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July 15, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station)	Docket No. 50-271-OLA (Spent Fuel Pool)

JOINT REPLY OF NEW ENGLAND COALITION ON NUCLEAR POLLUTION AND THE COMMONWEALTH OF MASSACHUSETTS TO APPLICANTS' AND THE STAFF'S RESPONSE TO STAY MOTION

Intervenors New England Coalition on Nuclear Pollution ("NECNP") and the Commonwealth of Massachusetts[1] offer the following in reply to the arguments contained in the Licensee's and the NRC Staff's responses to the joint motion of NECNP and the Commonwealth of Massachusetts for an order staying the effectiveness of License Amendment No. 104, dated June 7, 1988, and July 12, 1988, respectively. Motion for leave to file this reply was granted by this Board on July 12, 1988.

I. BACKGROUND

This brief concerns Intervenors' June 13, 1988, joint motion for an order that the Licensee "cease all work on the installation of the new racks in the spent fuel pool pending the preparation and issuance of an environmental impact statement or assess-

1 Hereinafter referred to as "Intervenors."

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ment addressing the use of the increased capacity provided by the racks of the new design."[2]

At a prehearing conference on June 28, 1988, the Licensee represented that the first set of new, high density racks would be installed in the Vermont Yankee spent fuel pool that day, or very soon thereafter. The Licensee further represented that the installation of the new racks would proceed at a pace of one rack every four weeks, until five racks are installed.

Upon learning of the immediacy of the Licensee's plans to install the new racks, Intervenors requested an emergency restraining order to preserve the status quo pending the Licensing Board's receipt and consideration of the Licensee's and the Staff's responses to Intervenors' joint motion. That request was denied by the Board, without prejudice to the consideration to a ruling on the still-pending injunctive request.[3]

Intervenors then sought and received permission to file a reply to Licensee's Response to Intervenors' Joint Motion and to any response to the same filed by the NRC Staff. Intervenors represented in their motion for leave to file a reply brief would

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2 "Joint Motion of the Commonwealth of Massachusetts and New England Coalition on Nuclear [Pollution] Intervenors for an Order Staying the Effectiveness of License Amendment No. 104 Granted To Vermont Yankee Nuclear Power Corporation By the Staff on May 20, 1988," dated June 13, 1988, at 12 (hereinafter referred to as Intervenors' Joint Motion").

3 LBP-88-18, slip opinion, at 5.

not interfere with the Board's ability to enter the requested order in sufficient time maintain the current status quo, since, according to counsel for the Licensee, the second set of racks is not scheduled to be installed until on or about July 25, 1988.

II. THE LICENSING BOARD HAS JURISDICTION TO ENTERTAIN INTERVENORS' MOTION.

A. The Licensing Board has authority under 10 C.F.R. § 2.718(m) to Issue an Order Prohibiting the Licensee from Installing The New Racks and Placing Fuel Therein.

The Licensee's suggestion that the Licensing Board has no authority to entertain or act upon Intervenors' motion that the Licensing Board enjoin the Licensee from installing the new racks pending the preparation and issuance of an environmental assessment, can be disposed of easily. This Board's jurisdiction to entertain and act upon Intervenors' motion derives from its broad authority "to take any other action consistent with the [Atomic Energy] Act, this chapter, and sections 551-558 of title 5 of the United States Code." 10 C.F.R. § 2.718(m).[4]

1. Granting Injunctive Relief is A Recognized Power of Administrative Agencies.

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4 The captioning of Intervenors' motion as a "stay," to the extent that term implies that the relief sought is a suspension of administrative proceedings or orders, is unartful. In fact, the relief sought by Intervenors is an order, running against the Licensee, "to cease all work, if any, on the installation of the new racks in the spent fuel pool pending the preparation and issuance of an environmental impact statement or assessment addressing the use of the increased capacity provided by the racks of new design." Intervenors' Joint Motion, at 11. Therefore, 10 C.F.R. § 2.788, and the limitations on the Licensing Board's authority thereunder, as noted in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-1, 24 NRC 1, 2 (1986), are not applicable.

