

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION

Frank J. Miraglia, Acting Director

In the Matter of)
GPU NUCLEAR CORPORATION)
OYSTER CREEK NUCLEAR GENERATING STATION) Docket No. 50-219

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

By letters dated May 11 and June 14, 1996, Mr. William deCamp, Jr., requested on behalf of Oyster Creek Nuclear Watch (the Petitioner) that the U.S. Nuclear Regulatory Commission (NRC or Commission) take action to investigate statements made by GPU Nuclear Corporation (GPU) in the April 1996 publication "Neighborhood Update" (the licensee's news magazine) and during sworn testimony on March 7, 1996, before the Lacey Township Zoning Board of Adjustment (the Zoning Board). The Petitioner asserts that the statements are false. The Petitioner further requests that NRC take appropriate disciplinary action against GPU management. The Petitioner's requests are being treated as Petitions pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206).

The specific statements of concerns are (1) the statement in the "Neighborhood Update" that GPU and the Commission agree that a license amendment request that involves the movement of spent fuel from the Oyster Creek Nuclear Generating Station spent fuel pool to the storage facility while the plant is at power "is not a safety issue but a procedural one" and (2) a

sworn statement by Mr. Barton, who was the Director of the Oyster Creek Nuclear Generating Station, before the Zoning Board that it is unsafe to operate the Oyster Creek reactor without full core offload capacity. The Petitioner, furthermore, requests that if no special situation is found that prevents Oyster Creek from operating without full offload capacity, the Commission take appropriate disciplinary action against GPU management for making a false statement under oath.¹

For the reasons stated below, I am denying the relief requested by the Petitioner.

II. DISCUSSION

A. GPU statement that the movement of the fuel raises a procedural issue, not a safety issue.

As a basis for the request regarding the first concern that the statement in the "Neighborhood Update" is untrue, Petitioner referenced the following excerpts from NRC Bulletin 96-02 (NRCB 96-02), "Movement of Heavy Loads Over Spent Fuel, Over Fuel in the Reactor Core, or Over Safety-Related Equipment," of April 11, 1996:

The NRC staff audited both the initial and updated 10 CFR 50.59 evaluations performed by the licensee [GPU Nuclear] and determined that the proposed cask movement activities represent an unreviewed safety question that should be submitted to the NRC for review and approval pursuant to the requirements of 10 CFR 50.59 and 50.90....Accordingly, as defined in 10 C.F.R. 50.59(c), if an

¹ The petitioner is not asserting that the licensee has provided false information to the Nuclear Regulatory Commission. A licensee's obligation to ensure the completeness and accuracy of its communications with the Commission is set forth in 10 CFR 50.9(a). This regulation requires, in part, that "[i]nformation provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects."

activity is found to involve an unreviewed safety question, an application for a license amendment must be filed with the Commission pursuant to 10 CFR 50.90.

GPU met with the NRC staff on November 19, 1993, to discuss plans for using the reactor building crane to move spent fuel out of the spent fuel pool in a transfer cask for transportation to the dry cask storage facility during power operations at Oyster Creek. During the discussions, the NRC staff raised concerns regarding the use of the crane and its ability to meet the heavy load criteria of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants." GPU indicated that this special application of the crane would be evaluated pursuant to 10 CFR 50.59.² NRC stated that it would conduct an audit of the 50.59 evaluation.

In April 1995, GPU informed NRC that the 50.59 evaluation for use of the crane to move the transfer cask was complete. On May 2 and 3, June 12, and October 12 and 13, 1995, the NRC staff conducted onsite audits and met with GPU at Oyster Creek regarding the use of the crane. On November 2, 1995, in a telephone call between the NRC staff and Mr. Keaten, Vice President and Director, Technical Functions, GPU, the NRC staff advised GPU that the staff's concerns regarding the use of the non-single-failure-proof crane to move the 100-ton transfer cask while the plant was at power had not been resolved by

²10 CFR 50.59 provides, in part, that a licensee may make changes in the facility or procedures as defined in the safety analysis report without prior Commission approval unless the proposed change involves a change in the technical specifications or an unreviewed safety question. The regulation, furthermore, requires the licensee to prepare and maintain a written safety evaluation addressing the issue of whether the proposal involves an unreviewed safety question. A proposal is deemed to involve an unreviewed safety question if (1) it involves an increase in the probability or consequences of an accident previously evaluated; or (2) creates the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involves a reduction in a margin of safety as defined in the basis for any technical specification.

its 50.59 evaluation. Specifically, the staff was concerned that the activity involved the movement of loads heavier than previously considered in the final safety analysis report (FSAR) and, therefore, might reduce the margin of safety, and that a load drop in the reactor building might result in consequences greater than previously evaluated in the FSAR and, therefore, may pose an unreviewed safety question.

Consequently, Mr. Keaten advised the staff that GPU was considering a plant modification, including reactor building crane upgrades, that would address the staff's concerns.

