter dated October 12, 1981.

Mr. Abbotts believes that the NRC should order licensees of operating plants and plants under construction to show cause why their operating licenses or construction permits should not be revoked, "because licensees have not demonstrated financial capability of paying for the costs of the Three Mile Island accident, similar accidents, or more serious nuclear power plant accidents, and thereby fail to comply with the Commission's regulations at 10 C.F.R. 50.33(f) and 10 C.F.R. 50

Appendix C." Petition at 1. In Mr. Abbotts' view, an order requiring licensees to demonstrate their ability to finance the decontamination of a damaged plant is necessary to "uphold the integrity of [the Commission's] own regulations, and to protect taxpayers from the hidden costs of atomic power...." Petition at 8.

The Commission's rules on financial qualifications derive from section 182a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2232(a), which provides in pertinent part:

> Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license.

Section 182a authorizes, but does not mandate, the Commission to require information regarding the financial qualifications of applicants for Commission licenses. A federal court of appeals has stated that the Atomic Energy Act "gives the NRC complete discretion to decide what financial qualifications are appropriate." New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 93 (1st Cir. 1978).

With respect to commercial power reactors, 10 C.F.R. 50.33(f) and 10 C.F.R. Part 50, Appendix C, implement the Commission's authority to require information concerning financial qualifications and to set standards for review of an applicant's financial qualifications as part of the licensing review of applications for construction permits and operating licenses. Applicants for a construction permit must show that

they possess "the funds necessary to cover estimated construction costs and related fuel cycle costs or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two." 10 C.F.R. 50.33(f). 1/ To obtain an operating license, an applicant must make a similar demonstration that it "possesses or has re. nable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license or for 5 years, whichever is greater, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition." 10 C.F.R. 50.33(f).

The Commission has defined the "reasonable assurance" standard of 10 C.F.R. 50.33(f) to mean that an "applicant must have a reasonable financing plan in the light of relevant circumstances." Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 18 (1978). This standard "does not mean a demonstration of near certainty that an applicant will never be pressed for funds...." Id. at 18.

1/ At the construction permit stage, the regulations do not require consideration of costs beyond those estimated for construction and for the first core of the nuclear fuel inventory as part of the review of an applicant's financial qualifications. See 10 C.F.R. Part 50, App. C, § I.A.1; Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 334 n. 30 (1978). Thus, Mr. Abbotts' petition may be denied with respect to his request for a show-cause order to all holders of construction permits, because the Commission's regulations do not require a showing at the construction permit state of financial qualification with respect to operation and decommissioning.

The regulations "do not require an applicant to have cash on hand to cover all possible contingencies of costs higher and revenues lower than estimates." Power Reactor Development Co., 1 AEC 128, 153 (1959), aff'd sub nom. Power Reactor Development Co. v. International Union of Electrical Workers, 367 U.S. 396 (1961), cited in Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 79 (1977). Such factors as the prospect of future rate increases, future interest rates, credit and bond ratings, and the ability to generate revenues through the sale of electricity are relevant to a determination of an applicant's financial qualifications. See Public Service Company of New Hampshire, supra, 7 NRC at 20-21. 2/

As part of an applicant's demonstration of its financial qualifications for an operating license, the Commission has not required a specific demonstration under current regulations of an ability to absorb the costs of severe accidents or to obtain the necessary funds to clean up after a severe accident. The Commission is, however, taking

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2/ See also Duke Power Co (William B. McGuire Nuclear Station, Units 1 & 2) LBP-79-13, 9 NRC 489, 523-28 (1979) (application of relevant factors in an operating license review). Because state and federal ratemaking commissions by law must permit public utilities a fair rate of return, it is generally assumed that rational regulatory policies with respect to the setting of rates will enable a public utility to cover its operating costs. See Public Service Co. of New Hampshire, supra, ALAB-422, 6 NRC at 77-78; Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 & 2), LBP-77-58, 6 NRC 1127, 1162 (1977), aff'd, ALAB-491, 8 NRC 245 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2); DD-79-20, 10 NRC 703, 713 (1979).

steps to address the issue of ensuring availability of funds for cleanup costs in current and upcoming rulemakings. In August 1981, the Commission published a notice of proposed rulemaking to modify the current financial qualification requirements. 46 Fed. Reg. 41786 (Aug. 18, 1981). The Commission has proposed as part of these revisions that it adopt an interim rule which would require all licensees of operating power reactors to maintain the maximum amount of commercially available on-site property damage insurance or an equivalent amount of protection 3/ At present, no such requirement is imposed on licensees. However, most licensees currently maintain the maximum available amount (approximately $370-450 million at present) of insurance, though some utilities do not purchase the maximum amount and the Tennessee Valley Authority insures itself for property losses. The proposed rule "is intended to serve as an interim requirement until the Commission has an opportunity to conduct a rulemaking to determine what level of protection is necessary to cope with the on-site radiological hazards resulting from an accident." 46 Fed. Reg. at 41788.

