AA61-2 PDR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MAR 14 1985

MEMORANDUM FOR: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

FROM: Hugh L. Thompson, Jr., Director
Division of Licensing
Office of Nuclear Reactor Regulation

SUBJECT: "SHOLLY" STATISTICS

Enclosed is the update of the Sholly statistics covering the period May 6, 1983 through February 27, 1985.

No additional comments nor requests for hearings were received.

The next monthly FRN is scheduled for publication on March 27, 1985, after which the statistics will be updated.

Hugh L. Thompson, Jr., Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosure:
As stated

cc w/enclosure:
NRR Division Directors
NRR Deputy Directors
DL Assistant Directors
DL Branch Chiefs
DL Licensing Assistants
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"SHOLLY" STATISTICS

May 6, 1983 - Feb. 27, 1985	Monthly FRN Proposed NSHC	Individual FRN Proposed NSHC	Individual FRN SHC	Total
NUMBER	1597	276	27	1900
Period for public comment:				
30 days	1597	259	27	1883
Less than 30 days:				
Short FRN		17		17
Press release		[illegible]		9
Public comments received	2 Grand Gulf 1 Oyster Creek 1 LaSalle-2	8 TMI-1 1 Susquehanna 1 WNP-2	0	14[1/]
Requests for hearing	1 Grand Gulf	2 TMI-1 2 Trojan 1 Salem-1 6 Turkey Pt. 3/4	1 Pilgrim 2 Zion 1/2	15[2/]

Amendments issued - Total	1175
(1) with 30 days notice	1109
(2) less than 30 days or no notice	55
(3) Hearing requested but final NSHC determination made (50.91(a)(4))	10[3/]
(4) Proposed NSHC; hearing requested. Hearing completed and amendment issued. No final NSHC determination was made because hearing was completed before amendment was needed	1[4/]

Backlog: (applications received which have not been noticed, either in monthly FRN or individually through February 27, 1985): NUMBER 321 (Includes items which have been prepared and approved for publication in March monthly, items which are in concurrence, and items for which additional information is needed from the licensee.

FOOTNOTES: See pages 2 and 3.

FOOTNOTES FOR "SHOLLY" STATISTICS

1/ Comments

Grand Gulf - 2 comments, one from State, one from a member of the public.

TMI-1 - 7 comments received as result of initial noticing action, 1 additional comment received as a result of Notice of Additional Opportunity published on August 25, 1983.

Susquehanna - 1 comment received from a member of the public.

Oyster Creek - 1 comment received from State.

WNP-2 - 1 comment received from a member of the public.

LaSalle 2 - 1 comment received from local government.

2/ Requests for hearing

TMI-1 - Steam generator repair - 2 requests for hearing received. Prehearing conference held. By a Memorandum and Order dated June 1, 1984, Board dismissed 9 of 11 contentions. Hearing concluded July 18, 1984. Staff's proposed findings submitted August 20, 1984. Board issued Decision on October 31, 1984.

Salem-1 - Integrated leak rate - 1 request for hearing received from State of Delaware. On January 20, 1984, State filed a motion to withdraw which was granted by Board on January 25, 1984.

Turkey Pt. 3/4 - (a) Proposed operational limits for current and future reloads - 2 requests for hearing (2 units). Prehearing conference held - February 28, 1984. Discovery in process. (b) Spent Fuel Storage Expansion - 2 requests for hearing (2 units). (c) Enriched fuel storage - 2 requests for hearing (2 units). Nuclear Responsibility Inc. and Joette Lorian petitioners in all three issues.

Pilgrim - Single loop operation - 1 request for hearing. Proceeding dismissed January 26, 1984 based on settlement.

Grand Gulf - Amendment No. 10 redefined HPCS operation and resulted in a calculated increase in peak clad temperature. One hearing request received. Prehearing conference held February 29, 1984. ASLB issued decision on April 23, 1984 admitting two contentions for discovery. On September 24, 1984, ASLB issued Memorandum and Order Terminating Proceeding.

2/ Requests for hearing (continued)

Trojan - Spent fuel pool expansion - 2 requests for hearing, 1 from State and 1 from Coalition for Safe Power. Both admitted as parties to proceeding. Prehearing conference held, two contentions accepted. Coalition withdrew from proceeding. Hearing held October 10, 1984. Initial Decision issued by Board on November 28, 1984.

Zion 1/2 - Containment leak testing - 2 requests for hearing (2 units) from Citizens Against Nuclear Power. Licensee subsequently withdrew application.

3/ Amendments Issued, Item (3)

TMI-1 hot testing, 1 amendment
Salem 1 integrated leak testing, 1 amendment
Turkey Pt. 3/4 operational limits for current/future reloads, 2 amendments
TMI-1 hot functional testing of SG, 1 amendment
Trojan spent fuel pool, 1 amendment
Turkey Pt. 3/4 SFP storage expansion, 4 amendments

4/ Amendments Issued, Item (4)

TMI-1 steam generator tube repairs and return to operation, 1 amendment. Pursuant to the Initial Decision of the Atomic Safety and Licensing Board dated October 31, 1984, the Commission completed action on GPU's May 9, 1983 application by the issuance of an amendment to the license permitting the return of the steam generators to operation. The hearing having been completed, the matter of a Final Determination of No Significant Hazards Consideration related to this amendment was considered moot and no such determination was required or made.

AA61-2 PDR

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR NUCLEAR RESPONSIBILITY INC., AND JOETTE LORION Appellants v. U.S. NUCLEAR REGULATORY COMMISSION, U.S. DEPARTMENT OF JUSTICE, AND FLORIDA POWER & LIGHT COMPANY, Appellees.	)	Case No. 84-5570

CERTIFICATE OF SERVICE

I Hereby motion that I have served a copy of the foregoing Brief for the Appellants, by first class mail, postage prepaid, on each of the following Counsel, this 28th day of January, 1985.

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Dated: January 28, 1985.

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Northern Indiana Public Service Company

Bailly Generating Station Nuclear #4
7 NRC 429 (1978) aff'd sub nom.

Porter County Iyaak Walton League V. NRC 606 F.2d 1364 (D.C. Cir 1979)

Citizens to Preserve Overton Park, 401 U.S. 402, (1971)

Pierson v. United States, 428 F. Supp. 381 (D. Del 1977)

U.S. v. John C. Greenberg Co. Inc., 702 F.2d 1362 (1983)

American Beef Packers, Inc. v. ICC.
711 F.2d 388, (1983)

Camp v. Pitts 411 U.S. 143

Federal Register Notices:
48 F.R. 33076 33077
48 F.R. 45862, 45863

Statutes:
Administrative Orders Review Act (Hobbs Act)

28 U.S.C. 2341 et. seq.
28 U.S.C. 2347, (b)(1), 2347(b)(2), 2347(b)(3)
National Environmental Policy Act of 1969
NEP^ 42 U.S.C. 4321 et. seq.

Administrative Procedure Act.
5 U.S.C. 551 et. seq.

Atomic Energy Act of 1954, as amended,

42 U.S.C. 2011 et. seq.
42 U.S.C. 2239 (a) (2) (A)

Public Law No. 97-415, 12,
45 Stat 2067, 1982
28 U.S.C. 1631
47 U.S.C. 407

Regulations

10 CFR Part 2
10 CFR Part 50.54

Miscellaneous:

D.L. Basdekas, The Risk of a Meltdown, N. Y. Times, March 29, 1982

E. Edelson, Thermal Shock -- New Nuclear Reactor Safety Hazard, Popular Science 55, June, 1983

NRC Staff Seeks Additional Information on Pressure Vessel Thermal Shock, Release No.

11-81-79 (NRC Office of Public Affairs, August 26, 1981)

NRC Staff Evaluation of Pressurized Thermal Shock (November 1982)

M. Toner, U.S. Reports Possible Flaws in N-Plants; Old Steel Vulnerable at Turkey Point, The Miami Herald, August 11, 1981

In the
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for the

District of Columbia Circuit

Case No. 84-5570

Center for Nuclear Responsibility Inc.,
and Joette Lorion — Appellants

v.

United States Nuclear Regulatory Commission,
and United States of America,
and Florida Power and Light Company,

Appellees.

Appeal from the U.S. District Court
for the District of Columbia Circuit

BRIEF FOR APPELLANTS

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STATEMENT OF THE ISSUES

1) Whether a Nuclear Regulatory Commission determination that issuance of a facility operating license amendment involves no significant safety hazards considerations, made through an informal, ex-parte agency process, constitutes a final order entered in a "proceeding" of the kind Congress specified in Section 189 of the Atomic Energy Act?

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STATEMENT OF THE ISSUES

1) Whether a Nuclear Regulatory Commission determination that issuance of a facility operating license amendment involves no significant safety hazards considerations, made through an informal, ex-parte agency process, constitutes a final order entered in a "proceeding" of the kind Congress specified in Section 189 of the Atomic Energy Act?

(a) Whether the District Court was required to transfer this case to the Court of Appeals, pursuant to 28 U.S.C. 1631, upon its determination that it lacked jurisdiction?

(b) Whether if initial jurisdiction is found in the Court of Appeals, should the Court transfer this matter to the appropriate District Court pursuant to the Hobb's Act, 28 U.S.C. 2341, 2347 (b) (3), for a determination of the disputed facts?

2) Whether the Nuclear Regulatory Commission erred in its determination that issuance of these license amendments involves no significant hazards?

(a) Whether the Nuclear Regulatory Commission's pattern of conduct here and in the issuance of other license amendments subsequent to the enactment of the "Sholly Rule", relying upon declarations of "emergency" or "no significant hazards", constitutes an abuse of agency discretion?

(b) Whether the Nuclear Regualtory Commission's interpretation of the intent of Congress in its enactment of the Amendment to Section 189 of the Atomic Energy Act is correct? (42 U.S.C. 2239 (a) (2) (A), 1982-83, Authorization Public Law No. 97-415, 96 Stat. 2067 (1983).

3) Whether the Final Environmental Impact Statement for the Turkey Point Nuclear Power Plants Units 3 and 4 is inadequate as a matter of a law due to new information developments and circumstances concerning the probability of a serious nuclear accident at the Turkey Point Nuclear Plants, which have been discovered and should be addressed

in the Environmental Impact Statement,all relating to reactor pressure vessel embrittlement and pressurized thermal shock?

4) Whether the subject license amendments should be vacated, and whether a mandatory injunction should issue which prohibits defendants, United States Nuclear Regulatory Commission and United States of America, from licensing or authorizing issuance of any facility or operating license amendments in connection with the reactor pressure vessel embrittlement, pressurized thermal shock and vessel flux reduction programs, that involve reduction of originally established safety margins and changes to the Technical Specifications and other appendices to the operating licenses, until there have been concluded prior public hearings under Section 189 of the Atomic Energy Act, and the National Environmental Policy Act of 1969, and other reviews required by Federal Law.

REFERENCES TO PARTIES AND RULINGS

On May 4, 1984, the Honorable John Garret Penn, United States District Court Judge, filed a 'memorandum" modifying an earlier Order filed April 27, 1984. After motions for clarification, Judge Penn issued a new Order filed on June 12, 1984, constituting the order appealed from here.

The Plaintiffs in the Court below are the Center for Nuclear Responsibility Inc., and Joette Lorion. The Defendants below, and Appellees here, are the United States of America, the United States Nuclear Regulatory Commission, and the Florida Power and Light Company.

This case has not been previously before the Court. The only related case was Joette Lorion d/b/a Center for Nuclear Responsibility v. U.S. Nuclear Regulatory Commission, 712 F. 2d 1472 (D.C. Cir. 1983), mandate stayed (October 13,1983), Petitions for certiorari filed October 28, 1983, Case. No. 83-703 Sp. Ct. and December 21, 1983, Case No. 83-1031 Sp. Ct. Cases were consolidated March 26,1984, and Oral Argument heard and case submitted October 29, 1984.

The Appellants relied upon the jurisdictional rule established by this Court in Lorion supra, in bringing this action in District Court.

STATEMENT OF THE CASE

Nature of the Case

This case is about "no significant hazard determinations", an informal agency "proceeding", ex-parte in nature, performed by the Staff of the Nuclear Regulatory Commission (NRC or Commission). Because "no significant hazard determinations" are not reviewable within the agency,they constitute "final agency action". "No significant hazard determinations" are the basis for the Commission's issuance of operating license amendments as permitted by the "Sholly Amendment" to section 189 of the Atomic Energy Act. (P.L. No. 97-415, 96 Stat. 2067, codified at 42 U.S.C. 2239 (a) (2) (A).) This action challenges the conduct of the Commission as it uses the "Sholly Amendment" to issue license amendments based upon "no significant hazard declarations", while denying members of the public any opportunity for a prior hearing. This is a case of first impression.

Appellants allege the Commission is indulging in a course of conduct designed to evade its responsibility to provide the public hearings requested by members of the public as mandated by Congress.

The complaint in this action sought mandatory, declaratory, and injunctive relief, declaring it to be a duty of the Commission to prepare a supplementary environmental impact statement (EIS) and conduct a prior public hearing before there could be issuance of amendments to facility operating licenses DPR-31 and DPR-41, as noticed for publication in the Federal Register on July 20, 1983, (48 F.R. 33076), and October 7, 1983, (48 F.R. 45862). [1]

These amendments, and others not at issue here, are components of the Commissions' Vessel Flux Reduction Programs designed to cope incrementally with the serious problem of reactor pressure vessel embrittlement (Developed at greater length p.p. 6-11 infra) while avoiding direct confronation in a public forum with the environmental aspects of the issue.

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1. Appellants, who are Plaintiffs below. brought this action on November 29, 1983, because the Commission had announced its intention to issue license amendments on or about November 30, 1983, that would permit start-up and operation of the Turkey Point facility using new untested reactor core designs that exceed previously assigned safety margins and Technical Specifications for the plant. The License Amendments were infact issued on December 9, 1983, (48 F.R. 33076) and December 23, 1983, (48 F.R. 45862) respectively.

This action poses threshold jurisdictional questions, as Appellants vainly thus far seek an effective forum in which to voice their concerns about the Reactor Pressure Vessel Embrittlement and Pressurized Thermal Shock problems at the Turkey Point Nuclear Power Reactors.

Succinctly, does jurisdiction to review an ex-parte, informal, yet final, agency action known as a "Declaration of No Significant Hazards" lie initially in the District Courts or the Courts of Appeal"? If the Courts of Appeal have intitial jurisdiction, does the Hobb's Act 28 U.S.C. 2341, 2347 (b) (3), require this Court to transfer this matter to the appropriate District Court for a determination of the disputed facts.

The Background Problem

After events at Three Mile Island, during the decade of the 1980's, the licensing responsibilities of the U.S. Nuclear Regulatory Commission (NRC or Commmission) shifted in emphasis from oversight of the construction and licensing of new nuclear power reactors to the management, through the issuance of operating license amendments, of a generatic of aging nuclear power reactors. Thereafter, a new and potentially catastrophic problem,that was never anticipated by the nuclear industry, arose. It is known as Reactor Pressure Vessel Embrittlement (RPV) coupled with Pressurized Thermal Shock (PTS).

> There is a high increasing likelihood that someday soon, during a seemingly minor malfunction at any of a dozen or more nuclear power plants around the United States, the steel vessel that

> houses the radioactive core is going
> to crack like a piece of glass.
> The result will be a core meltdown,
> the most serious kind of nuclear
> accident...

D.L. Basdekas, Reactor Safety Engineer, U.S. Nuclear Regulatory Commission. [2]

Basdekas, the reactor safety engineer with the Nuclear Regulatory Commission, continued in his article to warn that radiation is making the metal in some reactor pressure vessels (steel vessels that contain the radioactive core) brittle at certain nuclear power plants. [3]

Thus, water that is used to flood and cool the reactor core in an emergency could cause a meltdown, rather than preventing one. The cause of the vessel fracture and resultant core melt, would be the abrupt change in the reactor's pressure and temperature, known as Pressurized Thermal Shock (PTS), which could crack brittle vessels and allow emergency cooling water to escape.

Although NRC and industry interest in reactor vessel embrittlement had heated up in 1977, and then languished unresolved, Basdekas's article in the New York Times and his letters to Congressman Morris K. Udall, Chairman, Sucommittee on Energy and the Environment, quickly focused NRC and industry attention on the problem.

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2. D.L. Basdekas, "The Risk of a Meltdown," N.Y. Times March 29, 1982) ; see also"NRC Staff Seeks Additional Information on Pressure Vessel Thermal Shock," Release No. II-81-79 (NRC Office of Public Affairs, Reg. II, Aug. 26, 1981).

3. The problem has been described (footnote cont'd next page)

In a May 4, 1981, letter from Basdekas to Congressman Udall he urged,

> ...it is apparent to me that those PWR's (Pressurized Water Reactors) with high copper alloy vessels or welds, that have operated for 4 FPYE must be shut down until this matter is resolved in the technical arena.

D.L. Basdekas, NRC Reactor Safety Engineer. [4]

The NRC Commissioners held public meetings, Congressman Edaward Markey of Massachusettes called Congressional hearings, and the NRC accelerated work on the supposed definitive study which was to become known as the "PTS Report" or NRC Staff Evaluation of Pressurized Thermal Shock, Enclosure A, November 13, 1982. (The Enclosure is the main body of the report.) This report demonstrated that the Commission's own probabalistic analyses of the likelihhod of a pressurized thermal shock event coupled with reactor pressure vessel embrittlement, had a much higher probability of occurrance than the Commission's

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3.(continued) and evaluated in articles prepared for general distribution. See E. Edelson, Thermal Shock-New Nuclear Reactor Safety Hazard ? Popular Science, Pg. 55, June, 1983, for a non-technical description and summary of reactions from the scientific community.

4. The Basdekas letter to Representative Morris K. Udall is reproduced in Policy Information Paper - SECY-81-286, Pressurized Thermal Shock, U.S. Nuclear Regulatory Commission, May 4, 1981.

own 10 C.F.R. Part 50 and Part 100 criteria would allow. [5]

Furthermore, after the"Rancho Seco" Transient occurred on March 20, 1978, it became clear that pressurized water reactors were susceptible to abrupt changes in temperature and pressure that could result in pressure vessel fracture. [6]

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5. "Core Melt" - The core melt safety goal guideline states, 'The likelihood of a nuclear reactor accident that results in a large scale core melt should normally be less than one in 10,000 per year of reactor operation' (referencing 10 C.F.R. 100 setting guidelines on fission product releases and 10 C.F.R. Part 50 guidelines) . This suggests that the core melt frequency ascribable to one sequence, for example PTS, compared to other sequences should not exceed approximately 10^{-5} per reactor year. "

"Because of the unusually large uncertainty in the risk estimation for PTS compared to other sequences, a value of less than 10^{-5} might well be assigned for a safety goal of PTS. We have not done this. This reader should keep in mind that the risk numbers of PTS given in the following discussion are highly uncertain."

"We have no technical analysis of the course and consequences of a PTS sequence that involves RPV (reactor pressure vessel) failure."

NRC Staff Evaluation of Pressurized Thermal Shock , Enclosure A, p. 8-9, PTS Report Section 8, Nov. 13, 1982. (The Enclosure is the main body of the report.)

6. A reading of the NRC Policy Issue SECY-81-286, a chilling experience, gives an understanding of the concerns that Mr. Basdekas expresses about PTS. "At Rancho Seco...on March 20, 1978,...occurred...the most severe overcooling transient experienced by any PWR in the U.S." The Commission's Executive Director indicated that, "If the Rancho Seco Transient occurred after 10 effective full power years of operation,..the probability of failure of the Rancho Seco vessel would have been very high." The Turkey Point plants are now nearing that 10 year mark.

Until mid-1981, the Commission's handling of the reactor pressure vessel embrittlement and pressurized thermal shock problem had been conducted on a generic basis. But, in August of 1981, the Commmission publically disclosed facts that required site-specific consideration of the problem. The Commission's press releases revealed that the Turkey Point Nuclear Power Reactors have the most severely embrittled reactor vessels in the United States.

For that reason, Turkey Point is one of the nuclear power plants whose pressure vessel is likely to crack from thermal shock if a minor malfunction requires the use of standard emergency cooling procedures. "A seemingly minor malfunction" would thus result in the most serious kind of nuclear accident - a meltdown of the reactor core. [7]

When as early as August 21, 1981, the NRC Staff expressed its own view that reactor pressure vessel embrittlement at the Turkey Point Plant was "approaching levels of concern", such that continued full power operation might pose a significant health and safety hazard, [8] Joette Lorion

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7. See <u>NRC Staff Seeks Additional Information on Pressure Vessel Thermal Shock</u>, Release No. II-81-79, NRC Office of Public Affairs, Region II, August 26, 1981. See also e.g. M. Toner, "U.S. Reports Possible Flaws in N-Plants: Old Steel Vulnerable at Turkey Point Plant," <u>Miami Herald</u>, Sept. 8,1978,p.1A.

8. The worst case reactor pressure vessel embrittlement at Turkey Point is described by the Commission's Director of Licensing as "approaching levels of concern." See letter Darrel Q. Eisenhutt, Director Division of Licesning, Office of Reactor Regulation, U.S. Nuclear Regulatory Commission, to Florida Power & Light Co., Robert E. Uhrig, V.P., August 21, 1981. (A Commission Show Cause letter under 10 C.F.R. 50.54 (f).

one of the Appellants here, then acting individually, and under the name Center for Nuclear Responsibility, asked the Commission to address the problem and, if necessary, suspend the reactor's operating license. That request was promptly denied by a subordinate official in an informal and ex-parte, agency "proceeeding" known as a Director's Decision (Lorion v. NRC D.D.-81-21 14 NRC 1078 (1981.) Ms. Lorion petitioned for review of the agency action in this Court (See Lorion v. NRC 712 f. 2d 1472 (1983) supra.) On July 26, 1983, this Court dismissed that case for lack of subject matter jurisdiction and transferred it to the Federal District Court for the District of Columbia pursuant to 28 U.S.C. 1631, holding that:

> The jurisdictional bases of the petition for review are asserted in 28 U.S.C. 2342 (4) 1976 and 42 U.S.C. 2239 (b) 1976, which together give this Court authority to review directly those final orders of the NRC enetered after formal agency proceedings. * Because the Commission's decision in this case did not result from such a formal proceeding, however, we must dismiss this case for lack of subject matter jurisdiction.
> *Emphasis supplied. Lorion v. NRC, NRC 712 F. 2d 1472 D.C. Cir. (1983).

Presently the holding of this Court in Lorion is under review by the United States Supreme Court. (See reference to Lorion infra p. 4.)

STATEMENT OF FACTS

The Nuclear Regulatory Commission (NRC) decided to issue and make immediately effective two sets of amendments to the facility operating licenses issued to Florida Power and Light Company (FPL) for the operation of two nuclear generating units, Turkey Point Plant Units 3 and 4, in advance of any required hearing on the amendments.

Still wandering through a jurisdictional maze, and following the taechings of this Court in the first Lorion Case (Lorion I), and confronted with still another final agency action arising from an informal and ex-parte agency proceeeding, and being denied meaningful relief, the Appellants brought suit in the District Court for the District of Columbia Circuit seeking review of this agency action.

Appellants sought a prior public hearing and injunctive, mandatory,and delaratory relief to restrain the United States of America and its agent the United States Nuclear Regulatory Commission from authorizing contrary to federal law the operation of the Turkey Point Nuclear Power Plants Units 3 and 4 by the Florida Power and Light Company by issuing amendments to the facility operating license with revised Technical Specifications and reduced safety margins until the Defendant, the Nuclear Regulatory Commission, carried out its non-discretionary duty to conduct public hearings for consideration of the proposed license amendments as mandated by the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., and other pertinent federal law.

The Commission issued the amendments on December 9, 1983, and December 23, 1983, pursuant to notices in the Federal Register on July 20, 1983, (48 F.R. 33076,33077), and October 7, 1983, (48 F.R. 45862, 45863).

The District Court dismissed Appellants complaint, holding that it lacked subject matter jurisdiction of any of the issues raised by the Plaintiffs, who are Appellants' here. The District Court, confronted with this serious safety issue, however, failed to observe the Congressional mandate to transfer to the Court of Appeals, as provided at 28 U.S.C. 1631.

ARGUMENT

I.

THE DECISION OF THIS COURT IN THE FIRST LORION CASE COMPELS THE CONCLUSION HERE THAT JURISDICTION IS IN THE DISTRICT COURT.

A.

The No significant Safety Hazard Declaration Is An Ex-Parte, Informal Agency Proceeeding That Constitutes Final Agency Action.

It is not the intention of Appellants to re-argue the rationale of this Court as expressed in the Lorion case. Appellants support the decision and have relied upon it here. Presently, it is the law of the Circuit.

There are marked similarities between the Commission's "Director's Decisions" and "No Significant Hazard Determinations":

1. They are each performed by the NRC Staff.

2. They are both informal agency "proceedings".

3. They are ex-parte in nature.

4. No provision exists for further right of review within the agency, except in the case of Director's Decisions, which may be subject to sua sponte review by the full Commission under 10 C.F.R. 2.206.[9]

5. Both"proceedings" constitute "final agency action" due to their non-reviewability.

They are dissimilar in that Director's Decisions are responses to requests for enforcement action, and may be construed as a component of the Commission's prosecutorial or investigative function, while "no significant hazard declarations" are the very lynchpin of the Commission's licensing function under Sec. 189 (a). In Northern Indiana Public Service Company(Bailly Generating Station Nuclear -4) ("Northern Indiana") 7 NRC 429 (1978) aff'd sub nom. In Porter County Chapter Izaak Walton League 606 f. 2d 1364 (D.C. Cir. 1979), the Petitioners raised the argument that the NRC Staff participated as a "party adversary" in the enforcement proceeding requested by the Petitioners, and claiming that it is fundamentally unfair and unlawful for the Staff to take

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9. An exception to the non-reviewability within the Commission on no significant safety hazard consideration determinations may be seen in the Commission's handling of Staff determinations concerning the Three Mile Island Nuclear Plants. Metropolitan Edison Co. Three Mile Island Nuclear Unit No. 1. (TMI 1) In that proceeding the Commission has issued an order that all Staff decisions on TMI be reviewed by the full Commission. Hence, on November 18, 1983, the Staff asked the Commission to concur in the Staff's final determination that there is a no significant hazards consideration associated with the operation of the repaired steam generators at TMI-1. Commissioner James K. Asselstine issued a dissenting opinion Jan. 10, 1984, opining that the NRC Staff "is interpreting the Commission's regulations in a manner that is inconsistent with the language of the statute and clear intent of Congress as evidenced by the legislative history of the Sholly Amendment."

part in the decision making on the Petitioners' requests.

They also argued that these"dual and conflicting roles" are also prohibited by the APA, 5 U.S.C. 551 et seq. (particularly 554); the Commission's Regulations at 10 C.F.R. 2.719 and procedural due process guarantees. The Commission in its Memorandum and Order answered these contentions by identifying two separate categories of responsibility or function of the Commission's subordinate Staff members. The first dealing with "on the record ajudications" and the second with "investigative or prosectorial responsibilities." Thus it responded to Petitioners:

> These contentions are in error both as a matter of law and of policy. Section 554 of the Administrative Procedure Act deals specifically with on the record ajudications, and is designed to assure the separation of functions between those persons with <u>investigative or prosecutorial responsibilities and those with ultimate decision making authority</u>. Section 2.719 of the Commission's regulations has the same purpose. Here, however, no ajudication has been commenced, and the Administrative Procedure Act and 10 C.F.R. 2.719 clearly do not apply." ***

<u>Northern Indiana</u> (Bailly), 7 NRC 429, 431 (emphasis supplied.)

By identifying in this first pertinently interpretive case, these two separate cataegories of responsibility for the subordinate NRC Staff Administrators, the Commission also defined two separate areas of its function -- one a formal proceeding within Section 189 of the Atomic Energy Act, and the other agency action not within Section 189. Thus, function may determine the legal basis for jurisdiction.

B.

DISPOSITION BY THE SUPREME COURT OF LORION WILL NOT ALTER THE REQUIREMENT THAT NO SIGNIFICANT HAZARD DECLARATIONS ARE REVIEWABLE IN THE DISTRICT COURT.

This is a case of first impression. It is the first to raise the jurisdictional issues with respect to the "Sholly Amendment" , and the Commission's process for declarations of "no significant safety hazards". Underlying questions were presented in the first Lorion case that are now before the Supreme Court. Therefore, Appellants recognize that the decision of the Supreme Court in Lorion I may have an impact upon this case due to the similarities between"Director's Decision's" and "no significant hazards declarations". That impact, however, is unlikely to be controlling in so far as any result that might prevent review of "no significant hazard determinations" in the Federal District Courts (also see Hobb's Act, discussion infra pp. 19-21.) This is because a no significant hazards declaration represents, if anything, an even more abreviated agency "proceeding" than that involved in issuance of a Director's Decision. Here no records or opinion issue as a basis for the NRC Staff position. With no agency provision, other than the Federal Register declaration, in existance, and no intra-agency review, the effect is that the need for relief here is even more compelling. In a Director's Decision case, the Commission is dealing with a request for enforcement action, which by its very definition

implies some level of participation by the party requesting relief i.e. making the request. A no significant hazard declaration is a unilateral, non-reviewable, NRC Staff declaration that is the basis for issuance of a license amendment under Section 189 of the Atomic Energy Act. There is no possibility for public participation in the way that the agency process is set up. The Supreme Court held in Citizens to Preserve Overton Park, 401 U.S. 402 (1971) that fact finding beyond the administrative record is usually inappropriate. A reviewing court in considering whether the agency's decision was arbitrarily capricious or otherwise inconsistent with law may examine the administrative record (1)as to its completeness , (2) whether the agency explained its decision correctly, (3) whether the administrative process was tainted, and (4) whether the agency's accounting in court of interpretation of relevant regulations is consistent with its previous interpretations.

The question here is not whether the agency record is "complete" but rather whether it even exists, and if it does; how does one identify it ? In order to obtain imprimatur of a reviewing court an agency must provide a complete record, Pierson v. United States, 428 F. Supp. 381, 392 D. Del. 1977) When the Supreme Court in the Overton Park case said the bare record may not disclose the factors that were considered by the official, 401 U.S. at 420, it impled that if the administrative record does not disclose the agency's considerations or interpretations of the evidence, the court may require

"additional explanation of the reasons for the agency decision as may prove necessary." Camp v. Pitts 411 U.S. at 143 143. The Supreme Court found that a de novo proceeding is appropriate when the fact finding process below is inherently defective. That is the case here.

C.

The "Necessary First Step" Rationale May Not Be Applied To No Significant Hazard Declarations.

Almost the entire rationale of the Commission and Utility Comapny argument in Lorion was that the Director's Consideration was, "like the jurisdiction determination in Natural Resources Defense Council Inc. v. NRC--a 'necessary first step in the proceeding' to suspend, revoke or amend any license. Rockford League of Women Vpters v. NRC 679 F. 2d 1218,1221 (7th Cir 1982); County of Rockland v. NRC, 709 F. 2d 766, 774 (2d Cir. Cert.) denied No. 83-329 (Nov. 28, 1983)," cited in Brief for the Federal Petitioners Case Nos. 83-703, 83-1031 U.S. Sp. Ct. June 1984.