In order to determine the Licensing Board's power to order relief, other than those powers specifically enumerated under 10 C.F.R. § 2.718(a) through (l), under authority of 10 C.F.R. § 2.718(m), it is necessary first to determine whether the Administrative Procedure Act, 5 U.S.C. § 551-558, and "[g]eneral commentary on administrative practice supports the use of this authority as an efficient tool of administrative justice." Kansas Gas and Electric Co. (Wolf Creek Nuclear Generation Station, Unit No. 1), CLI-77-1, 5 NRC 1, 5 (1977) (holding that licensing boards have the power to issue declaratory relief under the predecessor of § 2.718(m)).

Issuance of orders directed against a licensee or other party involved in an adjudicatory proceeding is clearly a recognized power of an administrative agency. A Licensing Board, like other administrative agencies, has the inherent authority to prevent illegal actions which would alter the outcome of issues before it. See Davis, Administrative Law, § 12:14 (2nd Ed. 1979) ("when a hearing is clearly required and is provided, action may be necessary before the results of the hearing are known, and the administrative equivalent of a temporary restraining order or temporary injunction may be necessary.") Here, the present circumstance present such an appropriate case in which to enter the requested order under these general powers, since such an order is necessary to prevent the Licensee from prejudicing -- and, in effect circumventing, the outcome of the Intervenors' statutory right to a hearing under Section 189a of the Atomic Energy Act on

their NEPA contentions through an illegal segmentation of the Licensee's original application to expand the capacity of the Vermont Yankee spent fuel pool through installation of new, high density racks.

In this regard, the Appeal Board's decision in Kansas Gas and Electric Co. (Wolf Creek Nuclear Generation Station, Unit No. 1), ALAB-331, 6 NRC 771 (1976), aff'd, CLI-77-1, 5 NRC 1 (1977), is directly on point. There, the Appeal Board ruled that the Licensing Board had the authority under the predecessor of 10 C.F.R. § 2.718(m), to issue a "declaratory order" regarding whether the applicant could commence environmentally significant off-site construction activities without prior Commission approval, even though there was some argument that, under Commission regulations, permission only had to be obtained for onsite construction activities. The Licensing Board determined, and its decision was upheld by the Appeal Board and the Commission, that the applicant had no such authority. In effect, the declaratory order in that instance functioned in the same manner as an injunction, since it resulted in an "order" that the "proposed railroad spur would have an adverse impact upon the environment of the site sufficient that such activities should not be allowed in advance of receipt of a limited work authorization." Id., 5 NRC at 777.

2. A Restraining Order Will Ensure a Fair and Impartial Hearing on Intervenors' NEPA Contentions.

In order to take action under 10 C.F.R. § 2.718(m), there should also be a connection between the rendering of the

requested relief and fulfillment of the board's duty to take appropriate steps "to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order." 10 C.F.R. § 2.718; Metropolitan Edison Co (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-31, 16 NRC 1236, 1238 (1982). Here, entering the requested order is necessary to protect Intervenors' statutory hearing rights under § 189a of the Atomic Energy Act by preventing prejudice to the outcome of Intervenors' deferred NEPA contentions. The order is thus required to ensure a fair and impartial hearing.

Moreover, entertaining and entering the requested order would fulfill the Licensing Board's mandate to comply with NEPA by preventing an action which would effectively circumvent NEPA obligations through an illegal segmentation of the Licensee's original application to expand the capacity of the Vermont Yankee spent fuel pool through installation of new, high density racks. Thus, the requested relief is consistent with the Atomic Energy Act, and is consistent with the Licensing Board's duty to conduct a fair and impartial hearing.

B. The Requested Motion is Within the Scope of this Proceeding.

The Licensee erroneously suggests that this Board has no jurisdiction to enter the requested order, which is necessary to protect the Board's jurisdiction over Intervenors' NEPA contentions, because these contentions have not yet been admitted. However, an operating license amendment proceeding encompasses all relevant questions of whether there is compliance with

applicable Commission regulations with respect to the activity for which the license amendment is sought, including the regulations under Part 51. Thus, a claim that NEPA has been violated is clearly within the scope of the Licensing Board's jurisdiction.

Moreover, Intervenors' have clearly indicated that they intend to raise contentions regarding compliance with NEPA once the Staff releases its environmental assessment. The reason these issues are not now before the Licensing Board is not because they are without basis, but solely because the NRC Staff has not yet released its environmental assessment, and thus, those contentions are not yet ripe.[5] To now permit the Licensee to take action that would prejudice the outcome of Intervenors' hearing on these contentions once they do become ripe, would penalize NECNP for the staff's inexplicable delay in releasing the environmental assessment.