In view of the Commission's pending and intended rulemaking actions to address matters related to Mr. Abbotts' petition, issuance of an

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3/ The proposed rule also would eliminate entirely financial qualifications requirements for construction permit applicants and, for operating license applicants, either would eliminate them entirely or would retain them only to the extent they concern decommissioning costs.

order to show cause to all power reactor licensees is not warranted. Mr. Abbotts asks in effect that the Commission require on a generic basis a showing of an ability to pay the cleanup costs of an accident. The Commission has proposed an interim measure to deal with this issue and has indicated that it intends to consider the need for assurance of funds for cleanup costs in an upcoming rulemaking proceeding. While Mr. Abbotts requests the institution of individual adjudicatory proceedings against all licensees, he does not provide any reasons that would indicate individual adjudications are appropriate under the circumstances. All licensees holding construction permits or operating licenses have been found to be financially qualified in licensing proceedings in accordance with existing requirements, and Mr. Abbotts does not indicate that the specific determinations were improper in any particular licensing proceeding. Mr. Abbotts is arguing essentially that, in view of the financial burdens on General Public Utilities as a result of the Three Mile Island accident, the Commission should use its financial qualifications regulations to extract additional assurances from all licensees that cleanup costs of potential accidents can be covered. This issue concerns the question of the general standard that the Commission should apply to all power reactor licensees. This determination does not depend on the factual issues particular situations as much as it depends on establishing a common standard for all licensees.

The Commission has wide latitude to determine the appropriate means of administering, applying, and enforcing the regulatory standards under the Atomic Energy Act. See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543 (1978); Porter County Chapter of the Izaak Walton League, Inc. v. NRC, 606 F.2d 1363, 1369 (D.C. Cir. 1979). Generic issues, such as the one raised here by Mr. Abbotts, are addressed more appropriately in rulemaking than in individual adjudicatory proceedings. As a general proposition, "[w]here factual issues do not involve particularized situations, an agency may proceed by a comprehensive resolution of the questions rather than relitigating the question in each proceeding in which it is raised." State of Minnesota v. NRC, 602 F.2d 412, 416-17 (D.C. Cir. 1979). On other occasions, the staff has declined to initiate individual adjudicatory proceedings in response to petitions under 10 C.F.R. 2.206 for the reason that the same matters were being addressed by the Commission on a generic basis. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Power Nuclear Power Station), DD-80-20, 11 NRC 913, 914 (1980); Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), DD-80-19, 11 NRC 625, 627-28 (1980). In this instance, the Commission has indicated that it intends to address the matter raised in the petition in a rulemaking proceeding.

Moreover, no other considerations would indicate that issuance of orders to all licensees is necessary pending the Commission's generic treatment of this issue by rulemaking. Mr. Abbotts does not request an immediate suspension of all operating licenses and construction permits,

nor does public health and safety require such drastic action pending the conclusion of the Commission's rulemaking actions. 4/ As noted earlier, most plants already carry the maximum amount of available insurance to cover on-site property damage. And, though the possibility of accidents cannot be ruled out entirely, the types of severe accidents which would pose the most significant financial burdens are occurrences of relatively low probability. Again, it should be noted that the Commission is not under a mandatory obligation to impose any particular financial qualifications requirements, but is essentially free to determine whether and to what extent such requirements are necessary to its regulatory program. See New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 93 (1st Cir. 1978).

For the foregoing reasons, Mr. Abbotts' request for a "generic show cause order" is denied. Mr. Abbotts' comments attached to his October 12th letter will be considered with other comments that were filed in response to the notice of proposed rulemaking published at 46 Fed. Reg. 41786 (Aug. 18, 1981). Mr. Abbotts is invited, of course, to

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4/ Issuance of an order to show cause does not itself effect an immediate suspension of a license in the absence of a finding of "willful" violations of requirements or a finding that public health, safety, or interest requires an immediate suspension. Administrative Procedure Act 9(b), 5 U.S.C. 558(c); Atomic Energy Act § 186b, 42 U.S.C. 2236(b); 10 C.F.R. 2.202(f) & 2.204. See Consumers Power Co. (Midland Plant, Units 1 & 2), CLI-73-38, 6 AEC 1082, 1083 (1973). While proceedings on an order to show cause may eventually result in suspension of a license, there is no actual suspension until the conclusion of proceedings unless either the criterion of willfulness is met or the criteria of public health, safety, or interest are met.

participate in any future rulemaking related to the matter of cleanup costs, and the staff will inform Mr. Abbotts of the issuance of the applicable notice of proposed rulemaking. A copy of this decision will be referred to the Secretary for the Commission's review in accordance with 10 C.F.R. 2.206(c). As provided in 10 C.F.R. 2.206(c), this decision will become the final action of the Commission 25 days after issuance unless the Commission institutes review of this decision within that time.

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland
this 4th day of December, 1981

Rel.

[7590-01]

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of

Decision Under 10 C.F.R. 2.206

On Petition Concerning Financial

Qualifications of Nuclear Power Plant Licensees

Notice is hereby given that a decision has been issued denying a petition under 10 C.F.R. 2.206 filed by John Abbotts of Seattle, Washington. Mr. Abbotts had requested that the Commission issue a "generic show cause order" to all licensees of commercial nuclear power plants to require a demonstration of financial ability to absorb the cleanup costs of a serious plant accident. In view of Commission rulemaking action to address the need for such financial assurances, Mr. Abbotts' request for a show cause order has been denied. The reasons for this decision are set forth in a "Director's Decision under 10 C.F.R. 2.206" which is available for inspection in the Commission's public document room at 1717 H Street, N.W., Washington, D.C. 20555. A copy of the decision has been referred to the Secretary for the Commission's review in accordance with 10 C.F.R. 2.206(c). As provided in 10 C.F.R. 2.206(c), this decision will become the final action of the agency 25 days after issuance unless the Commission institutes review of the decision within that time.

Dated at Bethesda, Maryland, this 4th day of December, 1981

FOR THE NUCLEAR REGULATORY COMMISSION

Harold R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation