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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

SECRETARY
OF LICENSING & SERVICE
BRANCH

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. Jerry Harbour
Dr. Peter A. Morris

SERVED MAR 15 1983

In the Matter of
NUCLEAR FUEL SERVICES, INC.,
AND
NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY
(Western New York Nuclear
Service Center)

Docket No. 50-201-OLA

March 14, 1983

ORDER CONFIRMING TERMINATION OF PROCEEDING

On April 30, 1982, the Board issued an order fully disposing of all requests pending before us for a hearing in this operating license amendment proceeding, thereby concluding all matters before us. Although seeking neither formal reconsideration before us nor any appellate relief, apparently because the result reached by us was the one it advocated, the NRC Staff, on May 10, 1982, filed a "Motion for Clarification" of the Board's order.

Apparently out of an abundance of caution, by letter to the Board of February 18, 1983, Staff counsel has continued the practice required

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while the proceeding was before us of providing possibly pertinent information. The letter states that the information, in this instance a copy of an amendment to the indemnity agreement, is being provided "inasmuch as the Board retains jurisdiction to rule on the pending 'NRC Staff Motion for Clarification...'".

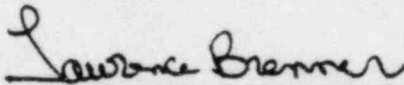
The Board took no action on the Staff's motion for clarification which would have enabled it to retain jurisdiction otherwise normally lost. While in retrospect it would have been better practice to have done so expressly, we deemed this to be an effective denial of the Staff's motion. We certainly would not have remained silent, intending at some future time to exercise jurisdiction in this proceeding, while the Appeal Board considered and ruled on intervenor's appeal, (ALAB-679, 16 NRC _____, July 8, 1982), and the Commission thereafter as of October 1, 1982, permitted the Appeal Board decision to become the final agency action. Moreover, normally we would not have considered granting the Staff's motion without inviting responses from the other parties.

The Staff's motion for clarification was denied for reasons which do not relate to the merits of the points raised in its motion. It would be unusual for an adjudicatory body to "clarify" points in its final decision at the request of a party, as distinguished from the possibility of reconsideration of a holding adverse to a party. This is analogous to and supported by the same rationale as the prohibition against appeals from decisions by a party not adversely affected by the result. Rochester Gas & Electric Corp. (Sterling, Unit 1), ALAB-502,

8 NRC 383, 393 at n. 21 (1978); Duke Power Co. (Cherokee, Units 1, 2 and 3), ALAB-482, 7 NRC 979, 980 (1978); Toledo Edison Co. (Davis-Besse), ALAB-157, 6 AEC 858 (1973). This general prohibition "eliminates the need to render purely academic decisions". Public Service Co. of Indiana (Marble Hill, Units 1 and 2), ALAB-459, 7 NRC 179, 202 (1978).

Accordingly, this order confirms that the NRC Staff's motion for clarification was denied and that this proceeding had been terminated before us.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
March 14, 1983