The NRC staff inspected the licensee's updated 10 CFR 50.59 evaluation which considered the reactor building crane upgrades. The NRC staff's inspections included sending a team to Oyster Creek. The staff concluded that its safety concerns had been addressed and resolved. The NRC staff also determined that the licensee's planned movement of spent fuel to the dry storage facility during plant operation was safe and in accordance with all license requirements. Notwithstanding the technical acceptability of the licensee's methodology and analysis in the updated 10 CFR 50.59 evaluation, NRC staff determined that since the possibility of an unreviewed safety question (USQ) had been involved before the licensee made modifications to upgrade the reactor building crane, GPU must submit a license amendment application for the proposed cask movement activities. At the public meeting on February 29, 1996, GPU was informed by the NRC staff that an amendment was required. When the NRC receives an amendment application, it is required to follow specific procedures set forth in 10 CFR 50.91.³

³ 10 CFR 50.91 requires the Commission to use specified procedures when it receives an application requesting an amendment to an operating license including procedures that concern consulting the State in which the facility

Accordingly, the staff finds, after its review and evaluation of the licensee's proposed action, that there are no safety issues preventing the adoption of the proposal, but procedures require amendment approval before the proposal can be implemented.

B. GPU statement concerning safe operation and full core discharge capability.

As basis for the Petitioner's request concerning GPU statements about safety and full core discharge capability, the Petitioner sets forth excerpts from Mr. Barton's testimony of March 7, 1994, before the Zoning Board, and states that "the NRC ruled in February 1985 in 10 CFR Part 53 that reactors may safely be run without full core offload capacity." ⁴

The Petitioner quoted in a letter and enclosed, underlined in red, copied portions of Mr. Barton's testimony as follows:

If we do not install the dry spent fuel storage modules by 1996, the plant would not have the capacity of totally off-loading fuel from the reactor to the in-plant spent fuel pools. (transcript pp. 94-95)

In order to operate safely we should be able to remove this fuel from the reactor and store it in the spent storage pool...
(transcript p. 95)

Without dry storage and without the ability to remove this fuel from the reactor, the plant would not be able to operate.
(transcript p. 95)

Mr. Barton's full testimony in context with the Petitioner's extracted quotes is as follows:

is located and procedures concerning providing notification to the public of the licensee's amendment, the Commission's findings or determinations regarding the amendment, and opportunity for a hearing.

⁴The Commission has stated that a full core reserve capability is not an NRC safety requirement. 50 FR 5548, 5549 (1985)

The fall of 1996 is a critical time for plant operations. If we do not install the dry spent fuel storage modules by 1996, the plant would not have the capability of totally off-loading fuel from the reactor to the in-plant spent fuel pool. This is not a desirable operating configuration, should the plant need to conduct internal inspections of the reactor vessel that would require fuel to be removed from the reactor. In order to operate safely we should be able to remove this fuel from the reactor and store it in the spent fuel storage pool inside the plant, and after 1996 we will not have the flexibility to do that. Without dry storage and without the ability to remove all the fuel from the reactor, the plant would not be able to operate. (transcript p. 95)

Taken in context, it appears that what Mr. Barton is stating is that he is concerned with operations management due to the inability to have full core off-load capability and that having full core off-load capability can in certain situations enhance safety. The plant has the capacity to complete one more refueling operation before they will not be able to operate without dry storage capability as Mr. Barton stated. The Commission has stated a similar view with regard to the issue of maintaining full core reserve storage capability:

While a full core reserve capability is not an NRC licensing or safety requirement, maintenance of full core reserve would enhance safety to some extent, and would also be needed to prevent extended reactor outages in the event a core must be discharged in order to inspect the reactor pressure vessel and perform other routine and unscheduled maintenance operations.⁵

The December 6, 1993, Zoning Board hearing testimony of Mr. Gordon Bond, Director of Nuclear Analysis and Fuel for GPU Nuclear, also supports the view that the concern is with operations management. When asked whether it is important to maintain full core discharge capability, Mr. Bond responded as follows:

⁵ The NRC's Statements of Consideration concerning the amendment of 10 CFR Parts 1 and 53 entitled, "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity," 50 FR 5548, 5549 (1985)

We believe it is. It's not required by Federal Regulations, but we believe it's prudent to allow sufficient reserve capacity in our pool to be able to offload the core any time that we may have to. For example, you may want to do some inspections inside the vessel, and to do that you'll need to remove all of the fuel.
(transcript p. 32)

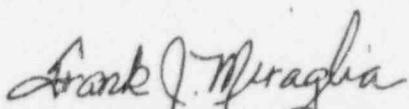
Accordingly, the staff finds that the statements and remarks of Mr. Barton in their context are not false or misleading.

V. CONCLUSION

The NRC staff has reviewed the statements made by GPU in the April 1996 "Neighborhood Update" (the licensee's news magazine) and the testimony of GPU managers before a local Zoning Board and concluded that the assertions raised by the Petitioner are without merit and that there is no basis to take any action against GPU. Accordingly, the Petitioner's requests are denied.

A copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review as stated in 10 CFR 2.206(c). This Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION



Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 11th day of December 1996

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FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by
Frank J. Miraglia

Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 11th day of December 1996

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*See previous concurrence

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