Here there is no question of whether a first step exists. There is no first step. The agency acted unilaterally, not in response to any "Intervenor" request, to issue an operating license amendment that reduced the margins of safety originally established for operation of the Turkey Point Nuclear Plants.

D.

The District Court Was Required To Transfer This Case to the Court of Appeals, pursuant to 28 U.S.C. 1631.

Upon its determination that it lacked jurisdiction the District Court was required under 23, U.S.C. 1631 to transfer this case to the Court of Appeals. That Statute provides:

> 1631. Transfer to cure want of jurisdiction
> Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of adminstrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred. -28 U.S.C.A. 1631 (West's 1983)

Chapter 1631 is a two way street among the Federal courts and its language is mandatory:

"...the court shall...transfer".

Further, Judge Penn recognized in open court the seriousness of the nuclear safety issues presented here. The District Court should have transferred to the Court of Appeals. The effective date of 28 U.S.C. 1631 was October 1, 1982 Sec. 402 of Pub. L. 97-164. The scant case law in existance indicates transfer was necessary. U.S. v. John C. Greenberg Co., Inc. C.A. Fed. 1983, 702 F. 2d 1362; American Beef Packers Inc. v. I.C.C.. C.A.D.C. 1983 711 F. 2d 388.

E.

If Initial Jurisdiction Is Found In The Courts Of Appeal The Hobb's Act 28 U.S.C. 2347 (b) (3) Requires Transfer To District Court For A Determination of The Disputed Facts.

The practical issue in this case is not whether administrative decisions such as the one involved in this case should be reviewed in the district courts; rather the issue is whether they should be screened by the courts of appeal before they get to the district courts. Under the Adminstrative Orders Review Act (the "Hobbs Act"),

28 U.S.C. 2341 et seq. (1982), the courts of appeals cannot remand a case to the agency and instruct it to hold a hearing or to supplement the record unless the case is one in which the agency process under review constituted proceedings (in which) a hearing is required by law," id. 2347 (b)(1). They must transfer to the appropriate district court any case that requires review of an agency action for which "a hearing is not required by law and (in which) a genuine issue of material fact is presented," 28 U.S.C. 2347 (b)(3).

The Commission and the courts of appeals have consistently held that NRC directors' decisions under 10 C.F.R. 2.206 are not the product of a 'proceeding', but rather that they constitute _ex parte_ factual determinations for which a hearing is not required by law. As the record here suggests, persons sufficiently aggrieved to seek review of the Staff's declaration of No Significant Hazard will frequently be able to demonstrate that there are genuine issues of material fact and thus that transfer to the appropriate district court is required under the Hobbs Act.

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10. If there are no genuine issues of material fact and if the court of appeals has jurisdiction, it may, of course pass upon the merits of the issues presented. 28 U.S.C. 2347 (b)(2)

11. See, e.g., Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1", 7 N.R.C. 429, 432-33 (1978), aff'f sub nom., Porter County Chapter of the Izaak Walton League v. NRC, 606 F. 2d 1363 (D.C. Cir. 1979).

Thus the practical question here is whether Section 189 of the Atomic Energy Act of 1954, 42 U.S.C. 2239 (1982), requires the courts of appeals screen petitions for review of license amendment proceedings refusing requests to institute license proceedings even though the significant portion of those petitions will have to be transferred to the district courts. Respondent believes that this Court of Appeals in the Lorion case correctly applied the plain meaning of that section in determining that, absent further action by Congress, both the initial screening and the required fact-resolution functions should be done by the district courts.

II

THE NUCLEAR REGULATORY COMMISSION ERRED IN ITS DETERMINATION THAT ISSUANCE OF THESE LICENSE AMENDMENTS INVOLVES NO SIGNIFICANT HAZARD

A

The Commission's Conduct Here And In Other License Amendments Since Sholly Rule Enactment Constitutes An Abuse Of Discretion.

Appellants have contended that the Commission's declaration of no significant safety hazard is agency error, as well as an abuse of agency discretion. In so doing they have raised a substantial issue of material fact. Appellant's position is supported in part by the descriptions of the technical problem contained in that section of this brief entitled The Background Problem. By its identification of the unanticipated and serious

problem of reactor pressure vessel embrittlement, the Commission acknowledged the existance of an unevaluated and unanticipated risk of vessel failure. The problem was such that Mr. Basdekas, the NRC Safety Engineer, took the unusual step of writing the Chairman of the House Subcommittee on Energy and Environmental Affairs to alert him to the severity of the problem. After describing the technical problem, he concluded:

> This compound transient, known as pressurized thermal shock, is capable of catastrophically fracturing a reactor vessel that has been exposed to a neutron fluence corresponding to only a few Full Power Years Equivalent (FPYE) of operation, and has a high copper content of about 0.4% in its walls or welds.
>
> A reactor vessel fracture is one of the most serious accidents a reactor may experience. Depending upon its location and mode, it is almost certain to cause a core meltdown with all its public health and safety remifications. . . . .
>
> . . .[I]t is apparent to me that those PWR's [Pressurized Water Reactor] with high copper alloy vessels or welds, that have operated for 4 FPYE must be shut down until this matter is resolved in the technical arena. /12

Appellants will not seek to develop further technical background facts, here since we have established a prima facia showing that RPV and PTS were serious safety issues that should have been considered to be significant safety hazards.

/ 12 See NRC Policy Information SECY-81-286, Pressurized Thermal Shock, May 4, 1981, Demetrios L. Basdekas, NRC Safety Engineer, letter to Honorable Morris K. Udall, Chirman, Subcommittee on Energy and the Environment, April 10, 1981.

II B

THE COMMISSION HAS FAILED IN ITS RESPONSIBILITY TO PROPERLY INTERPRET THE INTENT OF CONGRESS.

The Sholly Amendment to the Atomic Energy Act directed the NRC to promulgate regulations which determine whether an amendment to a nuclear power facility operating license involves "no significant safety hazards considerations". Subsequent to the enactment of the "Sholly Amendment", the NRC Staff has engaged in wholesale issuance of a vast number of nuclear power plant operating license amendments, while denying members of the public any opportunity to prior participation. [13]

In its regulations, the Commission has promulgated procedures and criteria to be used in making the "no significant safety hazards determination." In its interpretation of the Sholly Amendment and the Commission's regulations, the Staff is interpretating and "implementing the Sholly Amendment in a manner that is inconsistent with the language of the Statute and the clear intent of Congress." - James. K. Asselstine, Commissioner, U.S. Nuclear Regulatory Commission. [14]

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13. Since the "Sholly Amendment", P.L. No. 97-415, 96 Stat. 2067 was enacted on April 6, 1983, there have been 1732 No Significant Hazards Considerations Proposed and 1035 No Significant Hazards Considerations issued, as of January 18, 1985. Yet, as of January 18, 1985, the Commission has never conducted a prior hearing on a No Significant Hazards Consideration issue. Memo from Denton, NRC Cirector of Reactor Regulation to Eisenhut, Division of Licensing, "Sholly Statistics:, January 18, 1985.

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[14] See views of NRC Commissioner James K. Asselstine on the NRC Staff's No Significant Hazards Consideration Determination on the Three Mile Island Unit 1 License Amendment Application for Steam Generator Repairs, January 10, 1984, (Attached hereto as an Appendix to this Brief.)

III.

THE FINAL ENVIRONMENTAL STATEMENT FOR THE TURKEY POINT NUCLEAR POWER PLANTS IS INADEQUATE AND FEDERAL LAW REQUIRES A SUPPLEMENT.

The Turkey Point Nuclear Power Plants Units Nos. 3 and 4 are two pressurized water nuclear power reactors located about 15 miles from the city of South Miami, Florida. The NRC has issued facility operating licenses DPR-31 and DRP-41 to Turkey Point Units No. 3 and 4 respectively, which allow operation subject to Technical Specifications and safety limits established during the original licensing procedure and pursuant to final orders of the Atomic Safety and Licensing Board.

The National Environmental Policy Act, 42 U.S.C. 4321, et. seq. ("NEPA") is the basic national charter for protection of the environment. NEPA provides, in pertinent part, as follows:

> (2) All agencies of the federal government shall. . . .
>
> (c) include in every recommendation or report on proposals for legislation or the major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on (i) the environmental impact of the proposed action, and (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented. 42 U.S.C. 4332.

One essential purpose of NEPA is to "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences." NEPA, Section 101(b)(2) (42 U.S.C. 4331). (Emphasis supplied).

Resolution of this issue of correct intrepretation could include consideration of the following:

1. Did Congress intend an interpretation of the Commission's Regulations that would allow it to make its No Significant Hazard Consideration based on the merits of the proposed license amendment? That is, should the determination of a no significant safety hazards consideration, "represent a judgement on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues?" (See S. Rep. No. 113, 97th Cong. 1st Sess. 15,1931)

2. Would Congress have read the Commission's regulations and their interpretation as being consistent with a "significant safety questions" interpretation of the Sholly Amendment (one where competent experts disagree about whether a license amendment could "involve" a significant increase in the probability or consequences of an accident" or "a significant reduction in a margin of safety". Such disagreement could involve a significant safety question and thus a significant hazards consideration.

3. Has the Commission adhered to Congress's understanding that a no significant hazards consideration was a question of significant safety issues and not a question of significant additional risk? That is, does the avowed Staff practice of making its preliminary and final determinations of no significant hazards considerations on the merits of the amendments, i.e. on whether the amendment poses significant additional risks to the operation of the plant, constitute a legally valid basis for a determination of no significant safety hazard?

4. Has the Commission created an untenably vague standard by providing only examples of amendments likely or unlikely to involve significant hazards consideration, rather than clearly defining categories of amendments that invoke a no significant hazards consideration?

5. Should the Court direct the Commission to apply an interpretation of its regulations that requres consideration of significant and new and unreviewed safety questions in all no significant safety hazards determinations?

The NRC staff's current interpretation of the No Significant hazards consideration standards results in arbitrary and inscrutable application, evades the reviews required by Federal law, and reduces the public's access to the regulatory process. Above all, it violates Sec. 189 of the Atomic Energy Act and the intent of Congress.

The NRC and particularly its Office of Nuclear Reactor Regulation is charged with the responsibility to enforce the Technical Specifications and safety margins that are a condition for the issuance of the original reactor operating license as mandated by the Atomic Safety and Licensing Board and other pertinent federal law.

The NRC and more particularly its office of Nuclear Reactor Regulation is charged with the responsibility to prepare a detailed Environmental Impact Statement for every nuclear plant constructed in the United States. (10 C.F.R. 161). The Final Environmental Impact Statement is one of the most significant bases upon which the NRC predicates its decision on whether or not to issue an operating license to a nuclear power plant.

Appellants therefore submit that the Nuclear Regulatory Commission and the Florida Power and Light Company are violating the spirit and intent of the Atomic Energy Act of 1854. The Environment Policy Act of 1969 and the Administrative Procedure Act, and the Commission's own Rules of Practice at 10 CFR Parts 2, 50, and 100 and other pertinent federal law.

The President's Council on Environmental Quality ("CEQ"), an entity established within the Executive Office of the President by Title II of NEPA (42 U.S.C. 4341, et. seq.), is charged with the responsibility to ensure that all federal agencies implement and comply with provisions of NEPA. (421 U.S.C. 4344) In furtherance of this responsibility, CEQ publishes regulations ("CEQ Regulations") that inform all federal agencies of the procedures

for and contents of Environmental Impact Statements. (40 C.R.F. 1500.1 <u>et. seq.</u>) The CEQ Regulations are presently mandatory and binding upon all federal agencies, including the Nuclear Regulatory Commission (43 Federal Register 55991 (1978)). as codified in 40 C.F.R. 1500.3.

The applicant for a nuclear power plant operating license or its amendment ("applicant" or "licensee") shares with the NRC the responsibility for the preparation of the draft and final, as well as any supplements to the Environmental Impact Statement for that particular facility. Pursuant to sections 51.20 and 51.21 of the N.R.C. Rules, every applicant must prepare draft and final enviornmental reports to be submitted to the N.R.C. prior to preparation by the N.R.C. of its draft and final Environmental Impact Statements.

In order to guide applicants in preparation of the Environmental Reports, the Atomic Energy Commission originally published (Appendix D to 10 C.F.R. Par 51) preparation policies and procedures.

The Atomic Energy Commission approved and published the final Environmental Impact Statement ("FES") for the Turkey Point Nuclear Plants in 1972.

The Turkey Point Nuclear Power Plant Final Environmental Impact Statement and its supplements attempts to examine the environmental consequences of postulated accidents in Class I through Class 8, but does not discuss or otherwise consider the severe environmental consequences of "Class 9" accidents or those that otherwise exceed the reactor's original design basis.

New information indicates that a serious nuclear accident at Turkey Point is much more likely to occur than was previously believed. When significant new information relevant to environmental concerns occur, NEPA and CEQ Regulations, and other federal law directs the appropriate federal agency to prepare a supplemental Environmental Impact Statement.

Further, Section 1502.9 of the CEQ Regulations which were promulgated on November 29, 1978 requires all federal agencies to prepare a supplemental Environmental Impact Statement in the following situations:

(C) Agencies:

(1) Shall prepare supplements to letter draft or final environmental impace statements if:

(i) The Agency makes substantial charges in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (Emphasis added)

On Friday June 13, 1980, the Nuclear Regulatory Commission announced in the Federal Register Vol. 45, No. 116, page 40101, a new Statement of Interim Policy and the withdrawal of the Proposed Annex to Appendix D of 10 C.F.R. Part 100. (45 F.R. 40101). The Commission, in withdrawing the proposed Annex, and its non-requirement for severe accident consideration, noted previous criticisms of the rule and some occasions where its own Staff had taken exception to it. In its place the Commission

promulgated "Interim Guidance" while awaiting the use of "new methodologies" . . . "in discharge of its responsibilities." (45 F.R. 40103).

In promulgating this interim guidance the Commission replaced the more precise though incorrect guidelines of the proposed Annex, with a vague and lengthy recitation of its perceived responsibilities and objectives under NEPA, applying a standard of reasonableness of expectation and probability of occurrance coupled with probability of consequences to be considered in "ongoing" and future NEPA reviews:

> "It is the position of the Commission that its Environmental Impact Statements pursuant to Section 102(c)(i) of the National Environmental Policy Act of 1969, shall include a reasoned consideration of the environmental risks (impacts) attributable to the particular facility or facilities within the scope of each such statement. In the analysis and discussion of such risks approximately equal attention shall be given to the probability of occurrance of releases and to the probability of occurrance of the environmental consequences of those releases. . . . . Events or accident sequences that lead to releases shall include but not be limited to those that can reasonably be expected to occur. In plant accident sequences that can lead to a spectrum of releases shall be discussed and shall include sequences that can result in inadequate cooling of reactor fuel and to melting of the reactor core. . . . (45 F.R. 40103).

The Commission defined "on going NEPA reviews" as those for any proceeding at a licensing stage where a final Environmental Impact Statement (PES) has not been issued."

In those proceedings where it established a showing of "special circumstances" as a precedent for reviewing previously established agency permits.

> Thus this change in policy is not to be construed as any lack of confidence in conclusions regarding the environmental risks of accidents expressed in any previously issued Statements, nor, absent a showing of special circumstances, as a basis for opening, reopening or expanding any previous or on going proceeding. (Emphasis added.) (45 F.R. 40103, column 2)

As is demonstrated in this brief, the existing "special circumstance" of reactor pressure vessel embrittlement with its susceptibility to fracture induced by pressurized thermal shock meets the test of showing a "special circumstance," and imposes upon the Commission the requirement that the Commission prepare an Environmental Impact Statement in which it expressly analyses the enhanced possibility that reactor pressure vessel shells may crack resulting in a core melt accident and considers the environmental consequences and provides the other reviews required by the Atomic Energy Act NEPA and other pertinent federal law.

IV

THE SUBJECT LICENSE AMENDMENTS SHOULD BE VACATED, AND MANDATORY, DECLARATORY AND INJUNCTIVE RELIEF SHOULD ISSUE.

This prayer for relief is the best expression of Issue IV: Wherefore, plaintiffs pray for orders as follows:

A. For a declaratory judgement that: (1) the Turkey Point Units Nos. 3 and 4 Final Environmental Impact Statement is inadequate as a matter of law due to new information, developments and circumstances concerning the probability of a serious nuclear accident at the Turkey Point Nuclear Plants which have been discovered and which bear upon environmental concerns and which should be addressed in the Enviornmental Impact Statement;

B. For a declaratory injunction declaring it to be a duty of Respondents, United States of America and United States Nuclear Regulatory Commission to consider and analyze the problem of reactor pressure vessel embrittlement and pressurized thermal shock (PTS) and the potentially catastrophic environmental consequences of a PTS induced accident by preparing promptly, supplemental Environmental Impact Statements which analyze in detail the environmental effects, costs, benefits, and alternatives under NEPA, on a site-specific basis, rather than generically, for all of the worst-case operating U.S. reactors which have achieved more than four (4) effective full power years of operation and have significant percentages of copper in their axial and circumferential pressure vessel welds.

C. For a mandatory injunction which orders the defendants to prepare a supplemental Environmental Impact Statement for the Turkey Point Nuclear Plants at the earliest practicable opportunity.

D. For a mandatory injunction which prohibits defendants, United States of America and United States Nuclear Regulatory Commission from licensing or authorizing issuance of any facility or operating license amendments in connection with the reactor pressure vessel embrittlement, pressurized thermal shock and vessel flux reduction programs that involve change to the operating license Technical Specifications, established safety margins and other appendices to the operating license, until there have been conducted prior public hearings under NEPA and other reviews required by federal law and requested by Plantiffs here;

E. Vacating and setting aside any license Amendments to facility operating licenses DPR-31 and DPR-41, NRC Docket No. 50-250 and 50-251, issued, or that may have been issued by the Nuclear Regulatory Commission by the time of bringing this action pursuant to Notices published by the NRC in the Federal Register on July 20, 1983, 48 FR 33076, 33077 and October 7, 1983, 48 RF.R. 45862, 45863 including, but not limited to, the following changes.

1. Increase the hot channel F 3Δ H limit from 1.55 to 1.62;
2. Increase the total peaking factor F_Q limit from 2.30 to 2.32;
3. Change the overpower T setpoints and thermal hydraulic limit curves and;
4. Delete restrictions and limits restrictions placed on the old steam generators to allow for operation with tubes plugged in excess of five (5) percent.
5. Use of Westinghouse 15x15 optimized fuel assembly (OFA) with wet annular Burnable (WABA) Rods replacing the Westinghouse Low Parasitic Fuel Cores (LOPAR).

F. For the Court to retain continuing jurisdiction to review the adequacy of appellees compliance with all Judgements and Orders entered herein;

G. For such additional judicial determinations and orders as are necessary to effectuate the foregoing;

H. For reasonable attorneys' fees, and costs according to proof; and

I. For such other and further relief as this Court may

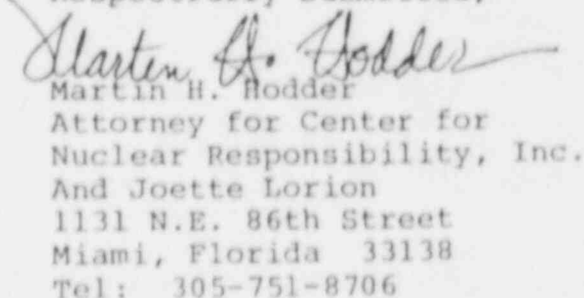
deem just and proper to effectuate and complete resulution of the legal disputes between plaintiffs and defendants.

CONCLUSION

Here there is a final agency order. The issuance of the license amendments in December 1983 constituted final agency action. At that point in time, plaintiffs had exhausted their administrative remedies. The final agency order was unsupported by any proper technical record or other visible administrative record. It did not receive Commission review. The only manifestation of no significant safety hazard consideration associated with the license amendments are the announcements of amendments themselves. The allegations of the Complaint state valid and substantial claims under the Constitution and laws of the United States. The lower court erred in denying relief. This appeal asks this court to correct that error.

Accordingly, the Appellants, Center for Nuclear Responsibility, Inc. and Joette Lorion, ask this Court to reverse the decision below and remand the case with instructions that the Court below vacate its orders of April 27, 1984, May 4, 1984 and June 12, 1984, and enter a judgement granting the declaratory mandatory and injunctive relief requested in Appellants foregoing prayer for relief.

Respectfully Submitted,



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Obtained at Commission Meeting 1/10/84 re: TMI-1

VIEWS OF COMMISSIONER JAMES K. ASSELSTINE ON THE NRC STAFF'S NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION ON THE THREE MILE ISLAND UNIT 1 (TMI-1) LICENSE AMENDMENT APPLICATION FOR STEAM GENERATOR REPAIRS

On November 18, 1983 the staff asked the Commission to concur in the staff's final determination that there is no significant hazards consideration associated "with the operation of the repaired steam generators at TMI-1." Unfortunately, staff has misinterpreted the Sholly Amendment, and a finding of no significant hazards consideration is not appropriate in this case. Moreover, staff is interpreting the Commission's regulations implementing the Sholly Amendment in a manner that is inconsistent with the language of the statute and with the clear intent of Congress, as evidenced by the legislative history of the Sholly Amendment, I cannot, therefore, agree with staff's determination in this case or with staff's interpretation of the Commission's regulations implementing the Sholly Amendment.

Staff's determination of no significant hazards consideration is based upon a 1983 amendment - the Sholly amendment - to section 189 of the Atomic Energy Act. The Sholly provision permits the Commission to make a license amendment immediately effective, without first granting any requested hearing on the merits of the amendment, if the Commission makes a determination that the proposed amendment involves no significant hazards consideration. 1982-83 Authorization Act for the Nuclear Regulatory Commission, Pub. L. No. 97-415, 96 Stat. 2067 (1983).

The Commission has promulgated regulations which establish procedures and criteria to be used in making the "no significant hazards

consideration" (NSHC) determination. Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations, 48 Fed. Reg. 14864 and 14873 (1983) (to be codified at 10 C.F.R. §50.91 and 50.92). These regulations provide that for each license amendment for which the staff has made a NSHC determination the staff must first publish its proposed determination in the Federal Register for a 30 day comment period. At the end of the comment period, the amendment may become immediately effective if there has been no request for a hearing on the amendment. In such cases no further NSHC determination is made. If the Commission receives a proper request for a public hearing within the 30 day comment period, the Commission will then issue a final NSHC determination. If the final determination is that there is no significant hazards consideration, then the amendment becomes effective immediately, even if adverse public comments have been received and even though an interested person has filed a proper request for a hearing. In such cases, the Commission need not hold any required hearing before it issues the amendment. If, on the other hand, the Commission determines that there are significant hazards considerations involved in the proposed amendment, any required hearing must be completed before the amendment may be issued.

In making its determination on whether a particular amendment involves significant hazards considerations the regulations require the Commission to consider whether "operation of the facility in accordance with the proposed amendment would...

> (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety."

48 Fed. Reg. 14864, 14871 (1983) (to be codified at 10 CFR § 50.92).

In its Statement of Considerations attached to the Sholly amendment rules, the Commission also provided examples both of amendments likely to involve significant hazards consideration and of those unlikely to involve significant hazards considerations. 48 Fed. Reg. 14864, 14870.

In an April 30, 1982 letter, the licensee for TMI-1 informed the NRC that it intended to repair its steam generators under the authority of 10 CFR § 50.59 using the kinetic expansion repair technique.[1] By citing section 50.59 of Commission regulations licensee indicated it had determined that its proposed repair would not involve "a change in the technical specifications incorporated in the license or an unresolved safety question." 10 CFR § 50.59. This meant that licensee thought it could proceed with the repair without prior Commission approval. In August of 1982, staff told licensee that the steam generator problem appeared to involve unreviewed safety questions. The staff's major concerns were:

1. The corrosion mechanism and extent of corrosion in the steam generators are unique. The staff had not reviewed the potential consequences of additional plant operation subsequent to

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[1]This technique involves the use of small explosive charges inside each steam generator tube to expand the tube and make it tight against the tubesheet. This is to prevent tube failures caused by corrosion. The tubes would normally have been repaired by plugging, which consists of placing a plug in the tube to prevent water from flowing through it.

the repair of the defects. In particular, the potential for this type of corrosion to reinitiate during operation and to rapidly progress, thus adversely affecting the steam generator primary pressure boundary, needed to be reviewed by the staff.

2. The potential existed for this type of corrosion to attack other primary pressure boundary materials.

3. The proposed tube repair technique (kinetic expansion) had not previously been approved by the staff as an acceptable method for repairing defective steam generator tubes.

4. Since portions of the tubes within the tubesheet contained defects greater than 40% through-wall and the repair method for the majority of these defects did not involve plugging, an amendment to the plant Technical Specification (Tech Spec or TS) 4.19 is needed prior to return to power operation.[2]

"Safety Evaluation of Steam Generator Tube Repair and Return to Operation," NUREG-1019, p.1 (1983). (footnote added)

The licensee conducted an extensive program to return the steam generator to service, and the staff issued a safety evaluation of the kinetic expansion repair technique in October of 1982. The staff found that the repair itself did not involve an unreviewed safety question or a modification to the technical specifications, and could, therefore, be conducted without prior NRC approval. However, the staff concluded that NRC approval of the overall program to return the steam generator to service was necessary before any <u>operation</u> of the plant would be permitted because operation of the plant with kinetically expanded tubes would require a modification of the technical specifications. NUREG-1019, p. 2.

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[2] A TMI-1 Tech Spec permits operation only with tubes repaired by plugging, not with tubes repaired by the kinetic expansion technique. The Tech Spec is considered a part of the license and an amendment of the Tech Spec is an amendment to the license.

On May 9, 1983, licensee submitted to the Commission its request to revise the technical specifications to allow operation of the plant after repair of a steam generator by methods other than plugging. On May 31, 1983, staff published in the Federal Register a proposed no significant hazards consideration determination for the requested amendment to the technical specifications. The staff concluded that the amendment "does not involve a significant hazards consideration because compensatory measures will be employed to provide a level of safety in operation with the repaired steam generators commensurate with that anticipated of the facility had it not experienced the need to repair steam generators." Metropolitan Edison Co., et. al., Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing, 38 Fed. Reg. 24231(1983). That Federal Register notice also sought public comment on the determination and announced an opportunity to request a public hearing on the merits of the amendment request. An intervening party requested a hearing within the prescribed time and was admitted as a party. That proceeding is now in its early stages.

The staff issued a Safety Evaluation on August 25, 1983 in which it evaluated the kinetic expansion repair method and subsequent operation of the facility using the repaired steam generators. NUREG 1019. Staff found the repair process effective and reliable, and found that licensee had returned the reactor coolant system to its original licensing basis. NUREG-1019, p. 45. Licensee conducted post-repair testing, including hot-functional testing, of the steam generators, and on November 18, 1983 staff sent to the Commission two documents: (1) Staff's Supplement

to its August 25th Safety Evaluation; and (2) Staff's final no significant hazards consideration determination. In its final determination, staff found that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident not previously evaluated, or (3) involve a significant reduction in a margin of safety. "Final Determination of No Significant Hazards Consideration," pp. 10-12; and see, 10 CFR § 50.92. The staff concluded, therefore, that operation of TMI-1 with the repaired steam generators involved no significant hazards consideration.

In two Commission briefings, staff clarified its findings. See, "Briefing [illegible] on TMI-Steam Generators", Transcript of Commission Meeting, December 7, 1983; and, "Strategies for Potential Litigation on TMI-1 Steam Generators", Transcript of Commission Meeting, December 8, 1983. Staff explained that [illegible]

[illegible] create significant additional risk to operation of the plant. See, Tr p. 46, lines 17-25; p. 57, lines 7-22; p. 72 line 2 to p. 73 line 6 (Dec. 7, 1983) and Tr. p. 22 lines 7-10; p. 31 lines 8-11 (Dec. 8, 1983). Since the requested amendment was a repair, the purpose of which was to restore the plant to its prior condition -- that is, to return it to its original licensing basis, the staff concluded that there could be no significant hazards consideration. Tr. 69, line 14-20. Moreover, since all of the testing, analysis and repairs were complete before the [illegible]

[illegible]

NUREG-1019, Supplement 1, which staff found affirmed its preliminary determination. Thus, as the staff explained, it made its preliminary and final determinations of no significant hazards consideration based on the merits of the amendment itself - i.e., on whether the amendment posed significant additional risk to operation of the plant.

Unfortunately, that determination is not the determination called for by the Sholly amendment. Rather, as its legislative history makes abundantly clear, the Sholly provision requires the Commission to determine whether the amendment presents any significant safety questions, i.e. whether the amendment poses any significant new or unreviewed safety issues for consideration. The report of the Conference Committee on the legislation which enacted the Sholly amendment emphasizes that in making a determination of no significant hazards consideration, the Commission is not to prejudge the merits of the amendment -- i.e., whether the plant could operate without significant additional risk as a result of the amendment. Instead, the Commission is merely to determine whether there are significant health or safety issues involved. H.R. Rep. No. 884, 97th Cong., 2d Sess. 37-38(1982). The Commission is to examine the proposed amendment and determine whether the Commission, in making a decision on the amendment application, would have to consider and address significant health and safety questions. As the report of the Senate Committee which recommended the Sholly amendment states: "The determination of 'no significant hazards consideration' should represent a judgment on the nature of the issues raised by the license amendment rather than a

conclusion about the merits of those issues." S. Rep. No. 113, 97th Cong., 1st Sess. 15 (1981).

Staff asserts, however, that it applied Commission regulations literally in making its no significant hazards consideration determinations, and that that should suffice. Staff reviewed each of the three criteria in section 50.92, and found no significant increase in the probability and consequences of an accident, no possibility of a new or different accident and no significant reduction in a margin of safety. Since staff found no significant additional risk, it concluded that there were no significant hazards considerations. "Final Determination of No Significant Hazards Consideration," pp. 10-12. Staff notes that the regulations it applied were available to Congress in proposed form at the time the Sholly amendment was being considered by Congress, and argues that since Congress did not object to those standards, and that since portions of the legislative history indicate Congressional intent to codify past Commission practice, staff's interpretation of the Sholly amendment must be acceptable. See, for example, H.R. No. 22 Part 2, 97th Cong., 1st Sess. 26 (1981).

Staff's argument is without merit. Read in isolation, the Commission's regulations could be interpreted as Staff does. However, the central question is what Congress understood "no significant hazards consideration" and the Commission regulations to mean. The regultions must, then, be read in context; they must be read against the background of the legislative history of the Sholly amendment.

