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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Richard A. Meserve, Chairman  
Greta Joy Dicus  
Nils J. Diaz  
Edward McGaffigan, Jr.  
Jeffrey S. Merrifield

OFFICE OF THE  
GENERAL COUNSEL  
ADJUDICATIVE DIVISION

**SERVED DEC 22 1999**

\_\_\_\_\_  
In the Matter of )  
 )  
GPU NUCLEAR CORPORATION )  
 )  
(Oyster Creek Nuclear Generating Station) )  
\_\_\_\_\_ )

Docket Nos. 50-219-OLA-2

CLI-99-29

MEMORANDUM AND ORDER

On December 9, 1999, GPU Nuclear Corporation ("GPU") submitted a request for Commission approval to withdraw without prejudice GPU's license amendment request in this docket. Neither the NRC staff nor the Nuclear Information Resource Service (which petitioned to intervene) has objected to the proposed withdrawal. On December 15, 1999, the Licensing Board issued an order granting the withdrawal and terminating the proceeding without prejudice. 50 NRC \_\_\_\_, LBP-99-45.

However, at the time it issued LBP-99-45, the Licensing Board had not yet issued a Notice of Hearing in this proceeding pursuant to 10 C.F.R. § 2.105(e)(2). Consequently, the authority to approve the withdrawal resides in the Commission rather than the Board. See 10 C.F.R. § 2.107(a); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-93-20, 38 NRC 83 (1993). Cf. 10 C.F.R. § 2.717(a) (a presiding officer's jurisdiction to conduct a hearing in a Subpart G proceeding "is deemed to commence when a

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notice of hearing ... is issued"). For this reason, we find it necessary to vacate LBP-99-45.

Notwithstanding the Board's lack of authority, we nevertheless agree with its rulings and adopt them as our own.

IT IS SO ORDERED.



For the Commission<sup>1</sup>

A handwritten signature in black ink that reads "Annette Vietti-Cook". The signature is written in a cursive style and is positioned above a horizontal line.

Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 22<sup>nd</sup> day of December, 1999.

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<sup>1</sup> Commissioner Diaz was not available for the affirmation of this Memorandum and Order. Had he been present, he would have affirmed the Memorandum and Order.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

GPU NUCLEAR CORPORATION

(Oyster Creek Nuclear Generating  
Station)

Docket No.(s) 50-219-OLA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-99-29) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
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Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
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Washington, DC 20555

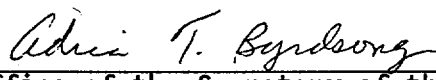
Administrative Judge  
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Reactor Watchdog Project  
Nuclear Information and Resource  
Service  
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Washington, DC 20036

Dated at Rockville, Md. this  
22 day of December 1999

  
Office of the Secretary of the Commission