

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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

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 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⁽¹⁾

[Original signed by Annette L. Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 22nd day of December, 1999.

1. 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.