As discussed above, the language of the Committee reports on the Sholly legislation expresses the issue clearly in terms of significant

health or safety questions and also expresses Congress' understanding that the NSHC determination will not be a merits determination. H.R. Rep. No. 884, 97th Cong., 2d Sess. 37-38 (1982); S. Rep. No. 113, 97th Cong., 1st Sess. 14-15 (1981). Also, the Commission repeatedly presented the issue to various congressional committees as a question of significant issues, not as a question of significant risk. Then Chairman Hendrie told the House Subcommitte on Energy and the Environment that whether there were significant hazards considerations was a question of whether there were "significant safety questions involved", whether there were "new safety issues raised, no new unreviewed hazards connected with an amendment", and whether the Commission saw "any safety-connected issues" in the amendment. "Nuclear Regulatory Commission Operating Licensing Process: Oversight Hearing Before the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs," 97th Cong., 1st Sess. 30, 32 and 75 (1981) (statements of Joseph Hendrie, Chairman NRC). Chairman Hendrie also explained the meaning of "no significant hazards consideration" to the Senate Subcommittee on Nuclear Regulation. He said "We are dealing here with a class of amendments that involve no safety questions in our view of any significance", and in answer to a question from Senator Hart explained that "It means no significant questions of public health and safety." "Nuclear Powerplant Licensing Delays and the Impact of the Sholly Versus NRC Decision: Hearings Before the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works," 97th Cong., 1st Sess. 138, 149, 156 (1981) (statements of Joseph Hendrie, Chairman NRC). Based upon the Commission's testimony, Congress understood that the question of no

significant hazards considerations was a question of significant safety issues, not a question of significant additional risk, and that the NSHC determination would not be a judgment on the merits of the amendment.[3]

Given this understanding, what weight can we afford to the fact that Congress was aware of proposed Commission regulations which contained the same three criteria for making NSHC determinations now contained in 10 CFR § 50.92 and applied by the staff in this case? One must first place into the balance the fact that Congress described what it expected the Commission's criteria to look like. That description excluded any standard which would have the staff making a NSHC determination based on the merits of the amendment application:

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[3] Further, in 1978 the Congress failed, when specifically requested, to adopt the staff's interpretation by changing the "the no significant hazards consideration" language in section 189 of the Atomic Energy Act to "no significant additional risk to the public health and safety."

In supporting this proposed change in the wording of the statute, then Chairman Hendrie explained to the Senate Committee on Environment and Public Works:

> Finally, I want to take note of a provision that revises slightly the present provisions of the Act dealing with advance notice of certain amendments. The present Act calls for advance notice of issuance of certain construction permit and operating license amendments when a "significant hazards consideration" is involved. This provision has proved extremely difficult to administer, primarily because of its apparent emphasis on the amount of controversy and review effort associated with the amendment, rather than on substantive matters. The bill would revise this provision so as to place the emphasis where it should be - on the amount of additional risk, if any, to public health and safety posed by the proposed amendment. If the proposed amendment does entail a significant additional risk, then prior public notice and opportunity for hearing should and would be afforded. "Nuclear Siting and Licensing Act of 1978: Hearings Before the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works," 95th Cong., 2d Sess. 183-84 (1978).

Congress failed to amend section 189 of the Atomic Energy Act as requested, leaving intact the "no significant hazards consideration"

(Footnote Continued)

> The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a. of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainly, (sic) and should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration.

H.R. Rep. No. 884, 97th Cong., 2d Sess. 37 (1982).

Thus, although Congress was aware of the Commission's proposed regulations, it did not understand them to, or endorse an interpretation of them which would, allow the Commission to make its NSHC determination based on the merits of the proposed license amendment.

Furthermore, while staff's literal interpretation of the regulation is reasonable when the rule is read in isolation, it is not the only plausible interpretation. The criteria in 10 CFR § 50.92 can be read as being consistent with the "significant safety issues" interpretation of the Sholly amdendment. For example, using the language of the regulation, a license amendment could "involve" a significant increase in the probability or consequences of an accident or a significant reduction in a margin of safety if, because of factual or methodological disputes, competent experts could disagree about whether such results could occur. Such disagreement could involve a significant safety

(Footnote Continued)
language. This language was retained when the Sholly amendment was passed five years later.

question, and thus a significant hazards consideration. Under this interpretation, Congress would have read the Commission's regulations as being consistent with a "significant safety questions" interpretation of the Sholly Amendment, and the mere fact that Congress was aware of the regulations does not mean that they endorsed the interpretation staff is now putting forward in this case.

A final factor to consider on this question of interpretating the term "no significant hazards consideration" is the Commission's own statment in its notice of rulemaking. In the Notice of Rulemaking for the criteria in 10 CFR § 50.92, the Commission disavowed any intent to use the NSHC criteria to prejudge the merits of the final safety review. 48 Fed. Reg. 14867 (1983).

When the Commission regulation is read in context, the evidence weighs heavily against the staff's literal reading of the regulations being an acceptable interpretation of the term "no significant hazards consideration." It is evident, then, that what staff should have considered was whether there were any new or unreviewed safety issues associated with the repair. Whether the plant can operate safely with the repaired tubes - i.e. the merits of the amendment application - should not have been the basis for staff's NSHC determination.[4]

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[4]Staff argues further that this interpretation of the Sholly amendment would have required them to ignore all of the technical information available which indicated that the repairs were adequate. The argument apparently is that in determining whether the issues raised are significant, the staff should be able to consider all information available to it on the merits of the amendment application. This argument might have some validity if the no significant hazards consideration determination were to be made on whether there is "significant additional risk". But, the question is the significance of

(Footnote Continued)

Staff indicated in its Commission briefings that even if the Commission does not accept its "significant additional risk" interpretation of the Sholly amendment, it has complied with the amendment under the "significant issues" interpretation. At those briefings, staff told the Commission that it had considered whether there were significant new or unreviewed safety issues involved with operation of the plant after repair and had found none. See, Tr. p. 85, lines 9-25; p. 98 line 25 to p. 100 line 8 (Dec. 7, 1983) and Tr. p. 19 line 3 to p. 21 line 15; p. 38 line 5 to p. 39 line 10. (December 8, 1983) Unfortunately, there is no evidence of this in the staff's NSHC determination or in either the Safety Evaluation (NUREG-1019) or its Supplement.[5]

(Footnote Continued)
the questions raised by the application, not the significance of any additional risk. Further, to follow this argument to its logical extreme could result in the Commission almost never making a determination that there are significant hazards considerations. The staff and licensee need only complete all of their analysis before making a NSHC determination, and any amendment staff would eventually approve for operation would not contain any significant hazards consideration, regardless of the significance of the questions the staff had to resolve in deciding whether to grant the amendment application, or attach conditions thereto. Since staff rarely, if ever, approves a license amendment that involves significant additional risk, staff's interpretation of the Sholly Amendment would permit virtually all license amendments to be issued without a prior hearing. Such a result is manifestly inconsistent with the position taken by the Commission in requesting the legislation and with the intent of Congress in enacting the Sholly Amendment.

[5] The argument has also been made that staff complied with the Sholly amendment in its preliminary NSHC determination, looking only at the nature of the issues involved rather than at the merits of the amendment application, and that is sufficient. A look at the staff's preliminary determination belies that argument, and shows that the staff was concerned with safety of operation, not with the significance of the questions involved. 48 Fed. Reg. 24231 (1983). See also p. 5, above.

In fact in NUREG-1019, staff identified four issues which it termed unreviewed safety questions. NUREG-1019. See p. 4 above. The staff also tells us that while this process - kinetic expansion of tubes - is not a new process and has been used on millions of new tubes, it has never before been used to repair used reactor tubes in a sensitized condition. Tr. p. 32, lines 10-14; Attachment to Transcript, p. 4 (December 7, 1983). The staff, its consultants, and licensee engaged in a substantial amount of effort in order to reach the conclusion that the repaired steam generators would indeed meet NRC safety requirements. NUREG -1019, Tr. p. 48 lines 10-24. Furthermore, the technical evaluation report provided by Franklin Research Center (FRC), a staff consultant, characterized this repair process in a manner which emphasized both its novelty and its close relation to safety, saying:

> Although the repair process (described earlier) of kinetically expanding tubes onto tubesheets is not new, this is the first application of this method to repair a nuclear steam generator tube in what is, in metallurgical terms, a sensitized condition, i.e., grain boundary precipitation of carbides had resulted from the stress-relieving heat treatment applied to the generators following their original fabrication, which involved mechanical tube rolling and seal welding of the tubes on the outside surface of the tubesheet. Forming a new seal length below the old one and thus eliminating the upper cracked region of tubing from consideration is also a novel application. Finally, the tube/tubesheet crevices were in a oxidized or corroded state stemming from both service operation and idle downtime exposure.
>
> Based upon the history of successful applications of the explosive expansion of tubes into a tubesheet, both in fabricating new heat exchangers and in repairing in-service ones, there did not appear to be any serious questions concerning the technical feasibility of the expansion process. Rather, efforts were concentrated on assuring that the procedure would be adequate ... to meet the tube/tubesheet qualification specifications for strength (pullout) and leaktightness, while at the same time not adversely affecting the structural integrity or fatigue resistance of the generators as a whole.

TER-C5506-311/312/313, Attachment 1 to NUREG-1019, Supp. No. 1, pages 7 and 8.

Thus, not only is this a novel application of this procedure, but it involves important safety considerations such as a leaktightness and structural integrity of the steam generator as a whole.

Under these circumstances, the facts do not appear to support a conclusion that staff dealt with no significant new or unreviewed issues in determining the merits of this amendment application. At a minimum, I would require an explanation of why issues such as the following were not significant new or unreviewed safety issues:

(1) The nature and extent of the corrosion mechanism are unique. Has the corrosion mechanism been arrested? Has it affected other primary system components?

(2) The use of the kinetic expansion repair process has never before been applied to used, sensitized steam generator tubes. What acceptance criteria should the staff apply to the repair?

(3) Do the residues of the kinetic expansion process result in a potential for new corrosion phenomena?

(4) Whether and to what extent the corrosion and subsequent repair lead to a need to change: (a) license conditions,

(b) emergency procedures, and (c) analyses of loss of main feedwater transients.

Absent a convincing explanation, including a documented supporting analysis, I cannot concur in the staff's determination of no significant hazards consideration. As it stands, staff's determination does not comply with the law, and the Commission should not permit the proposed amendment to TMI-1's technical specifications to become immediately effective.

Moreover, it is apparent that staff is applying its "no significant risk" interpretation of the Commission's regulations implementing the Sholly amendment in making all of its NSHC determinations. The Commission should immediately direct staff to apply the "no significant new and unreviewed safety questions" interpretation of the regulations in making all future NSHC determinations.

IN THE UNITED STATES COURT OF APPEALS

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

NO. 84-5570

CENTER FOR NUCLEAR RESPONSIBILITY INC.,
and JOETTE LORION,

Appellants,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION,
UNITED STATES OF AMERICA,
and FLORIDA POWER & LIGHT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS

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April 1, 1985

C.A. NO. 83-3570

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INTRODUCTION

This is a case that asks the Court to examine carefully the extent to which the United States Nuclear Regulatory Commission ("NRC" or "Commission") and its licensees may use procedural shell games to eliminate effective participation by interested members of the public and avoid the reviews required by federal law in major regulatory decisions.

I. THE NEW REGULATORY PROCESS: A SCHEME TO DERFRAUD.

In 1981, the Commission publicly disclosed that the Turkey Point Nuclear Power Plants had the most seriously embrittled 1/ reactor pressure vessels of some 80 operating U.S. reactors. The Commission notified the Licensee, the Florida Power & Light Company ("FPL") that the embrittlement of the Turkey Point nuclear reactors "was approaching levels of concern".

Since those disclosures in 1981, Ms. Joette Lorion and the Center for Nuclear Responsibility ("Center") have repeatedly attempted to compel the NRC to conduct hearings to determine the severity of the problem and the appropriate remedy.

The NRC and the Licensee, FPL, have not only successfully resisted all these attempts, they have also designed and sought to implement a program to permit the Licensee to utilize an experimental technology with no prior public hearings nor National Environmental Policy Act of 1969 (NEPA) examination of the serious technical and environmental concerns their program presents.

1/ In 1981, the NRC identified an unanticipated and serious problem. Radioactive bombardment of copper alloys used in the weldings in early reactor pressure vessels had caused the vessels to embrittle more rapidly than anticipated. See NRC Staff Seeks Additional Information on Pressure Vessel Thermal Shock, Release No. II-81-79 (NRC Office of Public Affairs, Reg. II, Aug. 26, 1981.

See also, e.g. M. Toner, "U.S. Reports Possible Flaws in N-Plants: Old Steel 'Vulnerable' at Turkey Point", The Miami Herald , Sept. 8, 1981, See A.,Pg. 1.

In the implementation of this "Vessel Flux Reduction Program", 3/ two elements have emerged as central to the scheme. First, the Licensee has submitted in seriatim about half a dozen sets of amendment requests seeking Commission approval for parts of a program, and thereby sought to avoid review of the program as a whole. Second, the NRC Staff has, relying upon the "Sholly Amendment", made "no significant safety hazard determinations" for each of the parts of the program, and has thereby permitted the Licensee to implement the whole without the requirements of any prior hearing or possibility of review as required by NEPA and other pertinent federal law. (The whole series of License Amendment requests that are compnents of the Vessel Flux Reduction Program are reproduced in a chronological table as Attatchment A to this brief.)

In some cases, amendments are described as being components of the Program in their respective Federal Register Notices, while in others, the direct relationship to the Vessel Flux Reduction

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2/ See footnote 1 supra; Also, see: Letter Darrell G. Eisenhut, Director Division of Licensing, Office of Nuclear Reactor Regulation to Florida Power & Light Co., Robert E. Uhrig, V.P., August 21, 1981, A Commission Show Cause letter under 10 C.F.R. 50.54 (f). Here the reactor pressure vessel embrittlement is described by the Commission as "approaching levels of concern" due to age coupled with the high levels of degradation being experienced.

3/ "Vessel Flux Reduction Program" (See footnote 4 infra. FPL letter March 25, 1983, Attatchment B) is the Agency's denomination of the experimental scheme it has sanctioned and the Licensee has devised in its effort to maintain full power operation over the projected lifetime of the facility, while attempting to achieve a reduction in vessel flux or radiation degradation of the reactor pressure vessel.

Program is obscured or artfully disguised. Yet, each listed amendment is a necessary and integral component of the Vessel Flux Reduction Program originally described by the Licensee in their letter of March 25, 1983, to the Commission 4/ , which identified and evaluated the program and its parts.

A. The Whole Is More Hazardous Than Any of Its Parts.

The Commission and the Licensee have almost achieved indirectly, that which might not have been allowed under the Commission's rules in a more direct and broad consideration of the problem. In so doing, the Commission has engaged in an extra-legal practice. It has repeatedly granted amendments to the Turkey Point Nuclear Power Plants' operating licenses that involved significant reductions in previous margins of safety that the Commission itself had originally esatblished. It has done so with the full knowledge that the reactor pressure vessel embrittlement at those nuclear power plants poses significant and unresolved safety hazards and threatens potentially catastrophic damage. It has withheld and delayed taking action required by the National Environmental Policy and Atomic Energy Acts. It

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4/ See Letter w/ attatchments, March 25, 1983, from Robert E. Uhrig, V.P. Advanced Systems & Technology, FPL, to the Office of Nuclear Reactor Regulation, Attn. Stephen A. Varga, Chief Operating Reactors Branch #1, Div. of Licensing, U.S.N.R.C., RE: Turkey Point Units 3 & 4, Docket Nos. 50-250, 50-251, Pressurized Thermal Shock. The letter and its attatchments A-E, identifies the Problem, Plant Status, and the Program designed to deal with it. The Program is an incremental one, and the several licenses amendments are part of it.
See relevant sections of the March 25, 1983, FPL Letter as Attatchment B.

has cooperated with the Licensee's schedule and approved each of the parts, while denying meaningful participation to members of the public who may be adversely affected by the overall program. Now, with nearly all the requested amendments issued, the NRC and Licensee ask the Court to close its eyes, so that the job can be finished.

B. Ms. Lorion's Bleak House: The Search for a Forum.

Ms Lorion sought judicial review of the Commission's Director's Denial of her 1981 request that the NRC implement an enforcement action (conduct a hearing under 10 C.F.R. 2.202). 5/

When Ms. Lorion brought her appeal of the Director's Denial of her request to this Court of Appeals, the Court decided sua sponte that it lacked intitial subject matter jurisdiction over Ms. Lorion's challenge to the denial of her 2.206 petition and transferred the case to the District Court for the District of Columbia, as required by 28 U.S.C.A. 1631 (West's 1983).

5/ Ms. Lorion in her letter of 9-11-81, claimed that (1) the reactor's steam generator tubes had not been inspected, (2) the plugging and consequent deactivation of 25% of the steam generator tubes impaired the systems heat removal capacity, and (3) the steel reactor vessel had become dangerously brittle and , therefore, might not withstand the thermal shock that might accompany any emergency cooldown of the reactor core. Lack of inspection was mooted on 10-19-81, with an inspection of the steam generator tubes one month after Lorion's letter. The Commission, while admitting that both steam generator tube integrity and pressure vessel embrittlement and rupture are "unresolved safety issues", found the risk of steam generator tube leakage remote, and the risk of reactor vessel failure in the "near term" to be "unlikely". The Staff agreed that additional action was required to resolve the long term problem of reactor pressure vessel embrittlement. In re Florida Power & Light Company (Turkey Point Plant, Unit 4), 14 N.R.C. 1078 (1981)

C. Appeals Arising From the Lorion Decision Staying the Mandate of the Court. 6/

During the pendancy of Supreme Court Review, and while the mandate was stayed in the first Lorion case, the Commission began its implementation of the Vessel Flux Reduction Program by its issuance of two sets of license amendments in December of 1983, while denying Ms. Lorion and the Center any opportunity for a prior hearing. 7/

Following the teachings of this Court in the first Lorion case, and recognizing that the unilateral, informal agency process for making determinations of "no significant safety hazard considerations" based upon no visible record represented an even more abbreviated agency process than a director's denial, Ms. Lorion brought her appeal of the amendments in the District Court for the District of Columbia Circuit.

6/ After the Supreme Court granted petitions for writs of certiorari brought by the FPL Co. (Case No. 83-703) and the U.S. N.R.C. (Case No. 83-1031), Ms. Lorion by her Counsel filed briefs and presented oral argument (10-29-84) in support of the decision of the Court. The Supreme Court decided Lorion on March 20, 1985, holding Section 2239 vests in the Court of Appeals initial subject matter jurisdiction to review the Commission's denials of citizen petitions under 10 C.F.R. 2.206. FPL v. Lorion et al. --SP. Ct.-- 53 L.W. 4360.

7/ The NRC issued one set of License Amendments for Turkey Point Units 3 & 4 on December 9, 1983, (See 48 F.R. 56518, Dec. 21, 1983 J.A. pg. 166.) On December 23,1983, the second set, also for both units,was issued, (See 49 F.R. 3364, Jan 26, 1984). J.A. pg. 168 .) "J.A." refers to Joint Appendix.

Judge Penn, while noting on the record the seriousness of the issues raised, found the Court lacked initial subject matter jurisdiction but failed to transfer the case to the Court of Appeals as required at 28 U.S.C.A. 1631 (West's 1983).

Now after nearly four years of wandering in a jurisdictional maze, Ms. Lorion returns to the Courts still seeking due process of law and a forum for appellate review of her claim that the agency has abused its discretion by failing to properly consider reactor pressure vessel embrittlement in the context of its site specific implications to the public's health and safety at the Turkey Point nuclear power plants near Miami, Florida.

The technical issue posed here is a serious one, but it pales in comparison to the legal, due process, and abuse of discretion concerns raised by both Lorion cases. Appellants have brought this action, not only to challenge the immediate agency conduct, but to challenge a persistent course of improper conduct by which the Commission and its Licensees have effected license amendments calculated to deny citizens meaningful participation in the nuclear reactor licensing process.

II. THIS COURT HAS JURISDICTION TO HEAR AND RESOLVE THIS CASE ON THE MERITS.

The present case illustrates an ambiguity that the 1963 revisions to Rule 58 of the Federal Rules of Civil Procedure did not address and presents an appropriate case for this Court to construe that rule and Rule 4(a) of the Federal Rules of Appellate

Procedure to exercise jurisdiction because the delay in filing of the notice of appeal resulted from conduct of the district court that misled the parties below. See, e.g., Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc., 371 U.S. 215 (1962); Thompson v. INS, 375 U.S. 384 (1964; Wolfson v. Hankin, 376 U.S. 203 (1964) (finding jurisdiction where notice of appeal was delayed in reliance upon misleading action of district court); see also, 9 Moore's Federal Practice 204.02; c.f. Fallen v. United States, 378 U.S. 139 (1964). 8/ The court below affirmatively advised the parties and its clerk that the basis for this order dismissing the case could be gleaned from an "accompanying Memorandum Opinion". The court's Memorandum Opinion did not, however, accompany the order and was only issued and filed eight days later, on May 4, 1984. The clerk of the court was apparently misled because he did not immediately serve the order on the parties as required by Rule 77(d) of the Federal Rules of Civil Procedure.9/ The absence of the "accompanying Memorandum Opinion" referred to in the order appears to have led the clerk initially to construe the order as requiring him to await further "direction of the courts" before preparing and signing a judgment in accordance with Rule 58(1) of the Federal Rules of Civil Procedure.

8/ Indeed it seems clear that the Supreme Court would have taken the same approach in Bowder v. Director, Dept. of Corrections of Ill., 434 U.S. 257, 272-74 (1978) Blackmun, J., concurring) (Br. FPL at 18) had not the respondent there affirmatively rejected the theory upon which the Court could have found jurisdiction.

Appellee NRC, notwithstanding its belated protestations, appears to have been similarly misled. Ten (10) days after the Memorandum Opinion was filed, the NRC filed its motion asking the court to amend its findings to alter the basis for its judgment on Lorion's environmental claims (A.144-46).10/ The court itself apparently shared the confusion because it ruled upon that motion and revised its Memorandum Opinion in a manner that substantially altered the issues that would otherwise have been before this Court on appeal (A.155-59). The Notice of Appeal was timely filed thereafter (A4).

Against this background, this Court was clearly correct in denying appellees' motion to dismiss the appeal. Clearly, Rule 4(a) is not to be construed to limit the jurisdiction of this court that has been prescribed by law. Rule 1 (b), F.R.A.P. Thus the ambiguity created by the reference to an accompanying memorandum opinion in the lower court's order should be construed as a direction to the clerk justifying

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9/ Appellant's counsel did not receive a copy until May 10th, fourteen (14) days after it had been entered on the docket. See Aff. of M. Hodder dated Nov. 21, 1984.

10/ Appellees now argue that the motion it submitted ten (10) days after the Memorandum Opinion was filed constituted a Motion for Relief from Judgment or Order under Rule 60(b) (*e.g.*, Br. FPL at 18) These parties had no standing to seek relief from the order; it had granted them the relief they sought. The motion was clearly intended as a motion by the prevailing party asking the court to amend its findings even though no alteration of the order would be thereby required within the meaning of Rule 4(a) (4) (ii) of the Federal Rules of Appellate Procedure. To the extend there is any ambiguity, this Court should so construe it to prevent injustice that would otherwise result from appellant's reasonable reliance.

delay in entry of a formal judgment until that court' reasons for its order had been received. See Rule 58(l), F.R. Civ. P. On this basis and for the reasons presented in Appellant's Reply to Federal Appellee's Motion to Dismiss, appellant submits that this Court has and should exercise jurisdiction.

III. THE DISTRICT COURT SHOULD HAVE TRANSFERRED TO THE COURT OF APPEALS UNDER 28 U.S.C. 1631

The District Court erred in not transferring this appeal to the Court of Appeals coincident upon its finding that it lacked jurisdiction to hear the issues raised. The Appellees have argued *inter alia*, that Appellants should have requested such transfer in order to claim the benefit of 28 U.S.C. 1631. This, however, is an incorrect view. Structurally, U.S.C. 1631 does not contemplate, or otherwise state any requirement that a party initiate a 1631 transfer. The burden to initiate transfer is placed upon the court and that requirement is mandatory as the use of the word "shall" denotes:

> .....the court *shall** if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal courts have been brought..... **emphasis supplied*

28 U.S.C. 1631 (West's 1983)

Indeed every requirement of 1631 was satisfied in the District Court's findings. First, the revised memorandum issued on July 12th found that there was a want of jurisdiction for each of the issues raised by Appellants who were Plantiffs below.

Judge Penn noted orally upon the record that the case raised serious safety issues. Further, there was a clear understanding that Appellants had brought their case in District Court based upon the jurisdictional rule established by the Court of Appeals in the first Lorion case Lorion v. NRC 712 F.2d 1472 (1983).

The opinion of the Court of Appeals in Lorion found that initial jurisdiction to review those informal, unilateral agency actions where there was no hearing, known as Directors Decisions, was in the District Court. Because the declaration of no hazard by the staff in this case represented an even more abbreviated agency proceeding than a Directors Decision, Appellants logically reasoned that jurisdiction for their appeal of the "no hazard" declaration lay in the District Court because that was then the law of this circuit.

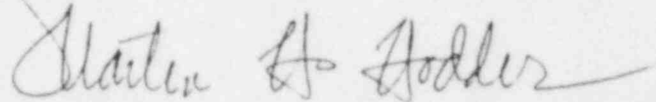
The Court and the parties were well aware of Appellants reliance on Lorion Id., and there was a general recognition of the conflict the Court of Appeals decision in Lorion had created among the circuits that was ultimately to be resolved in the Supreme Court. The interests of justice dictated that Judge Penn should have transferred the case under 1631.

This view is borne out by the existing case law on the subject: Where the labor department misled a claimant concerning the circuit having jurisdiction to review his petition, a 1631 transfer was appropriate. See Slatick v. U.S. Dept. of Labor 698 F.2d 433. Also see Hempstead County and Nevada County

v. U.S.E.P.A. 700 F.2d 459 (1983) where a fact situation similar to the one presented here prompted the court to conclude, "that this matter is precisely the situation Congress contemplated when it enacted 1631".

Thus this court has jurisdiction to hear and resolve this case on its merits. After Ms. Lorion's four year "Bleak House" she deserves that review.

Respectfully Submitted,



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Attorney for the Center
for Nuclear Responsibility
and Joette Lorion

April 1, 1985

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR NUCLEAR RESPONSIBILITY INC., and JOETTE LORION, Appellants, v. UNITED STATES NUCLEAR REGULATORY COMMISSION, UNITED STATES OF AMERICA, and FLORIDA POWER & LIGHT COMPANY, Appellees.	)	Case No- 84-5570

CERTIFICATE OF SERVICE

I hereby certify that copies of the Reply Brief for Appellants in the above captioned proceeding have been served upo' ne persons listed below by depositing the copies in the United States Mail, first class, postage prepaid, on the date shown below.

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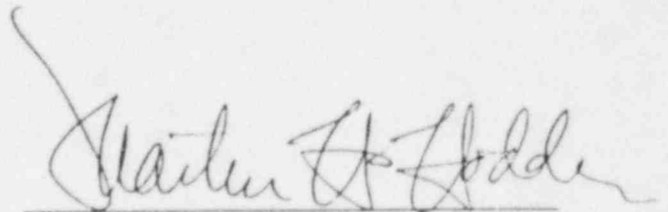

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DATED: APRIL 1, 1985

Attatchment A - 1

LICENSE AMENDMENT REQUESTS

FR NOTICE	DATE	AMENDMENT NOS.	DATE OF ISSUANCE
1. NO NOTICE, EMERGENCY AMENDMENT		95 & 89	August 31, 1983

This was an emergency license amendment issued to Turkey Point Unit #3 , and finally to Unit #4, which would allow the units to operate with an 400% increase of radioactive iodine in the primary coolant of the reactors. Licensee and Staff may have considered the possibility that their future use of a new fuel core design operating at higher temperatures, coupled with use of more highly enriched uranium fuel, (both parts of the vessel flux reduction program) would require higher limits on radioactive iodine in the reactor core.

2. 48 FR 33080	July 20, 1983	98 & 92	December 9, 1983

These amendments changed the technical specifications to allow the Licensee to utilize a new optimized fuel assembly (OFA) design in the Turkey Point reactor cores. The use of this new assembly would allow FPL to operate at 100% power, while using dummy fuel rods around the outside of the reactor core to cut down on the amount of radiation damage to the reactor pressure vessel walls. FPL could not have operated at 100% power , while implementing their vessel flux reduction program, without these amendments.

3. 48 FR 45862	October 7, 1983	99 & 93	December 23, 1983

These amendments involved technical specification changes designed to support FPL's "integrated program for vessel flux reduction". (see FR notice.) The changes allowed FPL to place dummy fuel rods around the outside of the reactor core, while pushing the fuel toward the center. These amendments allowed the core to run hotter and decreased the safety margin of the reactor core.

4. 49 FR 25360	June 20, 1984	103 & 109	September 5, 1984

These amendments allowed the Licensee to utilize mor highly enriched uranium 235 in the reactor core and in the spent fuel pool s orage facility. The enrichment in uranium was necessary to make up for t e loss of reactivity caused by the "dummy" fuel core design, which was implemented as part of the FPL Flux Reduction Program outlined in their March 25, 1983,letter(Attatchment A).

5. 49 FR 45514	June 7, 1984	111 & 115	November 21, 1984

These amendments allowed the Licensee to store more highly enriched uranium 235 fuel in the new spent fuel storage racks and reduced the margin of safety in certain storage processes.

LICENSE AMENDMENT REQUESTS

6. On February 15, 1985, in a letter from J.W. Williams, FPL Co., to Mr. Eisenhut, Division of Licensing, NRC, the Licensee requested an amendment to reduce the Moderator Temperature Coefficient for the Turkey Point nuclear reactors. Neither the NRC Staff, nor Appellants' experts have analyzed the amendment request in depth, but it appears on first examination, to consist of another increment in the flux reduction program.

March 25, 1983
L-83-180

Attatchment B
March 25, 1983 letter

Office of Nuclear Reactor Regulation
Attention: Mr. Steven A. Varga, Chief
Operating Reactors Branch #1
Division of Licensing
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Varga:

Re: Turkey Point Units 3 & 4
Docket Nos. 50-250, 50-251
Pressurized Thermal Shock

Your letter dated February 1, 1983 requested that we submit the information presented in our January 26, 1983 meeting regarding our plans and schedules to resolve Pressurized Thermal Shock at Turkey Point Units 3 & 4. The attachments address our presentation and contain the information requested in your letter.

Attachment A: Present Plant Status
Attachment B: Vessel Flux Reduction Program
Attachment C: Assessment of Safety Margins
Attachment D: Transient Analyses
Attachment E: Surveillance Program

We were also requested to address how much relief would be necessary with respect to plant safety limits to allow continued full power operation. This relief would consider the fuel management necessary to reduce flux to achieve end-of-life operation without exceeding the screening criteria. The assistance we requested from the NRC fell into three broad categories:

1. RETRAN APPROVAL

We plan on performing our plant specific transient analyses utilizing the RETRAN Code. This Code has been recently submitted by a User's Group for NRC review and approval. We request a quick review of RETRAN to prevent us from expending manpower utilizing a code that may not be acceptable to the NRC. We request that the NRC provide at least a preliminary opinion of the User's Group submittal by May 1983.

A049

2. EXTENSION OF TECHNICAL SPECIFICATION LIMITS

Based on our preliminary evaluations, we foresee no need for Appendix K exemptions or relaxations. However, to achieve the desired flux reduction in Turkey Point Unit 3, Cycle 9, scheduled to start operation in early

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December 1983, an increase in the $F_{\Delta H}$ limit of the Technical Specification is required. To achieve the higher $F_{\Delta H}$ without a power limiting reduction in the F_Q limit, we need approval of the improved LOCA Reflood Model (BART) already submitted by Westinghouse. This approval is required by August 1, 1983, to support our anticipated Technical Specification amendment to increase the $F_{\Delta H}$ limit in a timely manner prior to startup of Cycle 9. Approval of the Westinghouse High Burnup Topical is also needed in 1983. Approval of a Technical Specification change to increase the enrichment limit for the Turkey Point Unit 4 Cycle 10 (Spring 1984) will be dependent upon that approval.