Entering the requested order would be fully consistent with the Appeal Board's decision in ALAB-869. When ALAB-869 determined that NECNP's NEPA contention was unripe, there was no impending action that would prejudice the outcome of that contention, and thus NECNP's statutory hearing rights, once it did become ripe. However, such prejudice to NECNP's hearing rights would clearly result if the illegal segmentation of Vermont Yankee's 1986 application to allow more spent fuel rod assemblies

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5 ALAB-869, Slip opinion, at 29-34.

to be stored in the existing spent fuel pool were permitted to proceed.

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 466-467 (1982), is not applicable here. There, the issue was whether the Licensing Board had the authority to admit contentions that could not meet the basis and specificity requirements of 10 C.F.R. § 2.714(b) due to the unavailability of staff documents. Here, however, granting of the requested order would not result in the admission of baseless or vague contentions, but would merely forestall an illegal action which would abrogate NECNP's statutory right to a hearing on these contentions when they do become ripe. Moreover, as the Appeal Board expressly stated in Catawba, such procedural considerations may not be applied so as to "render nugatory" Intervenors' statutory hearing rights under Section 189a of the Atomic Energy Act as such a result "would countenance placing the petitioner in a classic "catch-22" situation -- which, once again, the statute forbids and our regulations cannot be thought to have authorized." Catawba, 16 NRC at 470 (footnotes omitted). Permitting such a result, as the Appeal Board recognized, would also encourage the utility and the Staff to delay the completion of necessary documents. Id. at 470 n. 16.

III. INTERVENORS HAVE SATISFIED THE APPLICABLE STANDARDS FOR AN ORDER PROHIBITING FURTHER LICENSEE ACTION IN INSTALLING NEW RACKS.

A. Standard for A NEPA Injunction.

It should be noted, first and foremost, that the traditional factors for an injunction are not applicable in NEPA cases. See

State of California v. Bergland, 483 F.Supp. 465, 498 (E.D. Cal. 1980) ("Normally, once a substantial NEPA violation has been shown, an injunction should issue without detailed consideration of traditional equity principles.") This presumption is justified as follows:

> The rationale for this NEPA injunction rule is clear. NEPA represents a declared Congressional policy requiring assessment of environmental concerns. As such, Congress has weighed the equities and determined that failure to examine environmental issues represents irreparable injury. See e.g. Wyoming Outdoor Coordinating Council v. Butz, 484 F.2d 1244, 1250 (10th Cir. 1973). If, having established a violation of NEPA, plaintiffs are not allowed to enjoin further activities until the agency complies with NEPA, then NEPA would be an "exercise in futility." Minnesota Public Interest Resources Group v. Butz, 498 F.2d 1314, 1324 (8th Cir. 1974).

State of California v. Bergland, 483 F.Supp. at 498-99.

Nonetheless, even when the traditional four injunction factors are applied, i.e., whether the petitioners have made a strong showing that they are likely to prevail on the merits; whether there will be irreparable harm to the petitioners if no injunction is granted; whether any other party will be harmed by a stay; and where the public interest lies,[6] Intervenors here satisfy each of these factors.

B. Intervenors Have a Strong Likelihood of Success on the Merits of their Claim that the Installation of the New Racks is an Illegal Segmentation in Violation of NEPA.

The Licensee and the Staff inexplicably confine their analysis of Intervenors' likelihood of success on the merits to a dis-

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6 These are the factors contained in 10 C.F.R. § 2.788, governing stays of decisions.

cussion of why the rejection of former Contention 2 and and the deferral of Contention 3 were not in error, and why the "no significant hazards consideration" made by the Staff may not be challenged by the board. However, Intervenors' joint motion does not challenge the Staff's "no significant hazards" finding, nor any other finding of the Appeal Board or this Board during the course of this proceeding.[7] Thus, Intervenors' likelihood of success on the merits, as in all NEPA injunction cases, refers to Intervenors claim that the proposed action violates NEPA. Hawthorn Environmental Preservation Association v. Coleman, 417 F.Supp. 1091 (N.D. Ga. 1976), aff'd, 551 F.2d 1055 (5th Cir. 1977). The movants' likelihood of success on any other matter is wholly irrelevant.