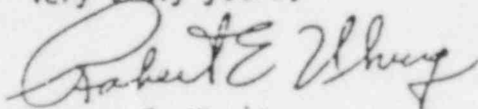
In future cycles it may be necessary to increase $F_{\Delta H}$ parameters of the Westinghouse Improved Thermal Design Procedure (ITDP) for which generic NRC approval has already been obtained. A longer term topical which needs NRC approval, and which will greatly affect FPL's flux reduction effort is the Advanced LOCA Reflood Model (BASH).

3. FORMULATION OF ACCEPTANCE CRITERIA

Scheduled to be submitted in 1983. We plan on focusing the bulk of our efforts on flux reduction to the reactor vessel inner wall. However, we intend on submitting plant specific analyses to justify operation past the 300°F RT_{NDT} screening criterion, should our best effort at flux reduction not be able to completely limit the increase in RT_{NDT}. Therefore, we request that NRC expeditiously develop acceptance criteria for these plant specific analyses. These criteria should include acceptable transient probabilities as well as analytical pressure, temperature and fracture mechanic results.

We appreciated the opportunity to present our plans to your staff and look forward to working actively with you in the future. We will continue to communicate the results of our work to you as our effort progresses.

Very truly yours,



Robert E. Uhrig
Vice President
Advanced Systems & Technology

REU/JEM/js

Attachments

cc: J. P. O'Reilly, Region II
Harold F. Reis, Esquire
PNS-LI-83-154-1

ATTACHMENT B

VESSEL FLUX REDUCTION PROGRAM

Table of Contents

1. Purpose and Objective

2. Dimension of Flux Reduction Requirement

3. Turkey Point Operating History and Plans

4. Flux Reduction Achieved to Date

5. Near-term Flux Reduction Plans

6. Long-term Flux Reduction Plans

7. Schedule

5. Near Term Flux Reduction Plans

In the second-half of 1982, with the establishment of the screening criteria, the limiting fluence became known and flux reduction became more urgent. Because materials were already in process for the next reloads, further modifications to the Cycle 9 designs were evaluated which did not entail change to the fuel loading. Time constraints limited changes to the Unit 4 Cycle 9 design to those which fell within existing operating margins.

As will be seen in subsequent sections of this report, increases in operating margin are required for Unit 3 in time to allow more extensive changes in its Cycle 9 design. The annual Cycle 9 Unit 4 design now has no time to be changed but has a radial power of 0.32 on the core flats which is about the same as modifications to the 18 month cycle could have achieved. As a general point, annual cycles can achieve lower vessel flux levels because of the greater inherent operating margin to LOCA and DNB limits. The lower number of feed assemblies increases the designers flexibility in shifting power away from the core flats.

The switch to the annual Unit 4 Cycle 9 has caused the Cycle 10 reload to start the design process now. This design assumes increased operating margins and will implement flux reduction features described in this section. Cycle 10 is now planned to start in May 1984 and will be an 18 month cycle.

A portion of the design flexibility associated with annual cycles can be obtained by moving to higher assembly discharge burnups (fewer feed assemblies). Achievement of high burnups and NRC approval of the high burnup topicals submitted by the fuel vendors in 1982 is seen as a high

priority with respect to flux reduction.

The Unit 4 18 month Cycle 9 design was used for the near-term flux reduction fuel management studies. Conclusions resulting from these studies are generally applicable to any 18 month Turkey Point cycle.

Figure 5.1 summarizes the anticipated current magnitude of flux reduction. The previous Cycle 9 design, and using equivalent core designs in the future, would cause the screening criteria to be reached in August 1995. Switching to dummy assemblies would be needed eight years from now if no other actions were to be taken. Translating these limitations to flux, Fig. 5.2 illustrates the flux levels versus azimuthal angle which cannot be exceeded (on the average) to avoid reaching the screening criterion. These flux limits assume the 4% reduction in historical flux level due to the corrected axial shape.

Even with increases in operating margin, the time required to implement exotic assembly designs or materials constrain the near term solutions to "off-the-shelf" materials and standard assembly designs. The options considered for near term implementation on the core flats were spent fuel (lowest reactivity), fresh full or part length burnable absorbers, part length control rods installed on burnable poison spiders, and assemblies containing natural or depleted uranium.

The radial power impact of the two most simple changes compared to the previous Ccyle 9 design are provided in Figs. 5.3 and 5.4. The case of low reactivity fuel and burnable poisons is anticipated to achieve the majority of

needed flux reductions. The burnable poisons (Fig. 5.4) used in the study were full length. The small axial extent of needed flux reduction, however, indicates that part length poison rods can be just as effective with a lesser decrease in overall radial power. Part length BPs would, therefore, assist in mitigating the loss in operating margin for a given level of flux reduction.

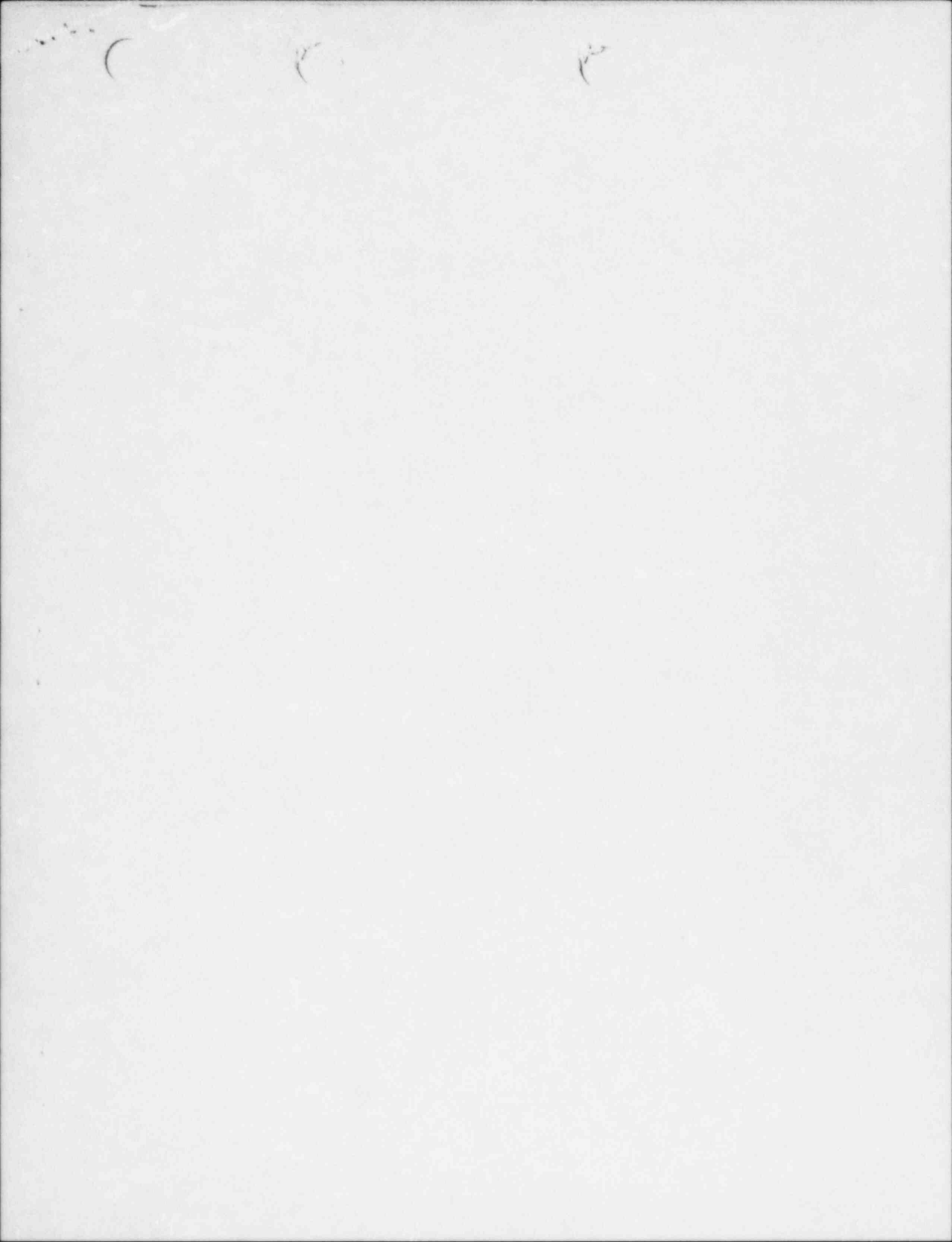
The impact of the near term design changes on the axial power shapes is illustrated in Fig. 5.5. The use of spent fuel on the core flats has a large advantage compared to the generic power shape by shifting the powers upwards, away from the critical weld in addition to the expected reduction in axial peaking. This factor results in about a 10% decrease in critical weld flux in addition to the decrease in radial power.

Combining the radial powers and the axial shapes results in the powers plotted in Fig. 5.6. The expected impact of implementing these changes is given in Fig. 5.7. The design changes planned for Cycle 9 of Unit 3 and Cycle 10 of Unit 4 correlate with Curve C on Fig. 5.7 which indicates that the screening criterion would be reached in August 2004. Assuming no further changes, dummy assemblies could be used beginning in 2001 to reach licensed lifetime.

These changes, however, are not without penalty. Increases in hot spot peaking (F_Q) and radial channel peaking ($F_{\Delta H}$) are expected. In addition, compared to designs without these changes, core reactivity is lost. In future cycles, this will be recovered by increasing the amount of U-235 loaded in the core. These penalties are summarized in Table 5.1. Table 5.2 lists the expected RT_{NDT} values associated with the near term design changes.

Florida Power & Light intends to implement the most effective of these design changes. Near-term approvals, however, of topicals, technical specification changes and licensing analyses are required by third quarter 1983 for the following items.

- High-burnup topical
- Enrichment limit on fuel storage
- Analyses for higher $F_{\Delta H}$ operating limit
- Analyses for higher LOCA (F_Q) operating limit.



BRIEF FOR FEDERAL APPELLEES

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5570

CENTER FOR NUCLEAR
RESPONSIBILITY, INC., *et al*. Appellants,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION, *et al*.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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C.A. No. 83-3570

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* City of West Chicago v. NRC, 542 F.Supp. 13 (N.D. Ill. 1982), aff'd, 701 F.2d 632 (7th Cir. 1983) 31

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* Deukmejian v. NRC, __ U.S. App. D.C. __, 751 F.2d 1287 (1984).......................... 37

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Lorion v. NRC, 229 U.S. App. D.C. 440, 712 F.2d 1472 (1983), rehearing denied (September 23, 1983), cert. granted, 104 S. Ct. 1676 (1984)........................9, 29, 30

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Sholly v. Nuclear Regulatory Commission, 209 U.S. App. 59, 651 F.2d 780 (1980), rehearing en banc denied, 651 F.2d 792 (D.C. Cir. 1981), vacated and remanded, 459 U.S. 1194 (1983), vacated, 706 F.2d 1229 (Table) (1983).. 6

Siegel v. Atomic Energy Commission, 130 U.S. App. D.C. 307, 400 F.2d 778 (1968).............. 3

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* United States v. Indrelunas, 411 U.S. 216 (1973)...................................... 25, 26

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* Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978)...................................... passim

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6A Moore's Federal Practice ¶ 58.04 [4-1] (1972).. 26

7 Moore's Federal Practice ¶ 60.22[3] (1974). 27

Pub. L. No. 97-415, 96 Stat. 2067 (1983), 97th Cong., 2nd Sess., reprinted in [1982] U.S. Code Cong. & Ad. News 3598-3600, 3606-3609.................................... 6

11 Wright and Miller, Federal Practice and Procedure § 2785.............................. 26

16 Wright, Miller, Cooper and Gressman, Federal Practice and Procedure & Jurisdiction § 3943 (1977).............................. 31

S. Rep. No. 113, 97th Cong., 1st Sess. reprinted in 1982 U.S. Code Cong. & Ad. News 3592.................................... 39

* Standards for Determining Whether License Amendments Involve No Significant Hazards Consideration, 48 Fed. Reg. 14,864, 14,873 (1983).. passim

* Cases or authorities chiefly relied upon are marked by asterisks.

QUESTIONS PRESENTED*

1. Whether this Court has jurisdiction over this appeal in view of appellants' failure to note an appeal until 108 days after the entry of the order dismissing their District Court action.

Assuming this Court has jurisdiction to hear this matter, the following issue is also presented.

2. Whether the District Court correctly determined that it lacked jurisdiction over appellants' attack on a final NRC decision, pursuant to section 189(a) of the Atomic Energy Act, that a particular license amendment presented no significant hazards considerations in view of Congress' clearly expressed statutory directive that such decisions are reviewable solely in courts of appeals. 42 U.S.C. § 2239(b) and 28 U.S.C. § 2342(4).

Depending on this Court's resolution of questions 1 and 2, the following issues may also be presented.

3. Whether the District Court should be reversed for its failure to transfer appellants' action to a court of appeals

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*This case has not previously been before this Court. Federal appellees are aware of no related cases.

pursuant to 28 U.S.C. §1631 when such transfer was never requested of the District Court, much less shown to be "in the interest of justice."

4. Whether the NRC correctly characterized, as no significant hazards consideration amendments pursuant to 42 U.S.C. §2239(a)(2), certain highly technical license amendments which permitted changes that improved the fuel efficiency of Florida Power & Light Company's Turkey Point nuclear reactors and reduced the risk of pressurized thermal shock for those reactors.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5570

CENTER FOR NUCLEAR
RESPONSIBILITY, INC., et al. Appellants,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION, et al. Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR FEDERAL APPELLEES

This brief is submitted by the United States and the United States Nuclear Regulatory Commission ("federal appellees").

COUNTERSTATEMENT OF THE CASE

1. Nature Of The Case

This is an appeal from the Honorable John Garrett Penn's dismissal of this action for lack of subject matter jurisdiction. This lawsuit began on November 29, 1983 when appellants filed their complaint with the United States

District Court for the District of Columbia seeking to enjoin the Nuclear Regulatory Commission ("NRC" or "Commission") from issuing two sets of license amendments for the Turkey Point Nuclear Power Plant, Units 3 and 4. Appellants contended before the District Court that the NRC's action would violate their rights to a prior adjudicatory hearing and to a complete safety and environmental analysis.

The District Court twice denied motions for temporary restraining orders, on November 30 and December 8, 1983. It also denied a motion for preliminary injunction on January 6, 1984. The NRC issued one set of license amendments for both Unit 3 and Unit 4 on December 9, 1983. It issued the other set, again for both units, on December 23, 1983. See 48 Fed. Reg. 56518 (December 21, 1983); 49 Fed. Reg. 3364 (January 26, 1984) (J.A. 168) ("J.A." refers to the Joint Appendix).

Holding that judicial review over an NRC amendment action was vested exclusively in the courts of appeals, the District Court dismissed the complaint in a judgment entered April 27, 1984. (J.A. 148). An explanatory Memorandum Opinion followed on May 4. Center for Nuclear Responsibility v. Nuclear Regulatory Commission, 586 F. Supp. 579 (D.D.C. 1984). After the District Court granted federal appellees' motion to correct an erroneous portion of its

Memorandum Opinion on June 12 (J.A. 155), this appeal followed on August 13, 1984.

2. Statutory And Regulatory Framework

In enacting the Atomic Energy Act of 1954, Congress provided for a regulatory format broad in the discretion given to the administrators of the Act, and remarkably free of express restrictions in its charter. Carstens v. Nuclear Regulatory Commission, 742 F.2d 1546, 1551 (D.C. Cir. 1984), quoting Siegel v. Atomic Energy Commission, 400 F.2d 778, 783 (D.C. Cir. 1968); see also North Anna Environmental Coalition v. Nuclear Regulatory Commission, 533 F.2d 655, 658-59 (D.C. Cir. 1976).

The NRC's process for initial licenses for power reactors is two-stage. In the first stage of reviews, the NRC staff determines whether an applicant should be authorized to construct a power plant. See 42 U.S.C. § 2235. At the second stage, the staff evaluates whether the utility should be permitted to operate the facility to generate electricity. Thereafter, the NRC issues amendments, when required, over the service life of the facility. In section 189(a) of the Atomic Energy Act, Congress established a hearing framework for these actions. 42 U.S.C. § 2239(a).

In the case of a construction permit application, there is a mandatory, prior adjudicatory hearing before a three-member Atomic Safety and Licensing Board (Licensing

Board), generally composed of one lawyer and two technical members. 10 C.F.R. § 2.104. For operating license applications, hearings are granted only when an interested person timely requests one, and then only on those material issues specifically contested by the person. 10 C.F.R. §§ 2.105, 2.714. See generally, 10 C.F.R. Part 2, App. A. In either case the findings and conclusions of the Licensing Board are the agency's initial decision on all contested issues. If further administrative review is sought, a party may appeal to an Atomic Safety and Licensing Appeal Board ("Appeal Board"), composed generally of two lawyers and one technical person. 10 C.F.R.§ 2.785. Further review is available as a matter of discretion by the five members of the Nuclear Regulatory Commission. 10 C.F.R. § 2.786.

Uncontested issues are reviewed and resolved by the technical staff. The NRC technical staff exercises this broad responsibility carefully and in a manner designed to raise and resolve health, safety, and environmental issues relating to license applications, through review of an applicant's detailed safety and environmental reports. The staff's conclusions are set out in a Safety Evaluation Report ("SER"), in an Environmental Impact Statement where a license is sought initially, and in Supplements to that Environmental Impact Statement if significantly changed circumstances are found.

All licenses are issued by the Commission based on the adjudicatory record, on the environmental impact statement and any supplements, on SERs, and on the staff's review of uncontested issues. 10 C.F.R. § 2.764. Judicial review over final orders in proceedings conducted under section 189 of the Atomic Energy Act is vested exclusively in the courts of appeals. 28 U.S.C. § 2342(4), 42 U.S.C. § 2239(b); see Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 525-27 and n. 5 (1978); Power Reactor Development Corp. v. Electrical Union, 367 U.S. 396 (1961); Ecology Action v. Atomic Energy Commission, 492 F.2d 998 (2d Cir. 1974).

Prior to 1980, it was established NRC practice that license amendments could be reviewed and issued by the technical staff along the following lines. If the NRC staff could not find that an amendment involved "no significant hazards consideration," or if it was "in the public interest," the staff provided an opportunity for a prior adjudication before issuing the amendment. If it found "no significant hazards consideration" the staff issued the amendment without advance notice and, hence, without an opportunity for a prior hearing. This practice flowed directly from 1962 amendments in which Congress added the third and fourth sentences of what is now section 189(a)(1). In 1980, this Court held that the NRC could not make an

amendment immediately effective where there was an outstanding hearing request, even if the amendment involved "no significant hazards consideration." Sholly v. Nuclear Regulatory Commission, 651 F.2d 780 (D.C. Cir. 1980). This holding drew a strong dissent when the Court rejected the NRC's suggestion for rehearing en banc. 651 F.2d 792 (1981). Subsequently, the Supreme Court granted certiorari to review the question. 451 U.S. 1016 (1981).

While Sholly was pending in the Supreme Court, Congress amended the Atomic Energy Act to overrule this Court's Sholly decision on this point and to provide, in section 189(a)(2), detailed procedures for authorizing issuance of amendments involving no significant hazards considerations notwithstanding the pendency of hearing requests. Pub. L. No. 97-415, 96 Stat. 2067 (1983), 1982 U.S. Code Cong. & Admin. News 3598-3600, 3606-3609. In the legislative history, Congress explained:

> Under the conference agreement, the NRC may issue and make immediately effective a no significant hazards consideration amendment to a facility operating license before holding a hearing upon request of an interested party. The Commission may take such action only after (in all but emergency situations), (1) consulting with the State in which the facility is located, and (2) providing the public with notice of the proposed action and a reasonable opportunity for comment.

Id. at 3607-08.[1]

As required by the 1983 amendment, the NRC promulgated detailed regulations governing the substantive standards for determining whether an amendment involved "no significant hazards consideration," the procedure for giving public notice and soliciting written comments, and the holding of post-issuance hearings. 48 Fed. Reg. 14864, 14873 (April 6, 1983). (S.A. 6, 15) ("S.A." refers to the Statutory Appendix attached to this brief).

Under amendments to 10 C.F.R. § 50.92, the NRC generally treats proposed changes as involving no significant hazards consideration if those actions do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The NRC provided a series of illustrative examples to aid the public's understanding of the kinds of actions that are within or outside of the "no significant hazards

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[1] Based on the 1983 amendment, both the Supreme Court, 459 U.S. 1194 (1983), and the D.C. Circuit, 706 F.2d 1229 (Table) (1983), vacated as moot and remanded the Sholly case.

consideration" category. See 48 Fed. Reg. at 14870, cols. 2 and 3 (S.A. 12).

Although the NRC is not required to conduct a prior adjudicatory hearing on demand, the NRC does publish Federal Register notices of applications received each month which, in the staff's view, involve no significant hazards considerations. 10 C.F.R. § 50.91; 48 Fed. Reg. at 14879 (April 6, 1983).[2] The notice summarizes the action proposed by the utility and provides a preliminary assessment by the NRC staff of whether the proposed amendment involves no significant hazards consideration. Id. If the staff assessment indicates that the amendment involves no significant hazards consideration, the notice also states that the staff intends to issue the amendment without further review of the no significant hazards consideration question unless a request for a hearing (including, normally, comments on the proposed action) is received within thirty days of publication. 10 C.F.R. § 50.91(a)(2), (3). (S.A. 21). If a hearing request is received, the NRC staff addresses the issues raised in the request in its final assessment of whether the application involves any significant hazards

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[2] In some cases, individual applications may be noticed. In cases of "emergencies" or "exigent circumstances," these notice requirements can be waived or modified. See 10 C.F.R. § 50.91(a)(5),(6). (S.A. 21).

consideration. If so, the matter will be set for a prior hearing; if not, a final "no significant hazards consideration" finding is published in the Federal Register, the amendment is issued based upon the staff's review of the merits of the amendment in a Safety Evaluation Report ("SER"), and any requested hearing is held thereafter.[3] 10 C.F.R. §§ 2.105(a)(4), 50.91(a)(4); 48 Fed. Reg. at 14879 (April 6, 1983) (S.A. 21).

3. The Turkey Point Amendment Proceeding

On its merits, this case involves two sets of NRC license amendments sought by and issued to Florida Power and Light Co. ("FP&L") for its Turkey Point reactors.[4] These

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[3]The NRC also provides an informal process whereby any person may request institution of enforcement proceedings against any licensee. 10 C.F.R. § 2.206. If the petition is denied, the appropriate NRC official will set forth the basis for the denial in a written decision. Prior to a 1983 decision in a case coincidentally brought by appellant Joette Lorion, judicial review of these decisions had taken place exclusively in the courts of appeals. Compare, e.g. Seacoast Anti-Pollution League v. NRC, 690 F.2d 1025 (D.C. Cir. 1982), and Rockford League of Women Voters v. NRC, 679 F.2d 1218 (7th Cir. 1982) with Lorion v. NRC, 712 F.2d 1472 (D.C. Cir. 1983), cert. granted, ___ U.S. ___, 104 S. Ct. 1676 (1984) (argued on October 29, 1984, decision pending).

[4]The Turkey Point reactors are the third and fourth units at a power station also incorporating two fossil fuel plants. The reactors are located on the Atlantic Coast about 25 miles south of Miami. Before they were licensed to operate in 1972 and 1973, respectively, FP&L and the NRC

[Footnote Continued]

amendments were authorized by the NRC on December 9 and 23, 1983. The first set of amendments allowed use of new fuel assemblies and core reconfiguration. The second set of amendments modified operational limits to account for the improved neutronic characteristics of the new fuel design, to make the reactor more efficient, and to account for operation with new steam generators. In addition, the core reconfiguration and operational limits were accomplished in a manner consistent with the ongoing program to resolve for Turkey Point a generic problem known as pressurized thermal shock ("PTS").[5]

[Footnote Continued]

staff completed comprehensive safety and environmental analyses. The plants are virtually identical pressurized water reactors designed by Westinghouse. Because of their similar design and operational characteristics, FP&L often seeks, and the NRC completes action on, amendments for both reactors at the same time.

[5] What is at issue in this case is the NRC's issuance of specific no significant hazards consideration amendments, not PTS and its potential significance to nuclear power plants. Besides being irrelevant to the issues before the Court, appellants' apocalyptic description of the PTS problem and its history is exaggerated, to say the least. See, e.g., Appellants' Brief at 9-10. For example, appellants' assertion that the Turkey Point "pressure vessel is likely to crack from thermal shock if a minor malfunction requires the use of standard emergency cooling procedures" Appellants' Brief at 10 (emphasis added), is flatly wrong. First, the Commission has concluded that none of the pressure vessels for plants currently licensed to operate are sufficiently embrittled at this time to pose PTS fears now. Second, a PTS event cannot be the result of a "minor" mishap. Several simultaneous and major failures would be necessary to induce such an event.

A conventional nuclear power reactor produces heat by the controlled nuclear fission of slightly enriched uranium. The reactor fuel core is contained in a large cylindrical shell, known as the pressure vessel. In this reservoir, water is channelled around and through the nuclear core to remove the large amount of heat generated by the nuclear chain reaction. The fission products from the chain reaction are largely confined in the zircalloy-clad fuel rods mounted in an appropriate configuration in the core. Neutrons released by the chain reaction are absorbed in the core, in the water surrounding the core, and in structural materials including the pressure vessel itself. It is essential that the pressure vessel and its associated piping, known as the primary system, maintain their integrity to assure continued cooling of the reactor core.

In pressurized water reactors ("PWR") such as the Turkey Point units, the heated water from the primary system passes through steam generators, where the heat is transferred to water circulating in the secondary system. Secondary system coolant water then turns to steam, which ultimately turns a turbine that drives generators of electricity. For a typical PWR, the reactor vessel is tough enough to withstand the high radiation environment and temperature and pressure during the thirty to forty-year service life. However, results from a reactor vessel

surveillance program indicated that certain older operating PWRs were fabricated with materials that tend to lose some of their toughness after comparatively short periods of exposure to the neutrons created by the chain reaction. This process is known as embrittlement, and principally affects pressure vessel welds with copper or nickel content.

In the late-1970s, it was recognized that these vessels could potentially experience a phenomenon known as pressurized thermal shock ("PTS"). If an embrittled reactor vessel is subjected to abrupt reduction in temperature by introduction of large volumes of cold water, while at the same time the primary system pressure remains high, the vessel is exposed to severe stress and may approach its limits of strength. This might happen, for example, if a primary coolant pipe breaks, causing the emergency core cooling system to actuate, injecting a large volume of cool water into the reactor vessel when the system pressure is high. In theory, the resulting severe temperature changes and pressure in the system could cause an embrittled reactor vessel to rupture, although an event of sufficient severity to cause such a rupture has never occurred. The NRC staff has concluded that as long as the fracture resistance of a reactor vessel remains high, such over-cooling/high pressure incidents will not cause vessel failure.

The staff has encouraged utilities to find ways to retard the embrittlement process so that pressure vessels will be assured of retaining adequate strength throughout the service life of the reactor. The NRC staff has decided that the most immediately effective way to minimize embrittlement and to extend the life of the pressure vessel is to reduce the bombardment of fission neutrons, or "flux," at certain areas of the vessel wall.[6] The program at Turkey Point is aimed at reducing the flux at the peripheral weld seams (welds in the middle of the vessel which are particularly susceptible to embrittlement) and at producing more uniform "fluence" ("fluence" is the flux absorbed over a length of time) by the end of the service life of the plant.

The two sets of license amendments for Turkey Point -- two groups of amendments for each unit -- were consistent with these goals. By a letter dated June 3, 1983 and supplemented on November 16, 1983, FP&L asked permission to begin the use of a new fuel design and configuration for

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[6]Reducing the power level of a reactor -- "derating" -- can also extend the calendar time of operation for a vessel. However, performance is measured in "effective full power years," the total amount of energy produced by the plant during a given time period, such as a year or a plant lifetime. The goal of the staff is to extend the number of effective full power years by slowing the embrittlement process and distributing the flux effects more uniformly in the vessel.

Turkey Point Units 3 and 4. This fuel design is now being used in most if not all Westinghouse PWRs, at least in part because it increases the efficiency of the reactor. Westinghouse has largely discontinued manufacture of the previous design.

It should be recognized that the specific actions authorized by the amendments, i.e., changes associated with a reconfiguration of the reactor core, involved straightforward and thoroughly understood processes. In July 1983 the staff decided that, barring some new circumstance, the reconfiguration amendments involved "no significant hazards consideration" because the fuel design itself was similar to designs in use at other facilities, and because there were no significant changes made in the overall safety of the reactor under the standards in 10 C.F.R. § 50.92. This set of amendments and proposed no significant hazards consideration finding were noticed in the Federal Register, offering interested persons thirty days in which to request a hearing. 48 Fed. Reg. 33076, 33080 (July 20, 1983) (J.A. 160, 162). No hearing request was received in response to this notice, and the amendments were issued on December 9,

1983 on a final finding that they involved "no significant hazards consideration."[7]

The NRC staff's Safety Evaluation Report ("SER") for the reconfiguration amendments provides a detailed assessment of potential accidents and concludes that the reconfiguration amendments do not present a substantial risk to the public health and safety. Moreover, because the amendments do not authorize any change in magnitude or type of effluent release, nor any increase of power level, nor any other effect which would have a significant environmental impact, the NRC staff concluded, pursuant to 10 C.F.R. § 51.5(d)(4), that no environmental impact statement ("EIS") or negative declaration and appraisal was required in connection with these amendments. SER at 21-22. (J.A. 112, 113). In effect, the environmental impact of these amendments is bounded by those impacts considered in the evaluation done for the facility when operation was originally authorized.

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[7]NRC rules provide that a final "no significant hazards consideration" finding need not be made unless a request for a hearing is received. In this case, because the first set of amendments had not issued, the staff, in its discretion, chose to make the determination on the first set as part of its response to comments submitted by plaintiffs on the second set of amendments. Aside from the other defects associated with this appeal, this first set of amendments _per se_ is not properly before the Court because appellants

[Footnote Continued]

On August 19, 1983, FP&L proposed a second set of amendments for Turkey Point -- again, one group for each unit -- to change the operational limits of the reactors, accounting for the new fuel design's characteristics and potential efficiencies, and for new steam generators. In the Federal Register on October 7, 1983, the staff noticed the application for the second set of amendments; it also offered in that notice its tentative finding of no significant hazards consideration, the basis for that finding, and an opportunity for hearing. 48 Fed. Reg. 45862. (J.A. 162). The staff noted that the second set of amendments covered four types of changes: (1) an increase to the hot channel limit, (2) an increase to the total heat flux peaking factor, (3) changes to the overpower temperature setpoints, and (4) changes to reflect new steam generators.

The first two changes permit portions of the reactor core to be at a higher temperature than they were in the preceding fuel cycle. In the October 7, 1983 Federal Register notice, 48 Fed. Reg. at 45862, col. 2 (J.A. 162), the staff concluded that the first two types of changes, in accord with example [vi] of "Changes Not Likely To Involve

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[Footnote Continued]

failed to submit to the NRC a timely request for a hearing on them.

Significant Hazards Considerations," 48 Fed. Reg. at 14870, col. 3 (S.A. 12), were within the overall margins of safety previously analyzed for the reactors, were to be balanced by more restrictive limits in other areas, and thus were not significant changes under 10 C.F.R. § 50.92.

The staff concluded that the third type of change, which required more uniform temperatures and thus constituted a safety improvement, was:

> similar to example [ii] of "Changes Not Likely To Involve Significant Hazards Considerations": A change that constitutes an additional limitation or control not presently included in the technical specifications: for example, a more stringent surveillance requirement .... The changes ... are all in the conservative direction and constitute a more stringent limitation.

48 Fed. Reg. at 45862, col. 3 (October 7, 1983) (J.A. 162), quoting 48 Fed. Reg. at 14870, col. 3 (April 6, 1983) (S.A. 12).

The fourth change accounted for the use of new steam generators which allow more secondary coolant to contact the heated primary system water. The heat exchange between the primary and the secondary systems occurs as primary system water passes over pipes carrying secondary coolant. Over time these tubes sometimes dent or fracture, and they need to be plugged or replaced. The old steam generators were repaired and the damaged tubes replaced. Of this fourth type of change the staff concluded that:

> The deletion of the technical specifications relating to the old steam generators is similar to example (v) of "Changes Not Likely To Involve Significant Hazards Considerations": Upon satisfactory completion of construction in connection with an operating facility...relief [is] granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily.
>
> This is intended to involve [relaxation of] restrictions [imposed during construction] where it is justified [when] construction has been completed satisfactorily. The deletions requested are to remove the restrictions placed on the use of the old steam generators with tubes plugged in excess of five (5) percent....[Because the new steam generators function satisfactorily], the restrictions placed on the old steam generators are no longer applicable....

48 Fed. Reg. at 45862, col. 3, 45863, col. 1 (Oct. 7, 1983) (J.A. 162, 163), quoting 48 Fed. Reg. 14870, col. 3 (April 6, 1983) (S.A. 12).

In summary, the October 7, 1983 notice made clear that the staff viewed this second set of amendments as contributing to the protection of the reactor against the possibility of pressurized thermal shock, rather than as raising significant new safety issues.

On November 4, appellants filed both a timely request for a hearing and a number of comments on the second set of amendments, the technical specification changes.

On December 23, 1983, the NRC staff issued the second set of amendments in a final "no significant hazards consideration" finding supported by a detailed SER, and a determination under 10 C.F.R. § 51.4(d) of no environmental

impact. SER at 13-14. (J.A. 137, 138). The SER explained that although there would be higher temperatures in portions of the core, there would not be additional heat overall, and thus no attendant increases in pressure and temperature stresses. In addition, new steam generators allowed more primary/secondary coolant interaction and better temperature control. In all, the staff found that all changes were safely within the previously analyzed operational limits for Turkey Point.[8] SER at 5-8 (J.A. 129-132).

Appellants' hearing petition was referred to a Licensing Board, which is now holding hearings on the second set of amendments. In the interim, appellants requested the District Court, and now request this Court, to nullify the NRC's actions on the amendments and the "no significant hazards consideration" determinations. Complaint (Nov. 29, 1983), Plaintiffs' Motion for Extension of Time ..., at 2 (Dec. 29, 1983); Brief for Appellant at 2-3, 32 (Jan. 28, 1985).

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[8]The staff analyzed the effects of the changes on postulated accidents involving loss of reactor coolant. Using elaborate computer models, the NRC staff predicted that under accident conditions, the reactor as changed by the amendments would remain within previously calculated and accepted limits. The NRC staff assumes a conservative approach toward safety questions and builds safety margins into its calculations, such that the plant is, in fact, safer than the calculations show. Minor changes in one

[Footnote Continued]

SUMMARY OF ARGUMENT

Appellants have appealed from a District Court order which dismissed their action. However, Appellants' notice of appeal was filed 108 days after the entry of this order. Because a notice of appeal must be filed within sixty days of the order or judgment from which an appeal is taken, and because this time limit is mandatory and jurisdictional, this Court lacks jurisdiction to hear the appeal.

Assuming that this Court determines that it has jurisdiction to review this appeal, the lower court was correct to dismiss the complaint for lack of District Court jurisdiction. Section 189(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2239(b), in conjunction with 28 U.S.C. §2342(4), provides that proceedings conducted under section 189(a), 42 U.S.C. §2239(a), shall be reviewed exclusively in the courts of appeals. Section 189(a) specifically addresses the NRC actions which are at issue in this case. The actions at issue are the NRC's amendment of licenses, and the NRC's determination that the amendments involved no significant hazards consideration, both actions which are specifically listed in section 189(a).

[Footnote Continued]

aspect of safety analyses usually do not affect the overall conclusions because of this conservative approach.

Accordingly, the District Court properly held that section 189(b), in conjunction with 28 U.S.C. §2342(4), makes the amendments at issue reviewable solely in the courts of appeals.

Moreover, the District Court did not err in failing to transfer appellants' action to this Court pursuant to 28 U.S.C. §1631. The standard of review for such a claim is whether the District Court abused its discretion. There can be no such abuse of discretion in this case because appellants never requested that the District Court transfer this matter. Indeed, appellants are barred from raising this issue on appeal, because they failed to raise it below.

Finally, if this Court reaches the merits of the underlying substantive matter at issue in this case, it should defer to the technical expertise of the NRC. The NRC staff's determination that the Turkey Point license amendments at issue involved no significant hazards consideration has a substantial basis in fact and should be upheld. Indeed, appellants attack fails to suggest how this determination is even arguably in error. Rather, they launch a confusing attack on the general issue of pressurized thermal shock and ignore the only issue on review, i.e., whether the amendments at issue raise significant, new, unreviewed safety issues.

ARGUMENT

I. This Court Does Not Have Jurisdiction Over This Appeal Because Appellants Failed To Notice Their Appeal Within Sixty Days Of Entry Of The District Court Judgment Dismissing Their Action

Before addressing the jurisdictional and substantive arguments that were before the District Court, this Court must first determine whether it has jurisdiction over this appeal. By motion of November 5, 1984, federal appellees asked this Court to dismiss this appeal for lack of jurisdiction. That motion was denied without prejudice on December 19, 1984. We reassert and incorporate that motion at this time, and we briefly review those jurisdictional arguments here.

The federal defendants moved to dismiss appellants' District Court action on the ground that challenges to NRC license amendments are to be heard only in the courts of appeals. The District Court subsequently issued an order which, "for the reasons set forth in the accompanying Memorandum Opinion ..." granted appellees' motion and ordered "that the action be and is dismissed." (J.A. 148). This order was filed and entered on the docket sheet by the clerk of the District Court on April 27, 1984. (J.A. 148). Not until May 4, 1984, however, did the District Court issue the "accompanying Memorandum Opinion" referred to in the April 27 Order. Center for Nuclear

Responsibility v. NRC, 586 F. Supp. 579 (D.D.C. 1984). The May 4 Opinion set forth the District Court's reasons for having earlier dismissed the complaint. In addition to correctly holding that it had no jurisdiction, however, the lower court unnecessarily and erroneously stated in dictum that the Commission's regulations never required the preparation of a Supplemental Environmental Impact Statement. Id., 586 F. Supp. at 581.

On May 14, 1984, the federal defendants filed a Motion to Clarify Opinion which asked the District Court to delete the erroneous and unnecessary dictum from its May 4 Opinion. Obviously, the federal defendants' motion did not seek to disturb in any way the District Court's April 27 Order which dismissed plaintiffs' action. The District Court granted this clarification motion on June 12, 1984, noting that since the plaintiffs had not responded, "the motion is deemed conceded under Local Rule I-9(d)." (J.A. 156).

On August 13, 1984, plaintiffs filed a Notice of Appeal. This notice purports to appeal "from the final order dismissing plaintiffs' complaint for want of subject matter jurisdiction entered in this action on June 12, 1984." It is apparent, however, that appellants are appealing the April 27 Order, for that is the District Court judgment for defendants which dismissed plaintiffs'

complaint for lack of jurisdiction. This appeal does not and could not lie from the District Court's June 12 clarifying opinion, which merely deleted a portion of its May 4 Opinion which was unnecessary to the District Court's reasons for dismissing the action on April 27.

The procedures for appealing from judgments of district courts are specifically prescribed by Rule 4 of the Federal Rules of Appellate Procedure. As relevant to this litigation, Rule 4(a)(1) provides that a notice of appeal must be filed within sixty days "after the date of entry of the judgment or order appealed from ...." Because the time limits provided in Rule 4(a)(1) are mandatory and jurisdictional, failure to file a timely notice of appeal deprives a court of appeals of jurisdiction to hear the appeal. See Browder v. Director, Department of Corrections of Illinois, 434 U.S. 257, 264 (1978); Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1983).

In this case that 60-day period must run from April 27, 1984, the date of entry of the District Court's order, or judgment, which dismissed this case. Thus, the time within which appellants could note their appeal expired June 26, 1984. Their August 13 notice, filed 108 days after the judgment dismissing their complaint, was 48 days out of time. Because it was filed late, this Court lacks jurisdiction over appellants' appeal.

Determining the operative ruling which is to be the judgment upon which an appeal must rest is a simple, straight-forward function, which a unanimous Supreme Court has instructed "must be applied mechanically." United States v. Indrelunas, 411 U.S. 216, 220-22 (1973). The Federal Rules clearly define the judgment or order which begins the running of the 60-day period within which an appeal must be noted. Federal Rule of Appellate Procedure 4(a)(6) states that

> [a] judgment or order is entered within the meaning of Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

In turn, Rule 58 of the Federal Rules of Civil Procedure requires that "[e]very judgment should be set forth on a separate document." Rule 79(a) describes how the district court clerk must enter court rulings on the "civil docket." Application of these mechanical rules to this case makes it clear that the April 27 Order is the only order upon which this appeal can rest. It is the only "separate document" which has been entered on the civil docket in accordance with Rule 79(a).

This appeal would be timely if the District Court's May 4, 1984 Opinion were the operative judgment dismissing this case, and if the federal defendants' motion to clarify that opinion (filed within 10 days of that opinion but not the April 27 judgment) were the type of

motion which tolled the time within which this appeal could be noted. However, both necessary prerequisites to such an argument are absent in this case.

First, and foremost, the District Court's May 4 Opinion is not a judgment. It does not meet the specific, mechanical requirements of Rule 58 -- it is not a "separate document" dismissing this case. Additionally, a court's "opinion does not constitute its judgment." <u>See</u> 6A <u>Moore</u> ¶ 58.02; 11 Wright and Miller, <u>Federal Practice and Procedure</u> § 2785. <u>Cf</u>., <u>Chevron, USA, Inc</u>. v. <u>Natural Resources Defense Council, Inc</u>., ___ U.S. ___, 104 S. Ct. 2778, 2781, (1984) ("... [t]his Court reviews judgments, not opinions ..."). Rule 58 clearly requires a court's judgment to be separate from its opinion. Although Rule 58 is formalistic, and must be applied mechanically, commenters have noted that "something like this was needed to make certain when the judgment becomes effective" for purposes of appeal and post-judgment motions. 6A <u>Moore</u> ¶ 58.04 [4-1], <u>quoted with approval</u> in <u>United States</u> v. <u>Indrelunas</u>, 411 U.S. 216, 220-22 (1973).

Moreover, the Advisory Committee comments on the 1963 amendment to Rule 58 also make this point in unmistakable terms:

> The amended rule eliminates ... uncertainties by requiring that there be a judgment set out on a separate document -- <u>distinct from any opinion or</u>

memorandum -- which provides the basis for the entry of the judgment.

Id. (Emphasis added).

Thus, it is clear that the District Court's May 4 Opinion cannot be the judgment upon which this appeal is based, nor can it be a judgment for purposes of determining the timeliness of a Rule 59 motion which would have extended the time for filing this appeal.

Second, even if the May 4 opinion were somehow found to be a judgment, the motion to clarify opinion was not the type of motion which could postpone the deadline for filing the notice of appeal, i.e., one of those listed in Rule 4(a)(4) of the Federal Rules of Appellate Procedure. It was instead a motion under Rule 60(b)(1) of the Federal Rules of Civil Procedure to correct a mistake in the opinion which otherwise would need to be corrected on appeal. This is a proper motion in this Circuit. See D.C. Federation of Civic Assns. v. Volpe, 520 F.2d 451, 453 (D.C. Cir. 1975). See also, 7 Moore ¶ 60.22[3].

It would be unreasonable to rule that the Motion to Clarify Opinion was a Rule 59(e) motion to alter or amend a judgment. The April 27 Order of the District Court was entirely favorable to the federal defendants. It provided all of the relief requested in the federal defendants' motion to dismiss the complaint. It would be illogical to treat a motion for clarification of an opinion, filed by the

prevailing party, as a motion to alter or amend a judgment, since the prevailing party would have no reason to request a modification of a judgment in its favor.

For all of the above reasons, and as more fully explained in our November 5, 1984 motion, this appeal should be dismissed for lack of jurisdiction.

II. The District Court Correctly Held That It Lacked Jurisdiction To Review The NRC Licensing Actions At Issue In This Case

If this Court determines, contrary to Argument I, supra, that it has jurisdiction over this appeal, it must then review the lower court's decision that the District Court lacks jurisdiction to review the NRC license amendments complained of here.

In section 189(b) of the Atomic Energy Act, Congress directed that "[a]ny final order entered in any proceeding of the kind specified in [section 189(a)] shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129) ...", more commonly known as the Hobbs Act. 42 U.S.C. § 2239(b), see 28 U.S.C. §§ 2341-51. Under 28 U.S.C. § 2342(4), a "court of appeals ... has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of ... all final orders of the [Nuclear Regulatory] Commission made reviewable by

section 2239 of Title 42." Vermont Yankee v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978) (hereafter cited as "Vermont Yankee"). Among the final orders contemplated in Section 189(a) are both: (1) orders in a "proceeding [for the] ... amending of any license," 42 U.S.C. § 2239(a)(1); and (2) "a determination by the Commission that [an] amendment involves no significant hazards consideration ..."42 U.S.C. § 2239(a)(2). (S.A. 4).

By the terms of the statute itself, the judicial review directives in section 189(b) apply to all of the different types of section 189(a) proceedings. So long as the actions are final, section 189(b) provides that the courts of appeals shall have exclusive jurisdiction to review all such determinations. On this basis, the District Court correctly dismissed the complaint challenging both the license amendments and the "no significant hazards consideration" determinations.

Appellants asserted before the District Court, and they assert here, that this Circuit's Lorion decision controls this case, and requires the District Court to exercise its jurisdiction. Lorion v. NRC, 712 F.2d 1472 (D.C. Cir. 1983), cert. granted, 104 S. Ct. 1676 (1984) (argued on October 29, 1984, decision pending). Even if its outcome in the Supreme Court is contrary to federal appellees' position, Lorion is not dispositive here.

In Lorion, this Court decided that NRC decisions to deny requests to take enforcement action under 10 C.F.R. § 2.206 ("2.206") were not final orders entered in "proceedings" of the kind specified in section 189(a). The Court concluded that such 2.206 decisions were final actions on "requests for proceedings" but were not "proceedings" themselves. Therefore, according to the Lorion Court, subject matter jurisdiction over this sort of 2.206 decision is not governed by the special appellate review format described above, but rather is controlled by the general federal question jurisdiction statute, 28 U.S.C. § 1331.

Even if upheld by the Supreme Court, Lorion is distinguishable from the instant case. The Lorion court was only concerned about whether denial of a 2.206 request for NRC enforcement action was a proceeding under section 189(a)(1). Unlike a 2.206 proceeding, a Commission proceeding to make a "no significant hazards consideration" determination is *explicitly* specified in Section 189(a)(2) and therefore is clearly included in the judicial review provisions of section 189(b). Under the special review statute, judicial review should proceed in the court of appeals.[9] San Luis Obispo Mothers for Peace v. Hendrie, 502

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[9]That appellants have raised claims under the National [Footnote Continued]

F.Supp. 408, 411-12 (D.D.C. 1980). See City of West Chicago v. Nuclear Regulatory Commission, 542 F.Supp. 13, 15 (N.D. Ill. 1982), aff'd, 701 F.2d 632 (7th Cir. 1983).

It is well settled that where Congress has specified a particular forum for review of agency action, the congressional choice of forum is exclusive. Whitney National Bank v. Bank of New Orleans, 379 U.S. 411, 419-20 (1965); Investment Company Institute v. Board of Governors, 551 F.2d 1270, 1279 (D.C. Cir. 1977); 16 Wright, Miller, Cooper and Gressman, Federal Practice and Procedure: Jurisdiction, § 3943 (1977). Similarly, although there is a presumption that agency action is subject to judicial review, it is presumptively subject to review in either a district court or a court of appeals, but not both. Investment Company Institute, 551 F.2d at 1279-80; Sun Enterprises v. Train, 532 F.2d 280, 287 (2d Cir. 1975). "[W]here it is unclear whether review jurisdiction is in the

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[Footnote Continued]

Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-61, does not affect this determination. Where NEPA claims are raised in the context of a challenge to a final NRC licensing action, judicial review lies in a court of appeals. Vermont Yankee, supra, 435 U.S. at 526-27; Susquehanna Valley Alliance v. Three Mile Island Reactor, 619 F.2d 231, 239-42 (3d Cir. 1980), cert. denied, 449 U.S. 1096 (1981). Jurisdiction to review all issues related to these actions should proceed only in a court of appeals. See City of Rochester v. Bond, 603 F.2d 927 (D.C. Cir. 1979).

district court or the court of appeals the ambiguity is resolved in favor of the latter..." Denberg v. U.S.R.R. Retirement Bd., 696 F.2d 1193, 1197 (7th Cir. 1983), citing Rockford League of Women Voters v. Nuclear Regulatory Commission, 679 F.2d 1218 (7th Cir. 1982).

Placing review of final NRC actions on license amendments and associated findings exclusively in a court of appeals gives appellants all necessary legal remedies, while avoiding the inefficiency of bifurcated review. The courts of appeals have the authority to determine the adequacy of the environmental and safety record in support of the amendments, the propriety of the "no significant hazards consideration" findings, and the adequacy of NRC's actions on appellants' comments.[10]

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[10] The NRC has already examined all technical issues raised in appellants' comments to the agency, even though appellants did not file a timely request for hearing on the first set of amendments. Further, an NRC Licensing Board is currently reviewing appellants' claims on the merits of the second set of amendments. Thus, that hearing process holds out the prospect of at least partial relief on the entire case. In addition, if appellants have other concerns beyond those so far addressed to this Court, the District Court, or to the NRC (such as, for example, the general concerns about PTS which fill their brief but are irrelevant to this case), the 2.206 process is also available to assure that the agency develops a full factual record for judicial review, avoiding the prospect that the resources of this or some other court would be prematurely expended. Appellants should exhaust NRC remedies before seeking judicial review. McKart v. United States, 395 U.S. 185, 193 (1969); Simmons

[Footnote Continued]

Accordingly, the District Court correctly dismissed the complaint for lack of subject matter jurisdiction.

III. Appellants Cannot Complain To This Court That the District Court Refused To Transfer This Action Under 28 U.S.C. § 1631

Appellants argue, for the first time in this action, that the District Court erred in failing to transfer this case to the Court of Appeals. They interpret 28 U.S.C. § 1631 as mandating a _sua sponte_ transfer whenever a court determines, as here, that it lacks jurisdiction over the matter. They cite no support for this proposition, and we are aware of none.

Before the District Court, appellants did not move for transfer. Thus they presented no argument to the District Court that the "interest of justice," or any other interest, warranted transfer of this case. This Court's reviewing role is limited to determining whether the District Court abused its discretion when it failed to transfer this case under 28 U.S.C. § 1631. _See Billops_ v.

[Footnote Continued]

v. _Arkansas Power and Light Co._, 655 F.2d 131 (8th Cir. 1981); _Honicker_ v. _Hendrie_, 465 F.Supp. 414 (M.D. Tenn.), _aff'd_, 605 F.2d 556 (Table) (6th Cir. 1979), _cert. denied_, 444 U.S. 1072 (1980).

Department of the Air Force, 725 F.2d 1160, 1164 (8th Cir. 1984). The District Court was under no obligation to exercise its discretion to transfer the case in the absence of argument on this issue. Nor can it be said to have abused its discretion when it failed to guess the relief appellants would have preferred but never sought.

Appellants cannot be permitted to reshape their case and arguments as the spirit moves them at succeeding stages of the proceedings. They cannot challenge the District Court's decision based on arguments not even raised below, particularly when this Court's standard of review is limited to determining whether the District Court abused its discretion. This Circuit has repeatedly and consistently rejected attempts to raise on appeal contentions, including legal arguments, not sufficiently raised in district court in the first instance. E.g, United States v. Pickney, 543 F.2d 908, 915 (D.C. Cir. 1967); Miller v. Avirom, 384 F.2d 319, 321-23 (D.C. Cir. 1967); Johnston v. Reily, 160 F.2d 249, 250 (D.C. Cir. 1947) (the rule is one "of substance in the administration of the courts" and, while it "may work hardship in individual cases, it is necessary that its integrity be preserved").

Under these uniform authorities, appellants are precluded from arguing in this Court that transfer is in the interest of justice, because that contention was not even

presented to the District Court.[11] In the present circumstances, however, it requires no citation to case authority to conclude that the District Court did not abuse its discretion in denying transfer when that request was not even presented to the District Court. It was appellants' burden to establish that transfer was in the interest of justice. Cf. Outboard Marine Corp. v. Pezetel, 461 F. Supp 384, 393 (D. Del. 1978) (party seeking transfer under 28 U.S.C. § 1406(a) has burden to show that such transfer is "in the interest of justice"). By failing to raise the issue in any of their papers filed with the District Court, they also failed to carry that burden. Certainly, the District Court cannot be faulted for failing to find

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[11] In Miller v. Avirom, supra, now-Chief Judge Robinson explained the rationale behind this well-established rule:

> In our jurisprudential system, trial and appellate processes are synchronized in contemplation that review will normally be confined to matters appropriately submitted for determination in the court of first resort. Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate distinctly the party's thesis, will normally be spurned on appeal. Canons of this tenor reflect, not obeisance to ritual, but "considerations of fairness to the court and the parties and of the public interest in bringing litigation to an end after fair opportunity has been afforded to present all issues of law and fact."

384 F.2d at 321-22, quoting United States v. Atkinson, 297 U.S. 157, 159 (1936).

transfer in the interest of justice when that remedy was never pursued by appellants in the District Court although fully known and available to them at the time.

IV. The NRC Staff Correctly Found That The Amendments To The Turkey Point Operating License Involved No Significant Hazards Considerations.

If, contrary to Argument I, supra, this Court finds that it has jurisdiction over this appeal and if it decides, contrary to Argument II, supra, that the District Court has jurisdiction over the challenge to NRC action raised by the appellants, this case must be remanded to the District Court for further proceedings.[12] On the other hand, if this Court assumes jurisdiction over this appeal, affirms the District Court's finding that it lacks jurisdiction over this action, but then determines that the lower court erred in failing to transfer the case to this Court (contrary to Argument III, supra) then, and only then, may it be necessary for the Court to reach the merits of the

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[12] Contrary to appellants' assertions, such review would be subject to the well-established APA principle that an informal agency decision (such as the NRC "no significant hazards consideration" decision) must be upheld unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). See, e.g., Vermont Yankee, 435 U.S. at 549.

substantive issues in this case.[13] There is only one substantive issue that is a final agency action properly reviewable at this time: the NRC staff's finding that the second set of amendments at issue involves no significant hazards consideration.[14]

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[13]The appellants argue that even if this Court affirms Judge Penn's jurisdictional analysis and concludes that the Court of Appeals has exclusive jurisdiction to review the NRC orders at issue, the Court must then transfer the case back to the district court "for a determination of the disputed facts." Argument I. E. of Appellants' Brief. To support this argument they rely on language in 28 U.S.C. § 2347(b)(3) of the Hobbs Act to the effect that a case must be transferred to a district court when "a genuine issue of material fact is presented." However, no such transfer is required here. The issue before this Court on reviewing the merits of the Commission's no significant hazards consideration determination would be whether the administrative record supports the decision. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971). There is no factual issue with regard to what constitutes the record. Thus there is no need for the district court's evidentiary capabilities. "[T]he focal point for judicial review should be the record already in existence, not some new record made initially in the reviewing court." Camp v. Pitts, 411 U.S. 138, 142 (1973). Thus the transfer that appellants contemplate is not only unnecessary, it is also flatly precluded. If the Court finds the agency record inadequate to support the decision, a remand to the NRC rather than discovery in the district court is the appropriate remedy. Deukmejian v. NRC, 751 F.2d 1287 (D.C. Cir. 1984).

[14]The no significant hazards consideration finding on the first set of amendments is not before the Court because appellants did not file comments within 30 days on the proposed finding for those amendments, 10 C.F.R. § 50.91(a)(2). Thus appellants did not properly exhaust their administrative remedies with regard to the first set of amendments. Even absent this fatal flaw, appellants'

[Footnote Continued]

Appellants have given the Court absolutely no reason why the NRC's no significant hazards consideration finding should not be affirmed. Indeed, rather than address the only substantive question before the Court, *i.e.*, whether the Commission abused its discretion in finding that the change in reactor core configuration at Turkey Point involves no significant hazards consideration, appellants expand at length on their view that reactor pressure vessel embrittlement and pressurized thermal shock are "serious safety issues." Appellants' Brief, Argument IIA. The Commission has never claimed otherwise. All that the Commission has determined is that the license amendments challenged by the appellants involve no significant hazards consideration.[15]

[Footnote Continued]

arguments on both sets of amendments are defective for the reasons discussed herein.

[15] Appellants are free to argue in a 10 C.F.R. § 2.206 petition to the NRC that more should be done to address the PTS issue as it affects Turkey Point, but that is a question which goes well beyond whether the particular amendment at issue here has been properly issued prior to an agency hearing. It is only with regard to the latter question that the Commission has reached a reviewable decision.

For the reasons given below, that determination was fully in accordance with the facts and NRC regulations. It should be affirmed.[16]

In this case the staff performed an evaluation of the amendments, and reached its no significant hazards consideration findings (J.A. 108-112) by using both the section 50.92(c) criteria and the examples in the preamble to the rule. See 48 Fed. Reg. at 14870 (S.A. 12). In their effort to turn this case into a review of PTS, appellants ignore the narrow question before the Court: the substance of the amendment at issue, the staff's SER on which the determination is based, the section 50.92(c) standards and examples which have been applied, and the NRC's attempts to faithfully carry out congressional intent to "develop...standards that to the maximum extent practicable, draw a clear distinction between amendments that involve a significant hazards consideration and those [that do not]." S. Rep. No. 113, 97th Cong., 1st Sess. at 15, reprinted in 1982 U.S. Code Cong. & Admin. News 3592, 3607. These

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[16]The appellants may attempt to challenge the substance of the amendments themselves in a hearing before the NRC -- indeed, they are doing so right now -- but in accordance with Section 189(a) and the regulatory scheme based on it, those amendments may go into effect while the hearing is pending. This effectiveness is entirely reasonable for a license amendment that involves no significant hazards consideration. It is precisely what Congress intended.

standards, as applied to the Turkey Point amendments, establish that the changes to the reactor core present no significant hazards consideration.[17] That finding should be affirmed.

It is in this kind of highly technical area involving assessments by the agency of probabilities of accidents, margins of safety, and accident sequences, that the Court's deference to the NRC should reach its zenith. See Carstens v. NRC, 742 F.2d 1546, 1557 (D.C. Cir. 1984), quoting Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 103 S. Ct. 2246 (1983). "'Particularly when we consider a purely factual question within the area of competence of an administrative agency created by Congress, and when resolution of that question depends on "engineering and scientific" considerations, we recognize the relevant agency's technical expertise and

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[17] The safety and environmental merits of the amendments -- as opposed to whether they involve no significant hazards considerations -- are not before the Court at this time. They are being reviewed in an ongoing Licensing Board proceeding on the second set of amendments. Appellants have presented no arguments on the merits of the amendments, and, in any case, the exhaustion doctrine should preclude judicial consideration of the merits of those amendments at this time. These ongoing hearings will give appellants the opportunity to attempt to show that the amendments raise important safety or environmental issues which have not been adequately resolved by the NRC staff. If this showing can be made then the NRC Licensing Board is authorized to order revocation of the amendments.

experience, and defer to its analysis unless it is without substantial basis in fact.'" Id., 742 F.2d at 1557, note 17, quoting Federal Power Commission v. Florida Power & Light Company, 404 U.S. 453, 463 (1972) (emphasis added).

There is a "substantial basis in fact" for the NRC's no significant hazards consideration decisions on the Turkey Point amendments, as discussed in the SERs (J.A. 92, 125). The amendments do not increase the probability of an accident previously evaluated; they do not create the possibility of a type of accident different from those already evaluated; and they do not significantly decrease any margin of safety. Appellants do not address, much less attack, the bases for these findings.[18] Thus this Court should uphold those decisions.

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[18]The Appellants' NEPA argument (Appellants' Brief, Argument III), founders on the same misconception that vitiates their Atomic Energy Act claims. The staff found that the amendments had no significant environmental impacts because they increased neither effluents nor reactor power output, and thus that no SEIS was necessary. SER of December 9, 1983 at 21-22; SER of December 23, 1983 at 13-14 (J.A.112-113; 137-138). This accorded with 10 C.F.R. § 51.5(b)(2). The NRC has met all NEPA requirements with respect to the Turkey Point amendments, and that is all that could properly be at issue here. If the appellants see the PTS problem as a circumstance requiring additional environmental analysis at Turkey Point, they may petition the NRC for such action. 10 C.F.R. § 2.206.

It is apparent that what appellants really seek is to litigate whether, in view of PTS, the Turkey Point reactors should be operating at all. Thus, they ignore the operative staff documents on the amendments. But it was never the intention of Congress to allow the use of hearing rights on amendments to reopen hearings on the original operating licenses.[19] Appellants' approach would mean that every license amendment proposed, no matter how innocuous itself, would open up relitigation of every conceivable safety issue to which the amendment might be related. This Court rejected a similar reading of the Atomic Energy Act in Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983).

For the foregoing reasons, if the Court reaches the underlying substantive issue in this case, the Court should find that the NRC's no significant hazards consideration finding was entirely proper.

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[19] The intent was to require prior hearings only on amendments which, in and of themselves, raised significant, new and unreviewed safety issues. What appellants actually seek in this case is review of a pre-existing problem, regardless of the inherent implications of the amendments themselves.

CONCLUSION

For the foregoing reasons, appellants' appeal against federal appellees should be dismissed.

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Dated: April 5, 1985

APPENDIX

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A. Statutes

42 U.S.C. § 2239 (1982)

§ 2239. Hearings and judicial review

(a)(1) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134(c) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

(b) Any final order entered in any proceeding of the kind specified in subsection (a) of this section shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, and to the provisions of chapter 7 of title 5.