It is a violation of NEPA to circumvent environmental review obligations by segmenting an interrelated project the overall efect of which is envionmentally significant, into smaller, less

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7 In this regard, Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-1, 24 NRC 1, 2 (1986), is inapposite. That case concerned a merits challenge to the Staff's final "no significant hazards" finding as well as challenge to the Staff's decision not to prepare an environmental impact statement regarding a License Amendment to both re-rack and expand the storage capacity of the spent fuel pool. Thus, the substantive NEPA review had already taken place, and was not based on illegal segmentation of the re-racking from the expansion. Here, by contrast, an injunction is necesary to protect Intervenors right ab initio to a fair and impartial hearing on their NEPA contentions by preserving the status quo pending the Staff's release of its environmental assessment.

significant actions. Kleppe v. Sierra Club, 427 U.S. 409, 408-415 (1976). Here, the overall project to re-rack and expand the number of spent fuel rods capable of being stored in the existing pool is one that involves signficant, environmental impacts, as Intervenors' admitted and deferred contentions amply demonstrate. Here, the Staff clearly violated NEPA by bifurcating the Licensee's still-pending 1986 application for a license amendment to expand the spent fuel pool and authorizing only the preparatory action to be taken based on an evaluation of the effects of re-racking alone, without considering the environmental effects of both the re-racking and the expansion.

First, License Amendment No. 104 and the Licensee's initial, still-pending application for authorization to expand the number of spent fuel rods capable of being stored in the existing pool, are clearly part of a single "proposal." The Staff's documents openly acknowledge that License Amendment No. 104 "is in partial response to your application dated April 25, 1986,..." Letter to R.W Capstick, Licensing Engineer, Vermont Yankee, from Vernon L. Rooney, Project Manager, Division of Reactor Projectssss, NRC, dated May 20, 1988. That letter also acknowledges the inter-relationship between License Amendment No. 104 and the second segment of the initial License Amendment to permit 870 more fuel assemblies authorized to be stored in the pool: "This amendment allows the installation of racks of a new design in the spent fuel puel sufficient to accommodate 2870 fuel assemblies." Id. (emphasis added). Thus, License Amendment No. 104 is clearly one

prcposal divided into two stages, much like the temporary storage proposal was a segment of a single overall plan for storage of uranium mill tailings in Kerr-McGee Chemical Corporation (West Chicago Rare Earth Facility), LBP-84-42, 20 NRC 1096 (1984).

The installation of the new, high density racks clearly has no utility independent of the tandem request to utilize their increased storage capacity, and the Licensee has not even attempted to argue that it does. Thus, the sole utility of installation of the new, high density racks is dependent on obtaining authorization to utilize the additional cavities afforded by the racks to add more spent fuel assemblies in the existing spent fuel pool. To paraphrase one Appeal Board, installing a new, high density rack without authorization to utilize its increased storage capacity, is "like an airplane that can't fly." Detroit Edison Co. (Greenwood Energy Center), ALAB-247, 8 AEC 936, 937 (1974).

Accordingly, the NRC must evaluate the environmental impacts of the re-racking as part of its overall, environmental assessment of the entire spent fuel pool expansion proposal, and the Licensee may not implement any segment of that proposal until the requisite NEPA reviews are completed.

C. Intervenors will be Irreparably Injured if the Installation of the New Racks is Permitted.

In order to effectuate the policy of NEPA, in evaluating a request for injunctive relief, "the word 'irreparable' must be given a broad and expansive meaning." Society for the Protection of New Hampshire Forests v. Brinegar, 381 F.Supp. 282, 283 (D.N.H. 1974). As the court stated in Environmental Defense Fund, Inc. v. Froehlke, 477 F.2d 1033, 1037 (8th Cir. 1973),

> We recognize that the injunction is the vehicle through which the congressional policy behind NEPA can be effectuated, and that a violation of NEPA in itself may constitute a sufficient demonstration of irreparable harm to entitle a plaintiff to blanket injunctive relief.

Society for the Protection of New Hampshire Forests v. Brinegar is particularly on point. In that case, the court ruled that a preliminary injunction prohibiting construction of or acquisition of land for a segment of an interstate highway was justified by the failure of the agency to prepare an Environmental Impact Statement taking into consideration the impact of the entire highway project. Significantly, the court even refused to permit acquisition of the land for the highway, reasoning:

> Although construction will not start for several years on the Littleton-Waterford segments of I-93, if the land is acquired for the road, the certainty of such construction will have the same coercive effect as if the road were being built tomorrow.

Id, 381 F.Supp. at 289.

Here, irreparable injury is clearly demonstrated. First, as noted above, the installation of the racks constitute an illegal segmentation in violation of NEPA. Second, injunctive relief is necessary to ensure that the additional costs and momentum of

additional work in undertaking the months-long process to install the new, high-density racks, "does not further serve to bind the agency to its initial decision." Realty Income Trust v. Eckerd, 564 F.2d 447, 457 (D.C. Cir. 1977). These prejudicial impacts go far beyond the "sunk costs" that the Licensee has already incurred, at its own risk, in purchasing the new racks prior to receiving approval for its License Amendment.

Allowing these additional costs to be incurred will have a prejudicial effect on the consideration of alternatives under NEPA. Even if it should so choose, it is not clear that the Licensing Board has the authority to disregard sunk costs when the time comes to weigh the costs and benefits of the re-racking and expansion of the spent fuel pool against other alternatives, or to prevent these "sunk costs" from prejudicing the outcome of the NEPA consideration of alternatives. This is a hard lesson learned from the Seabrook nuclear power plant litigation, where in performing the required NEPA review of sites for the nuclear power plant, the Appeal Board determined that it could not disregard money already expended by the utility at the preferred site when comparing costs of constructing at alternative sites, reasoning:

> To adopt any of the other alternatives refered to in the question quoted above (including Audubon's tabula rasa) would compel us to require the Licensing Board on remand to strike a cost-benefit balance based on a set of assumptions that no longer fairly described the facts as they are.

Public Service Co. of New Hampshire, (Seabrook Staion, Units 1 and 20, 5 NRC 503, 531 (1977).

On appeal, the U.S. Court of Appeals for the First Circuit recognized the prejudicial effect on the NEPA process as a result of this decision, and issued the following cautionary words to the Commission, which are particularly appropriate in this instance:

> The problem becomes serious where, as here, the Commission has allowed the applicant to go beyond the relatively minor, necessary investigatory expenditures and to sink large sums into actual construction. That raises the second problem, the advisability of allowing construction permits to issue before final approval of the site. If the Commission is careful about granting such permits, and if the Commission wisely uses its power to stay such grants, situations in which sunk costs predetermine comparative site analyses, rendering them a meaningless form, can be avoided.

New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 96 (1st Cir. 1978) (emphasis added). These cautionary words apply with full force to the present situation, and provide compelling support for the need to protect the NEPA process by granting Intervenors' the requested relief.

Finally, an order proscribing the installation of the new racks will prevent the irreversible impact of unnecessary worker exposure to radiation which will result if the overall license amendment to increase the number of spent fuel pool assemblies to be stored in the spent fuel pool is ultimately denied.

D. The Licensee Has Failed to Demonstrate That Any Cognizable Injury Will Result From An Order to Cease Installation of the New Racks.

The Licensee offers two potential injuries that would result in it were not permitted to install the new racks as this time. First, the Licensee suggests that it has already incurred costs in purchasing the new racks; and second, the Licensee suggests

that it will incur further costs as a result of delaying the implementation of the effort to expand the spent fuel pool storage capacity.

The first is clearly without merit. Since these costs have already been incurred, denial of Intervenors' request for an order prohibiting the installation of the racks will not prevent this "injury." In any event, the Licensee made a business decision to purchase new, high-density racks designed to increase the storage capacity of the spent fuel pool prior to receiving approval to even install the new racks, much less utilize the increased storage capacity that these racks allow. These costs were clearly incurred at the Licensee's risk and the Licensee cannot now be heard to complain about having incurred these costs.[8]

The Licensee's claim that prohibiting the installation of the racks will result in irreparable injury by delaying its effort to expand the spent fuel pool storage capacity is particularly disingenous. Any delay in the process is directly attributable to the Licensee's own failure to recognize that it has a spent fuel pool cooling system that does not meet the current standards for single failure criterion. Thus, the

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8 Indeed, as the Licensee continuously asserts, this injury may be speculative and remote, since installation of the new racks may be ultimately selected as the preferred alternative after compliance with the NEPA process and completion of all necessary hearings and safety reviews. Therefore, the costs will not have needlessly been incurred.