28 U.S.C. § 2342 (1982)

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communication Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 as are subject to judicial review under section 830 of title 46;

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42; and

(5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(i)(2) of title 49, United States Code.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

28 U.S.C. § 1631 (1982)

Sec.
1631. Transfer to cure want of jurisdiction.

§ 1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

§ 2347. Petitions to review; proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

B. Miscellaneous Documents

Notice of Request for First License Amendment

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving no Significant Hazards Considerations; Monthly Notice

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the autority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendment issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on June 22, 1983 (48 FR 28578-28583) through July 12, 1983.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By August 22, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance

with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also indentify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If The final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d)

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local public document room for the particular facility involved.

* * * * *

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant, Unit Nos. 3 and 4, Dade County, Florida.

Date of amendment request: June 3, 1983.

Description of amendment request: This amendment involves Technical Specification changes to support planned fuel design modification during Cycle 9 refueling for Unit 3, Cycle 10 refueling for Unit 4 and subsequent cycles. It is planned to replace the Westinghouse 15 x 15 low-parasitic (LOPR) fueled cores with Westinghouse 15 x 15 optimized fuel assembly (OFA) core with Wet Annular Burnable Absorber (WABA) Rods. Changes are requested to: (1) permit increases in shutdown and control rod drop time which will be based on safety analysis for the transition cores; (2) use of burnable poison rods of an approved design for reactivity and/or power distribution factors; and (3) changes in hot channel factors and other power distribution factors affecting departure from nucleate boiling (DNB). The change in core physics parameters and thermal characteristics are required due to the improved neutronic characteristics of

fuel assemblies and fuel management considerations.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain example (48 FR 14870). Example (iii) of amendments not likely to involve significant hazards considerations is a change resulting from nuclear reactor reloading involving no fuel assemblies significantly different from those previously found acceptable at the facility in question, where no significant changes are made to the acceptance criteria for the Technical Specifications, the analytical methods used are not significantly changed and the NRC has previously found the methods acceptable. The instant amendments are similar to the example in that the new fuel is exactly like previous Westinghouse 15 x 15 fuel assemblies except with grid spaces made with different material and improved neutronic characteristics. The core safety limits and associated setpoints in the current Technical Specifications are applicable. The effects of increased rod drop time are within all the safety limits and criteria analyzed in the FSAR and the plant will be operated within the previously approved margins and limits. Each reload core design will be evaluated to assure that design and safety limits are satisfied according to NRC approved methodology and analysis. On this basis, the staff proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1214, Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Notice of Request for Second License Amendment

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company; Consideration of Issuance of Amendment Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

These amendments would change the Technical Specifications to support the integrated program for vessel flux reduction to resolve the pressurized thermal shock issue and to take credit for operation with the new steam generators in an unplugged (maximum of five (5) percent tube plugging) configuration. Changes are requested to: (1) Increase the hot channel $F_{\Delta H}$ limit from 1.55 to 1.62; (2) increase the total peaking factor F_Q limit from 2.30 to 2.32; (3) change the overpower ΔT setpoints and thermal-hydraulic limit curves; and (4) delete restrictions and limits placed on the old steam generators to allow for operation with tubes plugged in excess of five (5) percent in accordance with the licensee's application for amendments dated August 19, 1983 as supplemented September 9, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples (48 FR 14870). The increase in the hot channel $F_{\Delta H}$ limit and the total peaking factor F_Q limit is similar to example (vi) of changes which are not likely to involve significant hazards considerations: A change which either may result in some increase to the probability or consequences of a previously analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The reduction in the safety margin resulting from the increase in the $F_{\Delta H}$ and F_Q limits are addressed in the safety evaluation provided with the submittal and indicate: (1) The calculated peak clad temperature of 1805° F and 1972° F for small and large break loss of coolant accidents respectively, are within the maximum limit of 2200° F specified in 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems (ECCS) for Light Water Nuclear Power Reactors"; (2) additional departure from nucleate boiling ratio margin is identified for Overtemp ΔT and loss of flow conditions to accommodate the reduction in margin resulting from increasing the $F_{\Delta H}$ loss of limit and is within the Final Safety Analysis Report (FSAR) design basis; (3) for breaks up to and including the double-ended severance of a reactor coolant pipe the ECCS will meet the acceptance criteria of 10 CFR 50.46; and (4) the overpower ΔT setpoints will be more restrictive to provide protection using the recalculated core limits and error allowances provided in the safety evaluation which indicate the safety margin is within the acceptance criteria of the Standard Review Plan.

The change in the Overpower ΔT setpoints and thermo-hydraulic limit curves are similar to example (ii) of changes not likely to involve significant hazards considerations: A change that constitutes an additional limitation or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The changes requested in the setpoint and thermal-hydraulic limit curves are all in the conservative direction and constitute a more stringent limitation.

The deletion of the technical specifications relating to the old steam generators is similar to example (v) of changes not likely to involve significant hazards considerations: Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily. The deletions requested are to remove the restrictions placed on the use of the old steam generators with tubes plugged in excess of five (5) percent. License conditions were placed on the Turkey Point Plant, Units 3 and 4, which requires a new ECCS analysis be performed if credit is to be taken for the unplugged configuration (maximum of five (5) percent tube plugging) for the new steam generators upon satisfactory completion of the construction associated with replacement of the steam generators. Construction has been satisfactorily completed and the licensee's submittal includes new ECCS analysis which assumes a maximum tube plugging of five (5) percent. The results of the new analysis indicate that for breaks up to and including the double-ended severance of a reactor coolant pipe, the ECCS can perform its function and is within the acceptance criteria of 10 CFR 50.46 which demonstrates that the

restrictions placed on the old steam generators are no longer applicable and the new steam generators function satisfactorily.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By November 8, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission takes this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Environmental and Urbana Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 3rd day of October 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-27421 Filed 10-6-83; 8:45 am]
BILLING CODE 7590-01-M

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

September 21, 1983

Martin H. Hodder, Esq.
1131 N.E. 86th Street
Miami, Florida 33138

Dear Mr. Hodder:

As I informed you in our last conversation, I passed on your oral request for documents to the NRC staff. The staff members I contacted were unable to identify some of the documents you requested from the titles given, and they suggested that I send you the following documents which summarize the current position on pressurized thermal shock:

(1) Summary of Meeting Held With FP&L on January 26, 1983 Concerning Pressurized Thermal Shock Program for Turkey Point Plant, Units 3 and 4, dated January 31, 1983;

(2) Letter from S. Varga to R. Uhrig requesting information on pressurized thermal shock, dated Feb. 1, 1983;

(3) Letter R. Uhrig to R. Varga supplying information on thermal shock, dated March 25, 1983;

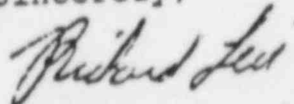
(4) SECY-83-79, Meetings with Selected Licensees Regarding Flux Reduction Programs Related to Pressurized Thermal Shock, dated February 25, 1983; and

(5) SECY-82-465 Pressurized Thermal Shock (PTS), dated November 23, 1982.

I believe these documents may provide you with the general information which you appear to be seeking.

If these documents are insufficient to your needs, please submit any request for additional documents in writing, as we had agreed.

Sincerely,



Richard P. Levi
Attorney
Office of General Counsel

cc: Harold Reis

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

FEB 1 1983

Docket Nos. 50-250
and 50-251

Dr. Robert E. Uhrig, Vice President
Advanced Systems and Technology
Florida Power and Light Company
Post Office Box 529100
Miami, Florida 33152

Dear Dr. Uhrig:

At the December 9, 1982 meeting with the Commissioners, the staff presented results of its Pressurized Thermal Shock (PTS) studies as described in SECY 82-465. The staff was subsequently directed to develop a Notice of Proposed Rulemaking that would establish an RT_{NDT} screening criterion, require licensees to submit present and projected values of RT_{NDT}, require early analysis and implementation of such flux reduction programs as are reasonably practicable to avoid reaching the screening criterion, and require plant-specific PTS safety analyses before plants are within three calendar years of reaching the screening criterion. The staff's proposed screening values are an RT_{NDT} of 270°F for plants and axial welds, and 300°F for circumferential welds.

The Commission also noted and concurred that the staff should meet with licensees of plants for which near-term flux reductions of factors of two to five would ensure that the screening criterion would not be exceeded through-our service life, to determine the licensees' plans for such programs, and proposed issuance of 10 CFR 50.54(f) letters to such licensees, if appropriate, following the meetings. We included Turkey Point Plant, Units 3 and 4, in this group of plants based on the information available to us at that time.

On January 26, 1983, your personnel met with the staff at our request to discuss the program for ensuring that the screening criterion for PTS for Turkey Point 3 and 4 would not be exceeded. Based on your presentation and our discussions, we understand that Florida Power and Light Company has already initiated a detailed program intended to achieve significant flux reductions in the next few years. The plant specific data through fuel cycle 8 indicates that the screening criterion will not be exceeded prior to 1989 due to the inclusion of low-leakage cores. The near term flux reduction, which will be implemented for fuel cycle 9 (Spring of 1983 for Unit 4 and Fall of 1983 for Unit 3), will extend the time for reaching the screening criterion to 1995. This will be accomplished by reducing the peripheral flux. Additional core configurations are being evaluated which could result in further flux reduction extending the time for reaching the screening criterion to 2004. In addition, you have indicated that the goal of your integrated PTS program is to achieve the maximum reasonable flux reduction while maintaining full power capability. Mr. Joe Moba indicated that you plan to submit the information presented in the meeting including projected schedules. We request that your submittal include the following, most of which was addressed in your presentation at the January 26 meeting:

1. Provide your assessment of the fluence experienced to date by the welds and plates in your pressure vessel, the rate of increase expected assuming future fuel cycles to which you are already committed, and a detailed description of the bases for the above (including surveillance capsule data and analysis methods, and generic methods or correlations used).

2. Using the above fluence information, provide your assessment of the RT_{NDT} presently existing in your pressure vessel welds and plates utilizing the methodology outlined in Appendix E to Enclosure A of SECY-82-465, and the expected future rates of increase, and the expected dates when the applicable proposed screening criterion will be exceeded.

3. Provide a description of the flux reduction measures that you have instituted and additional measures that you are considering for your plant. Indicate your estimated schedule for the studies in progress. Include for each option:

   a. Description of fuel management and/or fuel removal and/or fuel replacement with dummy elements including an indication of power level of outer assemblies in the axial and radial directions for future cycles;

   b. Quantitative assessment of resulting flux reduction to critical welds and plates;

   c. Parametric study showing future RT_{NDT} values resulting from both the earliest practicable implementation of the option, and from the latest possible implementation of the plan that will still avoid exceeding the RT_{NDT} screening criterion at the expiration of your operating license.

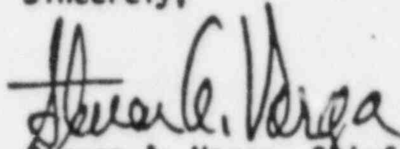
   d. Discussion of advantages and disadvantages of the option, particularly emphasizing power reductions caused by the option. With respect to power reduction, discuss the magnitude of the reduction and the particular limit (e.g., hot channel factor, DNBR, etc.) causing the power reduction. Also analyze how much relief would be necessary (with respect to the particular limit) to allow full power operation, and assess whether such relief would be an improvement to overall plant safety (considering LOCA, PTS, transients, etc.).

4. Discuss the alternatives in addition to flux reduction you are considering in your integrated program that will result in delaying or avoiding exceeding the RT_{NDT} screening criterion.

We request that the above information be provided within 60 days of your receipt of this letter. We may request a meeting with you to discuss your options and plans after we have reviewed the above requested information and as your studies progress.

OMB clearance is not required for this request since it is being transmitted to fewer than 10 addressees.

Sincerely,



Steven A. Varga, Chief
Operating Reactors Branch No. 1
Division of Licensing

cc: See next page

Robert E. Uhrig
Florida Power and Light Company

cc: Harold F. Reis, Esquire
Lowenstein, Newman, Reis and Axelrad
1025 Connecticut Avenue, N.W.
Suite 1214
Washington, D. C. 20036

Norman A. Coll, Esquire
Steel, Hector and Davis
1400 Southeast First National
Bank Building
Miami, Florida 33131

Mr. Henry Yaeger, Plant Manager
Turkey Point Plant
Florida Power and Light Company
P. O. Box 013100
Miami, Florida 33101

Mr. Jack Shreve
Office of the Public Counsel
Room 4, Holland Building
Tallahassee, Florida 32304

Administrator
Department of Environmental Regulation
Power Plant Siting Section
State of Florida
2600 Blair Stone Road
Tallahassee, Florida 32301

Resident Inspector
Turkey Point Nuclear Generating Station
U. S. Nuclear Regulatory Commission
Post Office Box 1207
Homestead, Florida 33030

James P. O'Reilly
Regional Administrator - Region II
U. S. Nuclear Regulatory Commission
101 Marietta Street - Suite 3100
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 1985 copies of the foregoing Brief for Federal Appellees were served on counsel for all parties by placing a copy in the United States mail, first class service, postpaid, to the following:

MARTIN H. HODDER, Esq.
1131 N.E. 86th Street
Miami, FL 33138

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Harmon, Weiss & Jordan
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HAROLD F. REIS, Esq.
Newman & Holtzinger, P.C.
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DIRK D. SNEL, Esq.
Appellate Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

MICHAEL B. BLUME
Senior Attorney
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(202) 634-1493

April 5, 1985

AA61-2 PDR

to the proposed sale by the Plan of a limited partnership interest (the Interest) in Western Mud Co., Limited to J. Michael Pisias, Jr., the trustee of the Plan, provided that the sales price is no less than the fair market value of the Interest at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 4, 1984 at 49 FR 47457.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Sheboygan Oral and Maxillofacial Associates, Ltd. Defined Contribution Plan (the Plan) Located in Sheboygan, Wisconsin

[Prohibited Transaction Exemption 85-24; Exemption Application No. D-5756]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the individually directed account of Richard F. Morrissey, M.D. (Dr. Morrissey) in the Plan of five units in the Limited Partnership of Doctors Park Investment Club to Dr. Morrissey for cash in the amount of $34,398.45, provided that such amount is not less than the fair market value of the units on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 4, 1984 at 49 FR 47459.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 17th day of January, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-1731 Filed 1-22-85; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Monthly Notice; Applications and Amendments To Operating Licenses Involving no Significant Hazards Considerations

1. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendments issued, or proposed to be issued, since that date of publication of the last monthly notice which was published on December 31, 1984 (49 FR 50794) through January 14, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received with 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By February 22, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition of leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filled by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomiv Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible efect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sough to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as part.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity of present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves on significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: October 16, 1984.

Description of amendment request: The proposed amendment requests modification of the Technical Specifications to reflect changes in the reporting requirements outlined in 10 CFR 50.72 and 50.73 and guidance provided in the Commission's Generic Letter 83-43. Specifically, the Technical Specifications would be modified as follows:

1. The term "reportable occurrence" would be replaced by "reportable event."

2. Section 6.9.B entitled, "Reportable Occurrences," would be removed. Since the removal of this entire section would eliminate a requirement, unrelated to operating events, to report changes in the licensee's organization, that requirement would be moved to Section 6.2, "Organization."

3. The reference in Section 6.6.A to the "requirements of Specification 6.9" would be changed to "requirements of either 10 CFR 50.72 or 10 CFR 50.73."

4. A time of one hour for reporting a safety limit violation would be added to Section 6.7.B.

5. A time limit of 30 days for submitting a safety limit violation report would be added to Section 6.7.D.

6. Section 6.5.B.7.g would be changed to require the licensee's Nuclear Safety Review and Audit Committee to review "all events which are required by 10 CFR 50.73 to be reported to the NRC in writing."

7. Section 3.9.B.2 would be changed to require NRC notification within one hour after incoming power is not available from both startup and shutdown transformers and reactor operation is continuing under certain permissible conditions.

8. Reporting requirements would be deleted from Section 3.6.D.3, 3.9.B.1, 3.9.B.4 and 3.9.B.5.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10

CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of these is example "(vii) A change to make a license conform to change in the regulations where the license change results in very minor changes to facility operations clearly in keeping with the regulations." This example applies to the proposed amendment since it is intended to conform to changes in the regulations which have little, if any, effect on facility operation.

Since the application for amendment involves changes which are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: November 9, 1984.

Description of amendment request: The amendment would change the Administrative Controls Section of the Technical Specifications as follows:

1. The title "Station Manager" becomes "Nuclear Operations Manager."

2. A new position entitled "Technical Station Head" is established to oversee the On-site Safety and Performance Group and the Technical Group at the plant. This new position will report to the Nuclear Operations Manager and will assume from him the responsibility of Chairman of the Operations Review Committee (ORC).

3. A new position entitled "Chief Chemical Engineer" and a chemistry technical staff are established. The person in this position will report to the Nuclear Operations Manager and will be a member of ORC.

4. Alternate members of ORC to serve on a temporary basis would be appointed by the Nuclear Operations Manager instead of the ORC Chairman.

5. An addition is made to the statement of authority for ORC to clarify that it can recommend proposals related to nuclear safety or reject those which do not satisfy the Committee's concerns.

Basis for proposed no significant hazards consideration determination: The proposed changes are all administrative improvements designed to increase the effectiveness of the station personnel. Their responsibilities for maintaining plant safety are not diminished and the changes will not physically affect any safety related systems. The staff, therefore, proposes to conclude that the license amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety. On this basis, the staff has made an initial determination that the proposed amendment is not likely to involve significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of amendment request: December 4, 1984.

Description of amendment request: This amendment would increase the Technical Specification limit on the linear heat generation rate (LHGR) for sixteen Barrier Fuel Test Assemblies in the Barrier Fuel Demonstration Program from 13.4 kw/ft to 15.0 kw/ft for the remainder of the current Operating Cycle 7. The purpose of the change is to enable the licensee to properly perform a control rod withdrawal ramp test at the end of Cycle 7 without exceeding the current LHGR limits.

Basis for proposed no significant hazards consideration determination: The licensee's submittal of December 4, 1984 contains an evaluation of the proposed action, and a basis for a proposed no significant hazards consideration determination. The licensee's proposed determination is based on the following considerations.

The criteria for defining a significant hazards consideration is set forth in 10 CFR 50.92(c). Applying these criteria to the proposed action, operation of Quad Cities Unit 2 in accordance with the proposed amendment, would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because adequate margin to the 1% plastic strain limit is maintained for the worst case transient described in the Final Safety Analysis Report (FSAR).

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed Technical Specification does not allow any new modes of operation beyond that normally performed at operating boiling water reactors (BWRs).

(3) Involve a significant reduction in the margin of safety because a 4.8 kw/ft (or greater) margin to the 1% plastic strain limit exists for the worst case transient described in the FSAR.

Additionally, this request is of a type which was specifically cited in the **Federal Register** (48 FR 14870) as an example of license amendment not involving significant hazards and therefore not requiring opportunity for prior hearings. That is:

> (vi) A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The staff has reviewed the licensee's significant hazards consideration determination and, based upon this reviewed, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504–17th Street, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassallo.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 25, 1984.

Description of amendment request: The proposed amendment would: (1) Correct a statement in the Technical Specifications that identifies which waste gas decay tank is to be chosen for release to minimize the amount of radioactivity being released, and (2) correct the setpoint specified in the Technical Specifications for the High Range Noble Gas Monitor, Main Steam Safety and Dump Valve Discharge Line Monitor and Engineered Safeguards Room Vent System Monitor.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance

concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to purely administrative changes to the Technical Specifications such as corrections of errors. The proposed change (1) above is needed to correctly identify the waste gas decay tank with the least radioactivity for releasing and change (2) above will correct the setpoint setting for those monitors which are used for monitoring potential high level releases after an accident. The setpoints were erroneously specified at the low levels for routine releases.

Therefore, because this amendment request involves administrative changes of the types specified in example (i) of the Commission's guidance, the staff proposes to determine that the proposed changes would not involve a significant hazards consideration.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49007.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: December 19, 1984.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to support the operation of Oconee Unit 2 at full rated power during the upcoming Cycle 8. The proposed amendment request changes the following areas:

1. Rod Position Limits (TS 3.5.2); and
2. Power Imbalance Limits (TS 3.5.2).

To support the license amendment request for operation of Oconee Unit 2 during Cycle 8, the licensee submitted, as an attachment to the application, a Duke Power Company (DPC) Report, DPC-RD-2004, "Oconee Unit 2, Cycle 8 Reload Report." A summary of the Cycle 8 operating parameters is included in the report, along with safety analyses.

During the refueling outage, 109 fuel assemblies will be reinserted, similar to those previously used, and 68 fuel assemblies will be discharged and replaced by new but substantially similar assemblies of the Mark BZ type. Additionally, Cycle 8 will incorporate gray (less-absorbing) axial power shaping rods (APSRs) instead of the previously used black (highly-absorbing) APSRs.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Example (iii) of the types of amendments not likely to involve significant hazards considerations is an amendment to reflect a core reload where:

(1) No fuel assemblies significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

This particular reload involves the reinsertion of 109 fuel assemblies of a type previously approved and used and the insertion of 68 fuel assemblies of the Mark BZ type. The Mark BZ fuel assemblies are the same as previously approved assemblies in terms of fuel rods, end grid, end fittings, and guide tubes and differ only slightly in the use of Zircaloy spacer grids rather than Inconel Intermediate Spacer grids. The use of the Mark BZ fuel assembly has been previously reviewed and approved by the Commission.

The Cycle 8 control rods differ from those of Cycle 7 in that gray APSRs are to be utilized instead of the previously used black APRSs. The gray APSRs have a grater absorber length than the APRSs used in previous reloads and utilize an Inconel absorber instead of the Ag-In-Cd alloy. According to the analyses described in DPC-RC-2004, "Oconee Unit 2, Cycle 8 Reload Report," the gray APSRs will not adversely affect Cycle 8 operation. The Commission has previously approved the use of gray APSRs.

Thus, this core reload involves the use of fuel assemblies and control rods that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The request for amendment changes the TSs to reflect new operating limits based on the fuel and control rods to be inserted into the core. These parameters are based on the new physics of the core and fall within the acceptance criteria.

In the analyses supporting this reload, there have been no significant changes in acceptance criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and the regulations were not significantly changed, and those analytical methods have previously been found acceptable. Thus, this reload and the proposed license amendments reflecting it appear to be encompassed by example (iii) of amendments not likely to involve significant hazards considerations. On this basis, the Commission proposes to determine that these amendments do not invovle significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: November 4, 1984.

Description of amendment request: This is an application for an amendment to Operating License DPR-66, revising the Technical Specifications to reflect the flow assumptions used for the postulated rod bank withdrawal accident in the Updated Final Safety Analysis Report. The assumed flow during Mode 3, hot shutdown, is ensured by use of two of the three operating reactor coolant loops. Currently, the specifications require only one loop be in operation for Mode 3. The proposed change would require that two loops be in operation for Mode 3.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these, Example (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The requested change matches the example and the staff, therefore, proposes to characterize it as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg,

Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: December 3, 1984.

Description of amendment request: The proposed amendment would make changes to the Technical Specifications for D. C. Cook Nuclear Plant Unit Nos. 1 and 2 to require at least two reactor coolant loops be in operation during mode 3 unless the reactor trip breakers were disconnected and to require at least one reactor coolant loop be in operation if the reactor trip breakers are disconnected.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (i) of an action not likely to involve a significant hazards consideration is a purely administrative change to technical specifications for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed change is like this example in that the Final Safety Analysis Report was prepared and reviewed on the basis of two reactor coolant loops in operation during mode 3 unless the reactor trip breakers were disconnected and then only one loop need be in operation. The original Technical Specifications incorrectly requires only one loop be in operation in mode 3, hot standby. The proposed change is to correct the error in the Technical Specifications. On the basis of the above, the Commission proposes to conclude that the proposed changes involves a no significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Pennsylvania Power & Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: October 31, 1984.

Description of amendment request: The purpose of the amendment is to request a change in the Unit 1 Technical Specifications Table 3.3.2-2. The licensee is proposing that the setpoint for MSIV isolation on reactor vessel water level be changed from Level 2 to Level 1 in order to reduce the number of challenges to the Safety Relief Valves (SRV). The change is consistent with the NRC recommendations in Item 16 of NUREG-0737 Section II.K.3, "Reduction of Challenges and Failures of Relief Valves—Feasibility Study and System Modification."

Basis for proposed no significant hazards consideration determination: The licensee in his letter dated October 31, 1984, stated that the proposed change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in margin of safety. The NRC staff agrees with the licensee's evaluation in this regard and proposes to find the proposed changes to Technical Specification Table 3.3.2-2 involve no significant hazards consideration. The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration, example (vi), is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The change to Table 3.3.2-2 may constitute a reduction in some way of the safety margin, but is still within all acceptable criteria with respect to the system or component. Therefore, the proposed change is encompassed by this example and on that basis the NRC staff proposes to find this proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: November 13, 1984.

Description of amendment request: The purpose of the amendment request is to propose changes to the Susquehanna Steam Electric Station Unit 1 Technical Specification to incorporate the changes necessary to support the plant modifications required to comply with License Condition 2.C.(17)(b)(2). The changes proposed in Tables 2.2.1-1, 3.3.1-1, 3.3.1-2, and 4.3.1.1-1 reflect the addition of a level transmitter to indicate Scram Discharge Volume Water Level-High. Previously only a float switch was used for indication. In Table 3.3.6-1 the proposed change imposes an additional restriction by increasing the minimum number of operable channels necessary per trip function from one to two. The final proposed change on page 3/4 6-33 is administrative in nature. The addition of footnote ** "Initial setpoint. Final setpoint to be determined during startup testing following the first refueling outage. Any required change to this setpoint shall be submitted to the Commission within 90 days of test completion" allows the licensee to verify through testing the previously calculated setpoint and correct the calculated value if necessary. This change clarifies the fact that the setpoint contained in the technical specifications is a calculated value requiring verification through testing.

Basis for proposed no significant hazards consideration determination: The licensee in his letter dated November 13, 1984, proposed that the modifications do not involve a significant hazards consideration. The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration, example (ii) involves a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: For example, a more stringent surveillance requirement. All the proposed technical specification changes except for the last constitute an additional limitation and, thus, fall within example (ii) of actions not likely

to involve significant hazards considerations. The last proposed change is administrative and therefore example (i)–a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature—applies. Based on the above discussion the NRC staff proposes to find that the above changes do not involve a significant hazards consideration.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of amendment request: September 7, 1984.

Description of amendment request: The proposed amendment would revise the Unit 2 Technical Specifications to: (1) Establish operating limits for all fuel types for the upcoming Cycle 7 operation; (2) establish the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) for all fuel types for Cycle 7 operation; (3) permit operation with hafnium (General Electric Hybrid I) control rods; (4) modify bases to delete reference to specific shutdown margin provided by Stanby Liquid Control System to reduce need for future cycle dependent revisions; and (5) modify that MAPLHGR reduction function for single loop operation. These changes were proposed in connection with the Cycle 7 refueling outage for Unit 2.

Basis for proposed no significant hazard consideration determination: The requested amendment to the Peach Bottom Atomic Power Station, Unit 2, operating license is being submitted in support of the upcoming Cycle 7 core reload. The requested amendment will incorporate Technical Specification (TS) changes as diescussed in the evaluation accompanying the licensee's application. The Cycle 7 core design would require the loading of 292 new fuel assemblies, approximately one-third of the reactor core. The new fuel assemblies are similar to the other fuel assemblies in the core except for the addition of barrier cladding used to reduce cladding failures due to pellet clad interaction. The proposed TSs would also change: (1) The operating limit minimum critical power ratio (MCPR) values for all fuel types for Cycle 7 operation; and (2) would incorporate the maximum average planar linear heat generation rate (MAPLHGR) versus planar average exposure curves for the new fuel assemblies. The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (48 FR 14870). An example of an amendment that is not likely to involve a significant hazards consideration is "(iii) * * *, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and the NRC has previously found such methods acceptable".

The Commission's staff considers the above two changes to be similar to example (iii) because the staff has previously reviewed the barrier cladding fuel design and found that the addition of the Zirconium liner to the cladding does not result indifferent operating characteristics or safety margins from those of the non-barrier fuel. The proposed change in the operating limit MCPR causing a reduction in values will not decrease the safety margin because the core loading Cycle 7 refueling is such that calculations indicate that transients would be milder than those of the previous cycle and would result in small changes in the MCPR values. Thus, the probability of reaching the safety limit MCPR during operation is not increased. No changes in the previously accepted analytical methods used to demonstrate conformance with the Technical Specifications and regulations are involved. Therefore, no significant difference in safety to the public is expected from substituting the barrier cladding fuel for some of the non-barrier fuel that has been used during previous cycles or from slightly reducing the operating limit MCPR values.

The third proposed change would reflect the use of the hybrid design hafnium control rod assemblies. These assemblies will be used to replace standard control rod assemblies during the Unit 2 refueling outage. The Hybrid I Control Rod (HICR) Assemblies have been designed by General Electric (GE) to be used as direct replacement for the present control rod assemblies. The original control rods contained only boron carbide, B_4C, as the absorbing material. The new assembly design uses B_4C absorber cubes and three solid hafnium rods in the outside edge wing. This new design will lengthen control rod lifetime.

The description of these control rods was submitted to the NRC by General Electric in topical report NEDE–22290. Based on the staff's evaluation of the information provided in (a) NEDE–22290, (b) a meeting with GE representatives, and (c) responses to NRC staff questions, the staff concluded that there is reasonable assurance that the substitution of Type I HICRs for other approved GE control rod blades will not result in unacceptable hazards to the public and should, in fact, result in improved control blade performance and a positive contribution to reactor safety.

A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety. The staff has reviewed the proposed change and the related topical report. The licensee concludes that the proposed change does not involve a significant hazards consideration, and based on the following discussion, the staff concur with the conclusion.

The materials evaluation, which includes the chemical, physical, mechanical and irradiation properties, indicates that data and experience demonstrate acceptable corrosion resistance in high temperature water and steam for hafnium in BWR control rods. The physical properties expected to be germane to control applications indicate acceptable performance in the BWR environment.

The mechanical evaluation indicates that the thermal expansion and irradiation growth of hafnium will not interfere with the velocity limiters.

A nuclear evaluation indicates that the HICR will have no significant impact on core and fuel operation when used as a replacement for the current B_4C control rod assemblies. Experiments

provide critical benchmarks for calculations and illustrate a minimum impact on local power and flux distributions with all hafnium rods. An even smaller impact is expected for HICR which is a mixture of hafnium and B_4C. Therefore, the HICR can be used without change in the current rod assemblies and current design procedures.

Thermal-hydraulic evaluation shows that the maximum temperature of the new rods is not significantly different from the currently used control rod assemblies.

An accident evaluation shows that the HICR weight and envelope are identical to the current assemblies. The mechanical and nuclear properties of the HICR do not differ from the current asssemblies in any measures that might be significant during normal or accident conditions. The HICR is, except for minor differences, mechanically identical to the BWR assemblies for which many reactor years of safe operating experience are available. Accordingly, the mechanical safety analysis for the HICR is enveloped by the mechanical safety analyses for the current assemblies.