Licensee's attempt to charge to Intervenors' the responsibility for these costs is particularly galling.

E. The Public Interest Supports Prohibiting Installation of the New Racks.

Granting the requested relief would further the strong public interest in ensuring compliance with NEPA. As the court noted in City of Boston v. Volpe, 464 F.2d 254, 257 (1st Cir. 1972):

> The concept of [NEPA] was that responsible officials would think about environment before a significant project was launched; that what would be assessed was a proposed action, not a fait accompli; that alternatives to such action would be seriously canvassed and assayed; and that any irreversible effects of the porposed action would be identified.

(emphasis in original). To allow the re-racking to proceed prior to consideration of the environmental factors would totally frustartate the strong public policy.

Again, the Licensee's efforts to cast the costs of delay to the ratepayers as a public interest factor weighing against enjoining the re-racking is appallingly disingenuous. Once again, any delay is of the Licensee's own making in failing to recognize that they have a spent fuel pool cooling system that does not meet the current standards for single failure criterion.

IV. The Licensee Has No Authority Under 10 C.F.R. § 50.59 to Install the Racks.

The Licensee makes the "policy" argument that the Licensing Board should refrain from entering the requested order since it possesses authority, "without reliance on License Amendment No. 104," to proceed with the installation of the new racks, and that granting Intervenors' motion would therefore be a "futility."

Licensee's Brief, at 15. This argument is absurd. First, the Licensee ignores the fact that Intervenors' have requested, not only a stay of License Amendment No. 104, but an order running directly to the Licensee that it cease all work in installing the new racks.[9] Therefore, the Licensee would be bound by such an order regardless of the Licensee's perception that it has authority under § 50.59 to install the racks independent of License Amendment No. 104. Should the Licensee believe that it has authority to install the new racks in direct contempt of a board order prohibiting it from doing so, it proceeds at its own risk.

In any event, it is necessary to put to rest this notion that the Licensee has any authority to proceed with installing the new racks under § 50.59. First and foremost, the applicability of § 50.59 is negated by the Staff's issuance of License Amendment No. 104, thereby characterizing the change as one requiring a license amendment. By definition, License Amendments are required for changes in the technical specifications or actions which involve unreviewed safety issues. A change requiring a license amendment, ipso jure, cannot be a change permitted under § 50.59.

Second, the installation of the new racks is not permitted under the plain language of § 50.59. Section 50.59 authorizes a Licensee to proceed with changes without obtaining prior approval

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9 Intervenors' Joint Motion, at 11.

of the Staff where the changes do not involve a change in technical specifications or an unreviewed safety issue. Thus, the applicability of § 50.59 cannot be based on a merits inquiry into whether the change is ultimately approvable. Rather, on its face, the change must not involve an "unreviewed safety question." 10 C.F.R. § 50.59(a)(1). (emphasis added).

It is apparent from the Staff Safety Evaluation Report underlying License Amendment No. 104[10] that the installation of the new racks involved an "unreviewed safety question." In the SER, the Staff engaged in an elaborate merits inquiry into whether the change in rack design, by allowing increased density, exceeded the criticality margins required by the existing technical specifications. While the Staff ultimately determined that the critically margin contained in the technical specifications would be maintained, it clearly engaged in a merits review of this important safety question. Thus, the installation of the new racks clearly involves an unreviewed safety question, and the Licensee has no authority under § 50.59 to make this change without obtaining a License Amendment.

The fact that the Licensee has not directed the Board's attention to any cases supporting its view confirms Intervenors' suspicions, voiced at the June 28, 1988 prehearing conference, that none exist.

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10 Attached to Intervenors' Joint Motion, as "Attachment C."

V. CONCLUSION

For the foregoing reasons, Intervenors' Joint Motion should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 15, 1988, copies of the foregoing pleading were served by first-class mail, or as otherwise indicated, on all parties listed below.

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