The reactor core response for the HICR design has been evaluiated against the current control rod design for comparison with linear heat generation, minimum critical power ratio and maximum average planer heat generation limits. The HICR weight and rod worth are the same as the current rod design, therefore the scram speed and scram reactivity are the same, and the above limits are not affected by the change.

Based on the above, the staff has determined that: (1) the probability of occurence or the consequences of an accident would not be increased above those analyzed in the Final Safety Analysis Report (FSAR) because the weight and envelope of the HICR are identical to those of the currently used assemblies, and the nuclear and mechanical properties of the HICR do not differ from currently used assemblies in a significant way: (2) the possibility of an accident different from those analyzed in the FSAR would not result from these changes because, in addition to the above, these systems would not be operated in manner new or different from that described in the FSAR; and (3) the margin of safety provided by Technical Specifications would not be reduced because the proposed change involves no significant relaxation of the criteria used to establish safety limits, no significant relaxation of the bases for limiting safety system settings, and no signficant relaxation in limiting conditions for operation. Therefore, the staff finds that operation of the facility in accordance with the above proposed change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident; (3) involve a significant reduction in a margin of safety.

The fourth proposed change would delete from the Bases of the Peach Bottom Unit 2 TSs reference to a specific numerical shutdown margin (SDM) provided by the Standby Liquid Control System (SLCS) The SLCS capability is providied as part of the standard Peach Bottom Reload Supplement and is routinely reviewed by the NRC staff. The licensee states that this proposed change is in accordance with the NRC approved reload licensing procedures ("General Electric Standard Application for Reactor Fuel", General Electric Report NEDE-24011-P-A). The staff had previously approved a similar requested change as part of the Peach Bottom Unit 3 reload.

Based on the above, the staff has determined that: (1) The probability of occurrence or the consequences of an accident would not be increased above those previously evaluated because the actual value of the SDM will be provided and available for staff review for each refueling cycle as part of the supplemental reload licensing submittals addressing the 660 parts per million of boron which is cited in the Bases to the Peach Bottom TSs; (2) the possibility of a new or different kind of accident from any accident previously evaluated would not result from this change because the TS requirement for the SLCS to bring the reactor from full power down to a subcritical condition would not be changed by this action; and (3) the margin of safety provided by the TSs would not be reduced because the proposed change in the Bases would not change the capability of the SLCS to bring the reactor, at any time in a fule cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive xenon-free state.

Finally, the amendment request would modify the MAPLHGR reduction factor for single loop operation (SLO) based upon the safety analyses for single loop operation provided in the GE Document NEDO-24229-1, June 1984. The licensee, as part of this reload analysis, checked the MAPLHGR reduction factors for SLO because of the introduction of the new barrier cladding fuel types discussed above. Based upon this review and reanalysis, a slight modification in reduction factor has been proposed in order to maintain the validity of the NRC approved SLO analysis. This change is a part of the reload analysis as discussed above. Since the new fuel assemblies are not significantly different from those found previously acceptable to the NRC for previous core reloads at this facility, and since no significant changes have been made to the acceptance criteria for the TSs by this change, and since the analytical methods used to demonstrate conformance with the TSs and regulations are not significantly changed by this action, and since the NRC has previously found such methods acceptable, the staff, therefore, has determined that the above fits example (iii) (referenced above) of a change not likely to involve a significant hazards consideration.

Since the amendment involves proposed changes for which no significant hazards considerations exists, the staff has made a proposed determination that this application for amendment involves no significant hazards consideration.

Local Public Document Room Location: Government Publication Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Public Service Electric and Gas Company, No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: March 27, 1984.

Description of amendment request: The proposed change would revise appropriate portions of the INDEX, DEFINITIONS, and ADMINISTRATIVE CONTROLS sections of Appendix A to the Technical Specifications, as attached, to reflect recent revisions to § 50.72 and the addition of § 50.73 to Title 10 of theCode of Federal Regulations which became effective on January 1, 1984.

Specifically § 50.73 states that: "The requirements contained in this section replace all existing requirements for licensees to report 'Reportable Occurrences' as defined in individual plant Technical Specifications", the reporting requirements incorporated into the "Administrative Controls" section of the Salem technical specifications would be changed to reflect the revised reporting requirements; the definition, "Reportable Occurrence" would be

replaced by a new term, "Reportable Event"; and, the Index would be updated.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the Standards for a No Significant Hazards determination by providing examples of actions not likely to involve a Significant Hazards Consideration in the **Federal Register** (48 FR 14870). One of the examples (vii) relates to changes that make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Based on the above, and since the proposed change involves actions that conform to the referenced example in 48 FR 14870, we have determined that this application for amendment involves no Significant Hazards Consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, D.C. 20006.

NRC Branch Chief: Steven A. Varga.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 1, 1983, as supplemented July 31, 1984.

Description of amendment request: This amendment would grant a one time exception to the requirements of section 4.4.4.1(d) of the Ginna Technical Specifications (TS). Section 4.4.4.1(d) requires that visual inspection of all containment tendons be done if more than 20 wires (out of the 14 tendons selected for inspection) have been broken since the last inspection.

Basis for proposed no significant hazards consideration determination: During July 1983, a scheduled containment tendon surveillance was undertaken by the licensee. A total of 18 tendons were to be visually inspected as well as undergo stress surveillance. The inspection of the first 12 tendons revealed no broken wires and no other anomalies. The lift-off tests showed that all tendon forces exceeded the TS minimum values.

Following the testing of the 12th tendon, the test equipment prematurely disengaged from the tendon head coupling causing damage to the components. An inspection conducted after the incident revealed that 24 of the 90, ¼-inch diameter steel wires were broken. Section 4.4.4.1(d) of the TS requires that all 160 tendons be inspected if more than 20 wires in 14 tendons are found to be broken since the last surveillance inspection.

The licensee requested an exception from this requirement for the following reasons:

(1) The intital inspection of tendon no. 75 and the other 11 tendons revealed no broken wires prior to the incident.

(2) The cause of the broken wires is attributable to the stressing equipment failure and not due to an unexplainable loss of tendon integrity.

(3) Adherence to the technical specifications would involve degreasing the tendon heads prior to conducting an inspection. The casing filler covering the tendon heads is a stiff, putty-like substance making degreasing operations a time-consuming orderal.

(4) Subsequent visual inspection of the four adjacent tendons in accordance with TS 4.4.4.1(e) revealed no broken wires.

(5) Subsequent lift-off testing of two of the four adjacent tendons yielded lift-off forces of 701 kips and 724 kips. Although predicitions are not available for these tendons, the results are within the range of other tendon forces, thus indicating that no significant change in lift-off force occurred in adjacent tendons.

No broken wires were found in the tendon inspection preceding the accident nor in the inspection of the remaining seven. The strength of the damaged tendon, not withstanding the loss of 24 of its 90 wires, proved to be compatible with the other adjacent tendons. Despite the damage to one tendon the calculated average force level of all the the tendons in the containment exceeds the minimum value required by the TS by 11.2 percent.

The Commission has provided guidance concerning the application of standards of no significant hazards consideration by providing certain examples (April 6, 1983, 48 FR 14870). These examples are not applicable to the proposed request. Accordingly, the question of no significant hazards consideration will be determined solely by the standards. The basis for concluding that the standards are met with respect to a no significant hazards consideration is presented below.

First Standard: Amendment does not significantly increase the probability or consequences of an accident previously evaluated. The wires were broken as the result of an accident, not through unknown deterioration. Further, the average force level of all of the containment tendons exceeds the minimum value required by the TS. Adequacy of the tendons has thus been verified and a one-time exception from the further inspection requirements of section 4.4.4.1(d) of the TS does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard: Amendment does not create the possibility of a new and different accident from any previously evaluated. The TS provide for additional inspections where there is damage to tendon wires from unknown causes. The requested one-time exception from additonal inspections where the cause of tendon wire damage is known and makes further inspections unnecessary does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard: Amendment does not significantly reduce a safety margin. The average force of all of the tendons is above the required minimum. Granting the requested exception from further inspection will not affect that force or otherwise affect tendon integrity and thus will not involve a significant reduction in a margin of safety.

Because the standards of 10 CFR 50.92 have been met, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue NW., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski, Chief.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: May 30, 1984.

Description of amendment request: This submittal supplements the request for amendment dated October 27, 1980, which was noticed in the **Federal Register** on December 21, 1983 (48 FR 56509). The submittal provides additional information supplementing the information in the October 27, 1980, submittal on the additional requirements proposed to ensure that proper means are available to provide redundant methods of decay heat removal. The Technical Specification revisions proposed in the October 27, 1980, application remain unchanged.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance

concerning the application of the standards for a no significant hazards determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications.

The May 30, 1984, submittal provides additional technical information to supplement the information in the submittal of October 27, 1980. The supplemental information does not change the proposed Technical Specifications. Therefore, our previous proposed determination that the proposed change does not involve a significant hazards consideration since it consists of an additional limitation on the operation of the facility not currently in the Technical Specifications remains unchanged.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, Claifornia.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: November 30, 1984.

Description of amendment request: This submittal is a revision to the request for amendment dated July 17, 1984 which was noticed in the monthly **Federal Register** notice on August 22, 1984 (49 FR 33373). This revision clarifies the July 17, 1984 submittal in response to the NRC's letter dated September 5, 1984. This amendment would approve changes to the Technical Specifications to include the requirement to limit the amount of overtime worked by plant staff members performing safety-related functions.

Basis for proposed no significant hazards consideration determination: Generic Letter 82-16 reque[illegible]d all Pressurized Water Power Reactor Licensees to review their Technical Specifications to determine if they were consistent with the guidance provided in the generic letter. For items where utilities identified deviations or the absence of a specification, they were requested to submit an application for a license amendment. In response to that request, the licensee for San Onofre 1 determined that there are no provisions in the Technical Specifications that address plant staff overtime. The Commission has provided guidance concerning the application of standards of no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions likely to involve no significant hazards consideration [example (ii)] relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. Since staff overtime limits are not addressed in the current Technical Specifications, the proposed change falls within the category of example (ii). Therefore, the staff proposes to determine that the requested action would involve a no significant hazards consideration determination in that it (1) does not involve a significant increase in the probability or consequences of a previously evaluated accident; (2) does not create the possibility of a new or different kind of accident from an accident previously evaluated; and (3) does not involve a significant reduction in a margin of safety.

Local Public Document Room location: San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: John A. Zwolinski.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 22, 1984.

Description of amendment request: The amendments would modify the Technical Specifications (TS) to:

1. Provide Limiting Conditions for Operation and Surveillance Requirements as necessary to permit the 161KV Trinity power transmission line and both common station service transformers to serve as an offsite power source to two operating units, and the 161KV Athens line and one common station service transformer to serve as an offsite power source to one operating unit, subject to the condition that the 161KV system is not used as a required offsite power source for more than two operating units. A cooling tower transformer could be substituted for a common station service transformer when no cooling tower pumps or fans are running.

2. Revise the setpoints and setpoint tolerance limits for Units 1 and 2 4KV shutdown board undervoltage relay timers. The setpoints and tolerance limits will be revised to reflect values achievable with pneumatic relays.

3. Revise text to more clearly identify acceptable offsite power source selections.

4. Revise text to more clearly identify 480VAC switchboard requirements. The boards will be identified individually rather than generically (i.e., change "480-V RMOV boards D and E" to "480-V boards 1D and 1E"). This will reduce confusion regarding shared equipment.

5. Remove the requirement to record weekly the temperature of the cells adjacent to the pilot cells of the unit batteries, diesel generator batteries, and shutdown board batteries, and replace it with a requirement to record the temperature of the pilot cells weekly.

6. Reword a surveillance requirement relating to automatic load sequencing to clarify that there is no load sequencer. (Load sequencing is accomplished by timers and relays.)

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include: "(i) A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement. (vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): For example, a change resulting from the application of a small refinement of a previously used calculational model or design method."

Change 1 may result in higher loads on certain components of the offsite power system and may thus affect the probability of loss of offsite power. This may in turn affect the probability or consequences of a previously-analyzed accident. However, the Athens and Trinity 161KV systems each meet the

SRP Chapter 8.2 acceptance criteria for an offsite power source and would thus be acceptably reliable. The proposed change is consistent with the acceptance criteria of SRP Chapter 8.2 and is encompassed by example (vi).

Change 2 involves more restrictive (conservative) requirements for certain Units 1 and 2 undervoltage relays, and less restrictive requirements for others. The former are encompassed by example (ii). For the latter, the revised setpoints and tolerance limits may result in some additional delay in protective actions. However, the revised requirements assure that the relay operating times will be less than the critical values stated in the TS. These changes conform to the acceptance criteria of Chapter 8.3.2 of the SRP and are therefor encompassed by example (vi).

Changes 3, 4 and 6 neither add, delete nor modify any requirements. The revised wording and nomenclature serves only to provide clarification of existing requirements. They are therefore administrative changes encompassed by example (i).

Change 5 modifies surveillance requirements for batteries and therefore may possibly increase the probability of loss of DC power. This may in turn affect the probability or consequences of a previously-analyzed accident. However, the revised requirements would be consistent with NUREG-0123, the Standard Technical Specifications (STS). The STS specify weekly surveillance of the pilot cell only. Since the STS serve as the basis for assessing conformance to the SRP Chapter 16 and the change is consistent with the STS, Change 5 is encompassed by example (vi).

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassalo.

Union Electric Company, Docket 50-483, Callaway Plan, Unit No. 1, Callaway County, Missouri

Date of amendment request: December 28, 1984

Description of amendment request: The purpose of the proposed amendment request is to revise License Condition 2.C.(3).(a) of Facility Operating License NPF-30 to incorporate a November 30, 1985 deadline for the environmental qualification of all safety-related electrical equipment. Section 50.49(i) of the Commission's Regulations, which is applicable to the Callaway Plant, does not appear to require the March 31, 1985 deadline currently in the license. The Callaway licensee has previously submitted Justification for Interim Operation (JIO's) which have addressed the requirements of 10 CFR 50.49(i) and will remain valid through November 30, 1985. The discussions in these JIO's ensure that the plant can be safely operated pending completion of equipment qualification. The staff has concluded that Union Electric Company has demonstrated conformance with the qualification requirements of 10 CFR 50.49 (Supplement 3 to Callaway Safety Evaluation Report, NUREG-0830, Section 3.11.5).

Precedents have been set regarding recently issued operating licenses that included November 30, 1985 qualification deadlines. In particular, Facility Operating License NPF-23 for Byron Station, Unit 1, issued subsequent to NPF-25 (Callaway low-power license), has a November 30, 1985 environmental qualification deadline. It is noted that the outstanding Westinghouse qualification programs are generic to Callaway and Byron.

Basis for proposed no significant hazards consideration determination: The licensee, in his letter of December 28, 1984, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; nor create the possibility of a new or different kind of accident or condition over previous evaluations; nor involve a significant reduction in a margin of safety. Based on the foregoing, the requested amendment does not present a significant hazard. The Commission has provided guidance concerning the application of the Standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). This amendment request is similar to the example of an action involving no significant hazards consideration which relates to a change to make the license conform to regulations, where the license amendment results in very minor changes to facility operations clearly in keeping with the regulations. The staff has made a significant hazards determination and has concluded that this amendment request does not result in a significant hazards consideration because previously submitted JIO's which have addressed the requirements of 10 CFR 50.49(i) will remain valid through November 30, 1985. The discussions in these JIO's ensure that the plant can be safely operated pending completion of equipment qualification.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri, 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 7, 1983, as supplemented October 22, 1984 and November 6, 1984.

Description of amendment request: This submittal supplements the request for amendment dated February 7, 1983 which was noticed in the **Federal Register** on April 25, 1984 (49 FR 17876). This supplements the request for amendment dated February 7, 1983 which was noticed in the **Federal Register** on April 25, 1984 (49 FR 17876). This supplemental request for Technical Specification (TS) change relates to the operability and testing requirements for hydraulic shock suppressors (snubbers).

The proposed changes were made in response to an NRC request to upgrade the testing requirements for all safety-related snubbers to ensure a higher degree of operability. The changes involve: Clarifying the frequency for visual inspection, stating the requirements for functional testing of snubbers which visually appear inoperable, the inclusion of a formula for the selection of representative sample sizes, and the clarifying of the testing acceptance criteria.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards considerations include changes that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related to hydraulic snubbers to clarify requirements and to

incorporate both operability and testing requirements. Since the requested changes upgrade the requirements for hydraulic snubbers, the staff proposes to determine that the application does not involve a significant hazards consideration, since the change is similar to the above example.

Local Public Document Room location: Brooks Memorial library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Wisconsin Electric Power Company, Docket No. 50-266, Point Beach Nuclear Plant, Unit No. 1, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 9, 1984 as modified November 14, 1984.

Description of amendment request: The application proposes changes to the Technical Specifications for Point Beach Unit No. 1. Specifically, the overtemperature and overpower delta T equations of Technical Specifications 15.2.3.1.B(4) and 15.2.3.1.B(5), respectively, would be modified to specify additional time constraints utilized in the measured delta T and average temperature lag compensations which are part of the instrumentation for the overpressure and overpower delta T circuitry.

Basis for proposed no significant hazards consideration determination: The licensee's proposed changes to the Technical Specifications for the overtemperature and overpower delta T equations are identical to those requested and recently issued for Point Beach Unit 2. The changes are needed because of the licensee's plans to use Westinghouse Optimized Fuel Assemblies during the next Unit 1 refueling outage. Sostman resistance temperature detectors (RTDs) previously installed in Unit 2 and presently installed in Unit 1 are unable to be accurately calibrated in accordance with new calibration procedures resulting from the licensee's use of Westinghouse Optimized Fuel Assemblies. The licensee determined that replacing Sostman RTDs with Rosemont RTDs, which are widely used in the industry, would satisfy the calibration difficulties. Westinghouse recommended that a two-second time-delay filter be used in conjunction with the Rosemont RTDs to minimize the potential for spurious reactor trips and runbacks.

The time delay associated with the Sostman RTDs is approximately equal to the combined time delay of the Rosemont RTDs plus the two-second time-delay filter. The filter had always been a part of the original design circuitry but was never analyzed because of the sufficient time delay associated with the Sostman RTDs. Using the filter in conjunction with the new Rosemont RTD time constant has necessitated that modifications be made to the overpower and overtemperature delta T equations to reflect the additional time constants in the equations.

From an analytical and electrical point of view, there is negligible difference between use of a Sostman RTD with no filter or a Rosemont RTD with a two-second filter. Indeed, the change to the overtemperature delta T and overower delta T equations requested in this application does no more than add a mathematical term $(1/1+t)$ which was always implicit in the equations in the existing Technical Specifications, but was never explicitly stated because, with the Sostman RTDs incorporating a built-in filter, t was equal to 0 and $1/1+0$ was equal to 1. Further, the licensee's proposed Technical Specifications conform to the overpower and overtemperature delta T equations of the Standard Technical Specifications.

Since the requested operational mode, plant operating conditions, the physical status of the plant, system response, and dose consequences of potential accidents are the same as without the requested change, the staff concludes that:

(1) Operation of the facility in accordance with the amendment would not significantly increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the amendment would not involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 26, 1984.

Description of amendment request: The application modifies an earlier amendment request dated March 16, 1984. A proposed no significant hazards consideration determination was made by the staff and notice was published in the **Federal Register** on June 20, 1984 (49 FR 25350 at 25381).

This application modifies the previous application by deleting shock suppressors (snubbers), Table 15.3.13-1, and references thereto in specifications in accordance with NRC Generic Letter 84-13, "Technical Specification for Snubbers", dated May 3, 1984. Additionally, Specification 15.4.13.2 has been changed to require the functional testing of a representative sample of approximately 10 percent of the safety-related snubbers. This change more accurately reflects the intent of the requirement of functional testing and makes the specfication independent of the number of safety-related snubbers.

This specification also incorporates recent organizational changes for senior management of Wisconsin Electric Power Company. Specifications 15.6.5.1, "Manager's Supervisory Staff", 15.6.5.3, "Off-site Review Committee", 15.6.6, "Reportable Occurrence Action", and 15.6.7, "Action to be Taken if a Safety Limit is Exceeded", and Figures 15.6.2-1 and 15.6.2-3 have been changed to reflect the creation of the position of Vice Chairman of the Board and elimination of the position of Executive Vice President. The application also corrects various typographical and clerical errors in the previous submittal and makes minor clarifying change such as that designation of the Duty and Call Superintendent by the Manager shall be in writing.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations is a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature. The changes in organizational titles, correction of

typographical and clerical errors and minor clarifying changes are of this type.

The changes related to safety related snubbers limiting conditions for operation and surveillance requirements follow the staff guidance contained in Generic Letter 84-13 dated May 3, 1984. The list of safety related snubbers has been deleted from the Technical Specifications. The provision that all safety related snubbers shall be subject to the limiting conditions for operation and surveillance requirements has been substituted in its place. The requirements have not changed other than to change the actual number of snubbers surveilled per interval to the percentage of the overall number of safety related snubbers. This would clarify the need for increasing the surveillance size should the licensee add new snubbers to the plant.

Deleting the listing of safety related snubbers from the Technical Specifications will not affect the operability and surveillance requirements of these snubbers. They will still be required to meet the limiting conditions for operation of the units. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Nor do they create the possibility of a new or different kind of accident from any accident previously evaluated. Because all of the limiting conditions for operation and the surveillance requirements remain essentially the same except for minor clarifications, the amendment do not involve a significant reduction in a margin of safety. Based on the original amendment application involve no significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Pennsylvania Power & Light Company, Docket No. 50-387, 50-388 Susquehanna Steam Electric Station (SSES), Units 1 & 2 Luzerne County, Pennsylvania

Date of amendment request: December 6, 1984.

Description of amendment request: The purpose of the proposed changes to the SSES Unit 1 and Unit 2 technical specifications is to avoid a forced shutdown of Unit 2 during the Unit 1 refueling outage. Presently, SSES Unit 2 currently depends on certain SSES Unit 1 125-volt batteries to support loads common to both units. As a result, Unit 1 batteries are listed in Unit 2 Limiting Conditions for Operating (LCOs) on the DC system. As the Unit 1 and Unit 2 Technical Specifications are now written whenever the Unit 1 125-volt batteries are unavailable Unit 1 and Unit 2 must shutdown after a short time period if the 125-volt power sources are not restored.

During the Unit 1 refueling outage (presently scheduled for February 1985) the Unit 1 batteries must undergo battery load profile testing. The battery tests are scheduled to be performed within the first week of the refueling outage. This battery load profile testing results in the unavailability of Unit 1 125-volt batteries forcing Unit 2 to shutdown during the aforementioned testing. The licensee is proposing to modify the 125-volt DC system in order to provide an alternative means of supplying common loads. This proposal includes providing a common load transfer scheme which will allow common loads to be powered from a 125-volt DC source on either unit through the use manual transfer switches. It should be noted that during normal operations of Unit 1 and 2 this proposed amendment only allows Unit 2 to remain operating upon loss of the Unit 1 125-volt DC power source. Provisions have been made in the proposed technical specification changes to provide for implementation of the common load transfer. Plant modifications will provide the hardware capability to feed the common loads from the Unit 1 and Unit 2 DC sources.

The Unit 1 Technical Specification changes reflect the addition of several action statements to instruct the operator to transfer common loads to the Unit 2 DC source upon loss of Unit 1 DC source. Additionally Unit 1 technical specifications make provision for the loss of the Unit 2 DC source subsequent to the loss of Unit 1 DC source. The Unit 2 Technical Specification changes reflect the addition of action statements to instruct the operator to transfer loads back to the Unit 1 DC source when the Unit 1 DC source is again operable. Provisions have also been made in the Unit 2 technical specifications for the loss of Unit 2 DC source when supporting common loads. The changes proposed allow increased operational flexibility in addition to adding a redundant feature, being the alternative means of providing 125-volt DC power source.

Date of publication of individual notice in Federal Register: January 7, 1985 (50 FR 904).

Expiration date of individual notice: February 7, 1985.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 2, 1984, as supplemented October 22, 1984.

Brief description of amendment: These revisions would permit higher settings in normal full power background trip level setting for the main Steam Line High Radiation scram and isolation setpoints to accommodate a scheduled short-term test. This test would examine the potential of hydrogen addition to the feedwater as a means of mitigating stress corrosion cracking.

Date of publication of individual notice in Federal Register: December 14, 1984 49 FR 48842.

Expiration date of individual notice: January 14, 1985.

Local Public Document Room location: Penfield Library, State University College at Oswego, Oswego, New York.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: October 16, 1984, revised November 8, 1984.

Brief description of amendment: The amendment would revise the Technical Specifications to allow on a one time only basis, the extension of the definition of refueling interval from 18 months to two months beyond the

maximum 25% extension for performance of the refueling interval surveillance test of the Reactor Internal Vent Valves. The temporary definition of the refueling interval for the reactor Internal Vent Valves will expire on startup from the 1985 refueling outage.

Date of publication of individual notice in **Federal Register**: December 20, 1984, 49 FR 49528.

Expiration date of individual notice: January 22, 1985.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amened (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date for application for amendments: July 6, 1984.

Brief description of amendments: Technical Specifications are modified to remove the listings of snubbers (Table 3.7-4a) in accordance with Commission direction of Generic Letter 84-13. Other administrative changes and typographical corrections are also made.

Date of issuance: December 19, 1984.

Effective date: December 19, 1984.

Amendment Nos.: 55 and 46.

Facilities Operating License Nos. NFP-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 22, 1984 (49 FR 33354).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1984.

No siginficant hazards consideration comments were received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date for application for amendments: November 2, 1984.

Brief description of amendments: Technical Specifications. Administrative Controls Section 6, is revised to delete "8-hour work day" but to maintain the nominal 40-hour work week.

Date of issuance: December 26, 1984.

Effective date: December 26, 1984.

Amendment Nos.: 56 and 47.

Facilities Operating License Nos. NFP-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 21, 1984 (49 FR 45942).

The Commission's related evaluation of the amendment is contained in a Safety Evaulation dated December 26, 1984.

No significant hazards consideration comments were received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: October 15, 1985.

Brief description of amendment: The amendment reflects, in the Technical Specifications, the actual number of instrument channels for the detection of pressurizer level, which will be available following modifications to upgrade these instruments during the sixth refueling outage.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No: 89.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1984 (49 FR 45677).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: October 9, 1984.

Brief description of amendment: The amendment revises the TSs to allow the ten-year hydrostatic test of the secondary system to be performed using steam in lieu of water.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No: 90.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1984 (49 FR 45680).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: September 12, 1984, as supplemented November 8, 1984.

Brief description of amendment: The amendment revises the TSs by providing operating requirements, limiting conditions for operation, and surveillance requirements for the upgrades in the Emergency Feedwater System and reflects the deletion of the Steam Line Break Instrumentation and Control System.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No: 91.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1984 (49 FR 45676).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: September 26, 1984, as supplemented October 31, 1984.

Brief description of amendment: The amendment revises the TSs to support the operation of ANO-1 at full rated power during the Cycle 7.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No: 92.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1984 (49 FR 45679).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit 1 and Unit 2, Pope County, Arkansas

Date of application for amendment: October 31, 1980 as supplemented and revised August 23, 1983 and July 11, 1984.

Brief description of amendment: The amendments revised the Technical Specifications (TS) to incorporate hdrogen/oxygen concentration limitations and hydrogen/oxygen monitoring requirements in the ANO 1 & 2 radioactive waste gas systems.

Date of issuance: January 14, 1985.

Effective date: January 14, 1985.

Amendment Nos.: 93 and 61.

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983, 48 FR 38387; November 22, 1983, 48 FR 52805, and September 28, 1984, 49 FR 38393.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 1985.

No significant hazards consideration comments received. No

Local Public Doucment Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 9, 1984 and June 29, 1984.

Brief description of amendments: The amendments changed the Unit 1 and Unit 2 Technical Specifications (TS) to reflect: (1) A change to the surveillance requirements for fire pumps to allow an alternate test method, (2) correction of a typographical error in a Unit 1 fire pump surveillance test, (3) clarification and correction of a typographical error concerning fire hose stations, (4) clarification of operability requirements for the component cooling water system, (5) clarification of valve surveillance for component cooling, service water and salt water systems, and (6) provisions for backup instrumentation for the remote shutdown, wide range neutron flux instrumentation.

These changes to the TS are in partial response to the applications dated April 9, 1984 and June 29, 1984. The remaining issues addressed in these applications will be addressed in future correspondence.

Date of issuance: January 14, 1985.

Effective date: January 14, 1985.

Amendment Nos.: 97 and 79.

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38390 at 38393).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power and Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of application for amendment: May 7, 1984.

Brief description of amendment: The amendment revises the Appendix A Technical Specifications to add a limiting condition for operation and basis for backfeeding safety related busses through the main and unit auxiliary transformers.

Date of issuance: January 2, 1985.

Effective date: January 2, 1985.

Amendment No. 88.

Facility Operating License No. DPR-23: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33361) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of application for amendment: These amendments change the La Salle Unit 1 and Unit 2 Technical Specifications consistent with a design change in the location of the reactor water cleanup (RWCU) pumps to a point in the system containing lower temperature water. The Technical Specifications change eliminates the requirement to specify limits on the ambient and differential temperature measrement in the RWCU pump rooms in Tables 3.3.2-1, 3.3.2-2, 3.3.2-3, and 4.3.2.1-1 because the ambient and differential temperature trip setpoints for these temperature channels (set at

temperatures for equivalent leakage) are very near normal operating temperatures. This has caused spurious isolation (no leaks present). Because of the change in the location of these pumps, these temperature channels and their logic trip inputs are unnecessary. Sufficient diversity remains to ensure that RWCU leakage in the pump rooms is monitored and promptly will be isolated.

Date of issuance: January 8, 1985.

Effective date: January 8, 1985.

Amendment Nos: 20 and 7.

Facility Operating Licenses No. NPF-11 and NPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45946). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1985.

No significant hazards consideration comments received: None.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Consolidated Edison Company of New York, Docket Nos. 50-3 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: September 29, 1983.

Brief description of amendment: The amendments revise Figures 3.1 and 3.2 of the Indian Point Unit No. 1 Technical Specifications and Figures 6.2.1 and 6.2.2 of the Indian Point Unit No. 2 Technical Specifications thereby consolidating the fire protection responsibilities of the Fire Protection and Safety Administration with those of the Fire and Property Protection Engineer. The amendment also changes the number of copies of the monthly operating report sent to the Office of Inspection and Enforcement and deletes the requirement to send the report to the Office of Management Information and Control.

Date of issuance: January 10, 1985.

Effective date: January 10, 1985.

Amendment Nos: 33 and 92.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17857). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 10, 1985.

Significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 14, 1983, as supplemented June 29, 1984.

Brief description of amendment: The amendment to the Technical Specifications modifies the definition of the term "Operable" as it applies to a single-failure criterion for safety systems. Certain editorial and format changes were also made.

The modification to the term operable was initially proposed by a February 14, 1983 license amendment application. This definition of operable alone was not consistent with the required definition contained in NRC's April 10, 1980 generic letter. However, supplemental modifications contained in a June 29, 1984 licensee amendment application provided a definition consistent with NRC requirements. The original license amendment application dated February 14, 1983 was not specifically noticed in the **Federal Register.** However, acceptable notice was accomplished through noticing of the June 29, 1984 application which referenced the February 14 application repeatedly.

Date of issuance: December 26, 1984.

Effective date: December 26, 1984.

Amendment No.: 91.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38396).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1984.

Significant hazards consideration comments received: No.

Lcoal Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: April 4, 1983 and August 23, 1984.

Brief description of amendment: The amendment modifies the Appendix A Technical Specifications by adding requirements which restrict overtime of certain plant personnel and require reporting of all indicated operations of primary system safety valves for pressure relief purposes.

Date of issuance: January 8, 1985.

Effective date: January 8, 1985.

Amendment No.: 38.

Provisional Operating License No. DPR-45. Amendment revised the Appendix A Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38400) and October 24, 1984 (49 FR 42816).

The Commission's related evaluation for the license amendment is contained in a Safety Evaluation dated January 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 14, 1983.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to allow air lock leak tests be performed only upon completion of maintenance that could affect the air lock sealing capability. This amendment involves an exemption to Section III.D.2(b)(ii) of Appendix J of 10 CFR Part 50; the exemption was granted on November 19, 1984. Also, Amendment Nos. 75, 82 and 83 have been issued on all other issues addressed by this request.

Date of issuance: November 19, 1984.

Effective date: November 19, 1984.

Amendment No.: 85.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49585). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: May 21, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to reflect the revised capsule removal schedule recommended by Westinghouse Topical Report WCAP-

9860. The Bases have also been revised to reference 10 CFR Part 50 Appendix H for capsule removal and evaluation. The changes would bring the surveillance schedule into conformance with Appendix H, "Reactor Vessel Material Surveillance Program Requirements" of 10 CFR Part 50.

Date of issuance: November 19, 1984.

Effective date: November 19, 1984.

Amendment No.: 86.

Facility Operating License No. DPR-66: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 24, 1984 (49 FR 29907). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: June 25, 1984

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to detach the schedule for the containment Type A leak test from the schedule of inservice inspection. An exemption from 10 CFR Part 50, Appendix J, Section III.D.1(a), was granted on December 5, 1984, allowing that this amendment be issued. The new technical specification still requires that Type A leak tests be done at 40± 10-month intervals even though they no longer need to be performed in conjunction with inservice inspection.

Date of issuance: December 31, 1984.

Effective date: December 31, 1984.

Amendment No: 87.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1984 (49 FR 33363). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: September 5, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to conform with guidance provided in the Standard Technical Specifications as follows: (1) The requirement to inspect in-containment areas where fire detection instruments have become inoperable has been changed from once per hour to once per 8 hours, or to monitor containment air temperature at selected locations once per hour. (2) The requirement to perform channel functional test on fire detection instruments not accessible during plant operation has been changed from once every 6 months to "during cold shutdown exceeding 24 hours." (3) The reporting requirement for inoperable fire detection instrument has been changed to comply with 10 CFR 50.72 and 50.73.

Date of issuance: December 31, 1984.

Effective date: December 31, 1984.

Amendment No: 88.

Facility Operating License No. DPR-66: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 24, 1984 (49 FR 42818). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: May 21, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to revise miscellaneous fire protection specifications and their bases.

Date of issuance: January 4, 1985.

Effective date: January 4, 1985.

Amendment No.: 89.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 24, 1984 (49 FR 29908) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Janaury 4, 1985.

No significant hazards consideration comments received: None.

Local Public Document Room Location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendment: October 18, 1984, supplementing the request of September 5, 1984.

Brief description of amendment: The revision to the Technical Specifications changes the Limiting Conditions for Operation, the surveillance requirements and supporting basis for the High Pressure Coolant Injection Steam Line High Differential Pressure trip function.

Date of issuance: December 27, 1984.

Effective date: December 27, 1984.

Amendment No.: 104.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 21, 1984, 49 FR 45951 The Commission's related evaluation of the amendment is contained in the Safety Evaluation supporting Amendment No. 103 dated December 7, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 8, 1984.

Brief description of amendment: The amendment to Technical Specifications makes changes to Section 6.0, Administrative Controls.

Date of Issuance: December 27, 1984.

Effective date: December 27, 1984.

Amendment No.: 78.

Provisional Operational License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 21, 1984 (49 FR 45953). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 27, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 4, 1983 as supplemented February 8, 1984.

Brief description of amendment: The amendment to Technical Specification, Section 3.1, raises the high drywell pressure setpoint from 2.0 psig to 2.4 psig.

Date of Issuance: January 11, 1985.

Effective date: January 11, 1985.

Amendment No.: 79.

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 21, 1985 (49 FR 45952). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 11, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: April 6, 1983, as supplemented July 29, 1983, October 17, 1983 and July 25, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate the Radiological Effluent Technical Specifications (RETS) for Duane Arnold Energy Center (DAEC).

Date of issuance: January 14, 1985.

Effective date: January 1, 1986.

Amendment No.: 109.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 23, 1983 49 FR 38406 and July 24, 1984 49 FR 29914.

The July 25, 1984 submittal did not change the July 29, 1983, or October 17, 1983 submittals; it requested an effective date of January 1, 1986; therefore no additional notice was issued.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: June 19, 1984.

Brief description of amendment: The amendment modified the Maine Yankee Technical Specifications to comply with changes to 10 CFR 50.54(m)(2) and (3) and 10 CFR 50.73.

Date of issuance: December 26, 1984.

Effective date: December 26, 1984.

Amendment No.: 79.

Facility Operating License No. DPR-36. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 22, 1984 (49 FR 33353 at 33365).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 7, 1982 as supplemented September 26, 1983 and May 22, 1984.

Brief description of amendment: This amendment modified the Maine Yankee Technical Specifications concerning containment integrity, to conform more closely with the Standard Technical Specifications.

Date of issuance: December 26, 1984.

Effective date: Within 30 days of the date of its issuance.

Amendment No.: 80.

Facility Operating License No. DPR-36. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 20, 1983 (48 FR 33076), November 22, 1983 (48 FR 52804) and August 22, 1984 (49 FR 33353 at 33365). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of application for amendment: March 7, 1984, as supplemented April 10, 1984, July 19, 1984 and November 15, 1984.

Brief description of amendment: This amendment revises the Technical Specification to incorporate the Radiological Effluent Technical Specifications (RETS) for Cooper Nuclear Station.

Date of issuance: December 24, 1984.

Effective date: July 1, 1986, except for the following sections of the RETS which are effective January 1, 1985:

a. Section 3.21.F,

b. Section 4.21.F, and

c. Tables 3.21.F.1 and 3.21.F.2 and associated notes.

Amendment No.: 89.

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1984 48 FR 38404 and November 21, 1984 49 FR 45956.

The November 15, 1984 submittal did not change the March 7, 1984, April 10, 1984, or July 19, 1984 submittals, it provided information to justify the effective dates of implementation; therefore, no additional notice was issued.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of application for amendment: February 29, 1984, as supplemented July 18, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to (1) incorporate changes proposed in response to TMI Action Plan Items set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements" and requested by the staff's Generic Letter 83-36, (2) add four additional fire detectors located near the service water pumps to the list of fire detection instruments in Table 3.14 and correct the indentification numbers of two fire detectors listed in that table, and (3) clarify a setpoint on Table 3.2.B for the Reactor Core Isolation Cooling System.

Date of issuance: January 3, 1985.

Effective date: January 3, 1985.

Amendment No.: 90.

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1984 49 FR 21831 and September 28, 1984 49 FR 38402.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Pennsylvania Power & Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of applications for amendment: December 8, 1983 and May 3, 1984.

Brief description of amendment: This amendment changes License Condition 2.G. of Facility Operating License No. NFP-14 to be consistent with NRC rule changes effective January 1, 1984. This amendment also incorporates Change S to the Physical Security Plan into License Condition 2.D.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No.: 27.

Facility Operating License No. 14: Amendment revised License Conditions.

Date of initial notice in Federal Register: May 23, 1984 (21833-21834) and September 28, 1984 (38406-38407), respectively. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power & Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of applications for amendment: May 3, 1984.

Brief description of amendment: This amendment changes License Condition 2.D. of Facility Operating License No. NFP-22 to incorporate Change S to the Physical Security Plan.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No.: 4

Facility Operating License No. 22: Amendment revised License Conditions.

Date of initial notice in Federal Register: September 28, 1984 (38406-38407). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, et al. Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 28, 1983, supplemented March 27, 1984.

Brief description of amendment: The amendment makes numerous changes to the Radiological Effluent Technical Specifications (RETS) to comply with Appendix I of 10 CFR Part 50 developed for the purpose of keeping releases of radioactive materials to unrestricted areas as low as is reasonably achievable.

Date of issuance: December 20, 1984.

Effective date: January 1, 1985.

Amendment No.: 99

Facility Operating License No. NPF-1. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 20, 1983, (48 FR 33076 at 33085) and September 28, 1984 (49 FR 38390 at 38407). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No comments received.

Location of Local Public Document Room: Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: December 28, 1983.

Brief description of amendment: The amendment revises Table 6.2-1, "Minimum Shift Crew Composition", to allow the duties of the Shift Technical Advisor and licensed Senior Operator to be combined.

Date of issuance: January 9, 1985.

Effective date: January 9, 1985.

Amendment No.: 100.

Facility Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 26, 1984 (49 FR 3351). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 1985.

No significant hazards consideration comments received: No comments received.

Location of Local Public Document Room: Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: September 27, 1984.

Brief description of amendment: Changes the fire hose stations numbering sequence as shown in Table 4.10-7 of the Technical Specifications to provide a sequence which uniquely identifies the location of the station.

Date of issuance: January 3, 1985.

Effective date: January 3, 1985.

Amendment No.: 46.

Facility Operating License No. DPR-34: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 21, 1984 (49 FR 45963). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 30, 1984.

Brief description of amendment: The amendment modifies the March 14, 1983 Confirmatory Order regarding items set forth in NUREG-0737 for which the staff requested completion on or after July 1, 1981. The schedule for completion of Item III.D.3.4, Control Room Habitability, is changed from July 1984 to September 30, 1984.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No.: 10

Facility Operating License No. DPR-18. Amendment revised the license.

Date of initial notice in Federal Register: October 24, 1984 (49 FR 42829).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 155 South Avenue, Rochester, New York 14604.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: February 22, 1984.

Brief description of amendment: The amendment modifies the Technical Specification reporting requirements to be in accordance with new regulation 10 CFR 50.73.

Date of issuance: January 2, 1985.

Effective date: January 2, 1985.

Amendment No.: 35.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 28, 1984 (49 FR 38406) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 1985.

No significant hazards consideration comment received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: April 6 and 27, September 11, 1984.

Brief description of amendments: The amendments change Technical Specification 3/4.3.2 concerning control room toxic gas isolation system setpoints.

Date of issuance: January 9, 1985.

Effective date: January 9, 1985.

Amendment Nos.: 29 and 18.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the Technical Specifications.

Dates of initial notices in Federal Register: September 28, 1984 (49 FR 38409). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1985.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: April 10, August 1 and 7, 1984.

Brief description of amendments: The amendments change Technical Specification 3.1.3, "Movable Control Element Assemblies," to (1) require a reduction in core power after the detection of a CEA deviation, (2) require that the regulating CEA groups be limited to the Short Term Steady State Insertion Limits when COLSS is out of service, and (3) restrict part length CEA positions to the core power dependent insertion limits.

Date of issuance: January 9, 1985.

Effective date: January 9, 1985.

Amendment Nos.: 30 and 19.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the Technical Specifications.

Dates of initial notices in **Federal Register**: October 24, 1984 (49 FR 42831). The Commission's related evaluation of the amendment is contained in a Safety evaluation dated January 9, 1985. No significant hazards consideration comments were receive.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: March 2 and April 2, 1984.

Brief description of amendments: The amendments change Technical Specifications relating to radiation and radioactive effluent monitoring instrumentation.

Date of issuance: January 11, 1985.

Effective date: January 11, 1985.

Amendment Nos.: 31 and 20.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the Technical Specifications.

Dates of initial notices in **Federal Register**: November 21, 1984 (49 FR 45969). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1985.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia

Date of application for amendment: August 20, 1982, supplemented by letters dated October 21, 1982, June 16, 1983, July 25, 1983, September 13, 1983, October 28, 1983, November 10, 1983, December 6, 1983, April 10, 1984, May 8, 1984 and May 18, 1984.

Brief description of amendment: The amendments revise the capacity of the Spent Fuel Storage Pool at NA-1&2. Specifically, the NA-1&2 Technical Specification 5.6.1 identifies a new nominal center-to-center spacing between fuel assemblies of 10 and 9/16 inches. In addition, the NA-1&2 TS 5.6.3 is revised to modify the spent fuel storage capacity to 1737 fuel assemblies. Finally, the amendments revise the NA-1&2 TS 5.6.1 and 5.6.3 to be identical with the NRC approved TS 5.6.1 and 5.6.3 in order to provide consistency between the NA-1&2 TS.

Date of issuance: December 21, 1984.

Effective date: December 21, 1984.

Amendment Nos. 61 and 45.

Facility Operating License Nos. NPF-4 and NPF-7. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 22, 1982 (47 FR 41893) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 2, 1984 and an Environmental Assessment dated July 2, 1984.

No significant hazards consideration comments received: Yes.

(1) Petition to intervene of Louisa County, Virginia and Board of Supervisors of Louisa County, Virginia dated October 22, 1982.

(2) Petition to intervene of Concerned Citizens of Louisa County, Virginia dated October 22, 1982.

Disposition of above Petitions:

(1) By Order dated May 22, 1984 the Atomic Safety and Licensing Board granted Louisa County's request for withdrawal as an intervening party in Case OLA-2 (expansion of the spent fuel storage capacity for North Anna Units 1 & 2.)

(2) By Memorandum and Order dated October 15, 1984, the Atomic Safety and Licensing Board denied Concerned Citizens of Louisa County's petition for leave to intervene in Case OLA-2. The Board order authorized the Director of Nuclear Reactor Regulation to issue amendments to Facility Operating Licenses No. NPF-4 and No. NPF-7 which permit expansion of the spent fuel storage for North Anna Units 1 & 2 from 966 to 1737 fuel assemblies.

(3) By Memorandum and Order dated November 20, 1984, the Atomic Safety and Licensing Appeal Board ruled that Concerned Citizens of Louisa County's appeal from the Licensing Board's Memorandum and Order of October 15, 1984 in Case OLA-2 was dismissed.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application of amendments: September 25, 1984.

Brief description of amendments: The amendments change the effective date of previously issued amendments 84 and 88 to Facility Operating Licenses DPR-24 and DPR-27 as indicated below.

Date of issuance: December 27, 1984.

Effective date: Upon completion of equipment installation and testing but not later than March 1, 1985.

Amendment Nos.: 87 and 92.

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the effective date of Amendments 84 and 88.

Date of initial notice in Federal Register: November 21, 1984 (49 FR 45941 at 45981).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 1984.

No significant hazards consideration comments received. No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment September 13, 1984

Brief description of amendment: Deletes list of snubbers from plant Technical Specifications and includes other minor snubber related changes.

Date of issuance: December 26, 1984.

Effective date: December 26, 1984.

Amendment No. 57.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 21, 1984 (49 FR 45982) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1984.

Significant hazards consideration comments received: None.

Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 27, 1984.

Brief description of amendment: Revision of reporting requirements to conform with amended NRC Regulations 10 CFR 50.72 and 10 CFR 50.73.

Date of issuance: January 4, 1985.

Effective date: January 4, 1985.

Amendment No: 58.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 28, 1984 (49 FR 38414)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1985.

Significant hazards consideration comments received: None.

Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: March 30, 1984.

Brief description of amendment: Licensee response to NRC Generic Letter 83-37 wherein we requested proposed Technical Specifications for certain NUREG-0737 installed features.

Date of issuance: January 9, 1985.

Effective date: Sixty days from date of issuance of license amendment.

Amendment No. 59.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1984 (49 FR 21850) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1985.

Significant hazards consideration comments received: None.

Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

OTHER NOTICES: NOTICE OF ISSUANCE OF AMENDMENT PURSUANT TO INITIAL DECISION OF ATOMIC SAFETY AND LICENSING BOARD FOR WHICH A FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION WAS NOT REQUIRED

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 9, 1983.

Brief description of amendment: This amendment permits the return to operation of the repaired steam generators. On August 25, 1983, the Commission issued Amendment No. 86 (48 FR 39709) which addressed a portion of the licensees' application of May 9, 1983. That amendment revised the TSs to recognize and approve the steam generator tube kinetic expansion repair technique as an alternative to plugging of defective tubes, only for purposes of steam generator hot functional testing using pump heat (non-nuclear), and permitted such testing. Similarly, Amendment No. 91, issued on April 9, 1984, further modified TS 4.19 to cover the total period of pre-critical (non-nuclear) hot functional testing of the plant.

This amendment completes the Commission's action on the May 9 application by further modifying the TSs to remove restrictions as to the period of effectiveness of the acceptability of the kinetic expansion repair process as an alternative to plugging defective tubes in the steam generators, thus permitting them to return to operation. The TSs are further modified to add requirements regarding the condenser offgas radiation monitor. In addition, conditions have been added to the license to require primary-to-secondary leakage restrictions, power ascension test program results availability, extended inservice inspection, evaluation of operational leakage, and reporting corrosion lead tests.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on May 31, 1983 (48 FR 24231), and corrected June 14, 1983 (48 FR 27328). In response to this notice, requests for hearing were filed by TMIA on May 19, 1983, as amended on June 23, 1983, and by Lee, Molholt, and Aamodt on June 30, 1983, as amended on July 13, 1983.

Comments were made by six other persons and the Commonwealth of Pennsylvania.

On August 25, 1983, the Commission issued a Safety Evaluation (NUREG-1019) related to this action and reopened the comment period to receive further public comments on the proposed no significant hazards consideration published on May 31. A "Notice of Additional Opportunity for Comment" was published in the Federal Register on August 31, 1983 (48 FR 39541). Additional comments were filed by the Commonwealth of Pennsylvania.

A hearing was held on July 16–18, 1984, and the Atomic Safety and Licensing Board issued its Initial Decision on October 31, 1984.

Date of issuance: December 21, 1984.

Effective date: December 21, 1984.

Amendment No. 103.

Facility Operating License No. DPR-50. Amendment revised the license and the Technical Specifications.

Date of initial notice in Federal Register: January 4, 1985, 50 FR 580.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERTION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amend (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely was would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordinaly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washingtion, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 22, 1985, licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affecteded by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements decribed above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters with the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves not significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the followng message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing or good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 3, 1984.

Brief description of amendment: This amendment modifies TS Section 1.6, which provides the definition of OPERABLE—OPERABILITY, so that from the effective date of this amendment to until Mode 1 is entered for Cycle 5 only, operability of the auxiliary feedwater system will be determined without consideration of the status of the startup feedwater system.

Date of issuance: December 20, 1984.

Effective date: December 20, 1984.

Amendment No.: 82.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, by Legal Ad published in the *Toledo Blade* on December 8, 1984, the Fremont, Ohio, *News Messenger* on December 13, 1984, and in the Port Clinton, Ohio, *News Herald* on December 12, 1984.

Comments received: No.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 20, 1984.

Attorney for licensee: Gerald Charnoff, esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland this 16th day of January 1985.

For the Nuclear Regulatory Commission.

Donald E. Sells,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-1627 Filed 1-22-85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, SG 302-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Vital Islands, Protection of Physical Security Equipment, and Key and Lock Controls" and is intended for Division 5, "Materials and Plant Protection." It is being developed to present approaches that would be acceptable to the NRC staff for implementing proposed amendments to 10 CFR Part 73 (49 FR 40735) if they are promulgated in their present form. Emphasis in the guide is on minimizing the safeguards impact on safety.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by March 7, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 15th day of January 1985.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of Risk Analysis and Operations, Office of Nuclear Regulatory Research.

[FR Doc. 85-1727 Filed 1-22-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Watts Bar; Meeting

The ACRS Subcommittee on Watts Bar will hold a meeting on February 13, 1985, Ramada Inn West, 7621, Kingston Pike, Knoxville, TN.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, February 13, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will discuss major open items prior to fuel load and to update the Subcommittee concerning modifications to the Model D-3 steam generators, the fire protection program, and resolution of construction and QA deficiencies.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 16, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-1725 Filed 1-22-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 24, 1984 (49 FR 49953). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1985 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Braidwood Station, January 29, 1985, Washington, DC. The Subcommittee will continue to review the Commonwealth Edison Company's application for an operating license for Braidwood.

Fire Protection, February 5, 1985, Washington, DC. The Subcommittee will be briefed on the following: (1) The status of Appendix R compliance, (2) Duke and Calvert Cliffs compliance with Appendix R, (3) fire insurance companies' views on fire protection, and (4) the status of fire protection research at Sandia.

Advanced Reactors, February 5, 1985, Washington, DC. The Subcommittee will discuss the DOE's redirected programs for LMRs and to review the relevant NRC research programs in the areas of LMRs and HTGRs.

Regulatory Policies and Practices, February 6, 1985, Washington, DC. The Subcommittee will review the Commission's proposed Backfitting Rule.

Watts Bar, February 13, 1985, Knoxville, TN. The Subcommittee will discuss major open items prior to fuel load and to update the Subcommittee concerning modifications of the Model D-3 steam generators, the fire protection program, and resolution of construction and QA deficiencies.

Combined GESSAR II and Reliability & Probabilistic Assessment, February 14 and 15, 1985, Los Angles, CA. The Subcommittee will continue their review of GESSAR II for a Final Design Approval applicable to future plants. The focus of this meeting will be on seismic risk.

Nine Mile Point Unit 2, February 20 and 21, 1985, Syracuse, NY. The Subcommittee will begin review of the Niagara Mohawk Power Corporation's application for an operating license for Nine Mile Point Unit 2.

Emergency Core Cooling Systems, February 21, 1985, Washington, DC. The Subcommittee will review provisions of proposed Rule to revise Appendix K to 10 CFR 50.46 and discuss proposed Regulatory Guide 1.82, "Containment Emergency Sump Performance" (tentative).

Class 9 Accidents, February 25, 1985, Washington, DC. The Subcommittee will discuss with the NRC Staff the status of the NRC's severe accident codes.

Emergency Core Cooling Systems, Date to be determined (late February/early March), Washington, DC. The Subcommittee will continue the review of Yankee Atomic's request for an exemption to Appendix K of 10 CFR 50.46.

Maintenance Practices and Procedures, March 5, 1985, Washington, DC. The subcommittee will review staff Maintenance Program Plan.

Safety Philosophy, Technology, and Criteria, March 6, 1985, Washington, DC. The Subcommittee will review the status of the NRC Staff's evaluation of the trial use of the Commission's proposed Safety Goal Policy.

Regulatory Policies and Practices, March 6, 1985, Washington, DC. The Subcommittee will continue the review of NRC report on the need for an "NTSB-like" board in the NRC.

Class 9 Accidents, March 14, 1985, Washington, DC. The Subcommittee will discuss New York Power Authority's Source Term studies.

ATWS, March 15, 1985, Washington, DC. The Subcommittee will review the

NRC Staff's activities associated with implementation of the ATWS rule.

Reliability Assurance, March 19, 1985 (tentative), Washington, DC. The Subcommittee will review concerns arising from a significant failure of an RCIC steam line isolation valve to open against operating reactor pressure.

Electrical Systems, March 20, 1985, Washington, DC. The Subcommittee will discuss recent plant experience with the loss of AC power and the status of NRC action on USI A-44, "Station Blackout", and the status of recent NRC actions on diesel generator reliability.

Combined Extreme External Phenomena, Structural Enginering, and Diablo Canyon, March 21 and 22, 1985, Los Angles, CA. The Subcommittees will discuss the status of the NRC Staff seismic design margins programs and PG&E's plan for a seismic reevaluation of Diablo Canyon.

Safeguards and Security, March 27, 1985, Albuquerque, NM. The Subcommittee will review design features for protection against sabotage at commercial nuclear power reactors, explore the potential consequences of successful sabotage at nonpower reactors, and hear how the NRC Staff reviews and evaluates licensees' security plans.

Combine GESSAR II and Reliability & Probabilistic Assessment, March 27, 28, and 29, 1985, Albuquerque, NM. The Subcommittees will continue their review of GESSAR II for a Final Design Approval applicable to future plants. The principal topics to be discussed are plant safeguards and the GESSAR II probabilistic risk assessment.

Air Systems, Date to be detemined (late March), Washington, DC. The Subcommittee will review the NRC's Supplement to the Control Room Habitability Working Group Report. This Supplement is to discuss the Staff's survey of near term operating license and operating reactor control rooms.

Human Factors, Date to be determined (late March), Washington, DC. The Subcommittee will discuss NUREG/CR-3737, a method of ascertaining management/organization's contribution to the safety of operating reactors.

Combined Metal Components and Seismic Design of Piping, Date to be determined (March, tentative), Washington, DC. The Subcommittees will review the NRC piping Review Committee's overall recommendation on piping system concerns.

Qualification Program for Safety-Related Equipment, Date to be determined (March, tentative), Washington, DC. The Subcommittee will discuss the NRC Staff's resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants."

Seismic Design of Piping, Date to be determined (March, tentative), Washington, DC. The Subcommittee will review draft reports issued by the NRC Piping Review Committee on dynamic loads and load combinations and seismic design requirements of piping.

River Bend Nuclear Power Plant Units 1 and 2, April 10, 1985, Washington, DC. The Subcommittee will continue the review of Gulf States Utilities application for an operating license for the River Bend Nuclear Power Plants Units 1 and 2.

Emergency Core Cooling Systems, Date to be determined (early spring), Palo Alto, CA. The Subcommittee will continue the review of the joint NRC/B&W Owners Group/EPRI/B&W joint IST Program. A visit to the EPRI Stanford Research Institute facilities supporting this Program is also planned.

Palo Verde Nuclear Generating Station, Date to be determined, Maricopa County, AZ. The subcommittee will review the final reports for various construction deficiencies and the results of the preoperational testing as requested in ACRS letter dated December 15, 1981.

Waste Management, Date to be determined, Washington, DC. The Subcommittee will review DOE's Final Mission Plan for Civilian Radioactive Waste Management Program.

Combined Reliability and Probabilistic Assessment and Millstone 3, Date and location to be determined. The Subcommittees will review the probabilistic risk assessment for Millstone 3.

Combined Reactor Operations and Human Factors, Date and location to be determined. The Subcommittees will discuss INPO evaluation of nuclear plant operations and incidents/accidents—briefing by INPO representatives.

ACRS Full Committee Meeting

February 7-9, 1985: Items are *tentatively* scheduled.

*A. *Backfitting of Nuclear Plans*—Review proposed NRC revision to 10 CFR Part 50 backfitting requirements.

*B. *NRC Safety Research Program and Budget*—ACRS report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1986 and 1987.

*C. *Braidwood Nuclear Plant Units 1 and 2*—Review request for proposed operation of this plant.

*D. *Meeting with NRC Commissioners*—Discuss ACRS activities regarding safety related and regulatory activities including proposed use of the "check-operator" concept for licensed nuclear power plant operators.

*E. *Pressurized Thermal Shock*—Discuss comments by NRC Staff member regarding regulatory requirements to prevent damage to reactor pressure vessels from pressurized thermal shock.

*F. *Institute for Nuclear Power Operations*—Briefing regarding activities of INPO in review and evaluation of nuclear power plant operations and incidents.

*G. *Fire Protection at Nuclear Facilities*—Discuss report of NRC Task Force on implementation of fire protection requirements (10 CFR Part 50, Appendix R) at nuclear power plants.

*H. *Anticipated Transients Without Scram*—Briefing and discussion regarding BNL study of anticipated transients without scram with consequential failures.

*I. *Decay Heat Removal*—Briefing and discussion regarding proposed NRC Staff activity regarding resolution of USI A-45, Decay Heat Removal.

*J. *Waste Management and Disposal*—Report of ACRS subcommittee regarding DOE environmental assessments and NRC evaluation of proposed waste disposal repositories.

*K. *Systematic Review of Nuclear Power Plants*—Discuss proposed ACRS comments regarding the scope and timing of systematic reviews of nuclear power plants.

*L. *Future ACRS Activities*—Discuss anticipated ACRS activities and items proposed for review by the full Committee.

*M. *NRC Office of Research (tentative)*—Briefing regarding office activities by the Director, RES.

*N. *NRC Vendor Inspection Program (tentative)*—Briefing by representatives of NRC Staff regarding the NRC vendor inspection program.

March 7-9, 1985—Agenda to be announced.

April 11-13, 1985—Agenda to be announced.

Dated: January 16, 1985.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-1726 Filed 1-22-85; 8:45 am]

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[Docket No. 50-123]

Renewal of Facility Operating License; University of Missouri, Rolla

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility

Operating License No. R-79 for the University of Missouri (the licensee) which renews the license for operation of the training and research reactor located in Rolla, Missouri. The facility is a non-power reactor that has been operating at power levels not in excess of 200 kilowatts (thermal). The renewed Operating License No. R-79 will expire on November 20, 1989.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR, Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on May 9, 1980 at 45 FR 30752. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1086) for the renewal of Facility Operating License No. R-79 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Facility Operating License No. R-79 dated November 16, 1984 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on January 10, 1985, at 50 FR 1285.

For further details with respect to this action, see (1) the application for amendment dated October 15, 1979, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 7 to Operating License No. R-79, (4) the Commission's related Safety Evaluation Report (NUREG-1086), and (5) Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Copies of NUREG-1086 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Bethesda, Maryland, this 14th day of January 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 85-1728 Filed 1-22-85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 23573; 70-7075]

Louisiana Power & Light Co. and Middle South Utilities, Inc.; Proposed Issuance and Sale of Common Stock by Subsidiary and Acquisition Thereof by the Holding Company

January 16, 1985.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, have filed a proposal with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

LP&L proposes to issue and sell from time to time through December 31, 1985, and Middle South proposes to acquire, an aggregate of not in excess of 15,152,000 additional shares of LP&L's authorized but unissued common stock, without nominal or par value. This amount includes 9,092,200 shares previously authorized to be issued and sold in 1984 which were not sold (HCAR No. 23271 (April 4, 1984)). The common stock will be sold at $6.60 per share for an aggregate cash purchase price of $100,000,000. LP&L will use the proceeds of such sales for the financing in part of (including the retirement of short-term indebtedness incurred in financing) its construction program (estimated to be $321,100,000 for the calendar year 1985) and for other corporate purposes.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 11, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-1664 Filed 1-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23572; 70-7074]

Mississippi Power & Light Co. and Middle South Utilities, Inc.; Proposed Issuance and Sale of Common Stock by Subsidiary and Acquisition Thereof by the Holding Company

January 16, 1985.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, have filed a proposal with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

MP&L proposes to issue and sell from time to time through December 31, 1985, and Middle South proposes to acquire, an aggregate of not in excess of 1,305,000 additional shares of MP&L's authorized but unissued common stock, without nominal or par value. This amount includes the 1,087,000 shares previously authorized to be issued and sold in 1984, none of which were sold (HCAR No. 23271 (April 4, 1984)). The common stock will be sold at $23.00 per share for an aggregate cash purchase price of $30,015,000. MP&L will use the proceeds of such sales for the payment in part of short-term borrowings, for the financing in part of its 1985 construction program (estimated to be $41,400,000), and for other corporate purposes.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 11, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a