

7. **Abstract:** 10 CFR Part 60 requires State and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository. Representatives of States Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

Submit, by (insert date 60 days after publication in the Federal Register, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modern on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703-321-3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1-800-303-9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703-487-4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1-800-397-4209, or within the Washington, DC, area at 202-634-3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F33, Washington, DC, 20555-0001, by telephone at (301) 415-7233, or by

Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of December, 1996.

For the U.S. Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96-32347 Filed 12-19-96; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corporation Oyster Creek Nuclear Generating Station Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letters dated May 11 and June 14, 1996, Mr. deCamp, on behalf of Oyster Creek Nuclear Watch (Petitioner), requested NRC, pursuant to 10 CFR 2.206, to investigate and correct a highly inaccurate public statement in the "Neighborhood Update" (the licensee's news magazine) and apparently false public testimony given by GPU management at a local zoning board hearing and to take appropriate disciplinary action in the matter. Specifically, Petitioner's concerns relate to (1) the statement that GPU and the Commission agree that a license amendment request that involves the movement of spent fuel from the Oyster Creek Nuclear Generating Station spent fuel pool to the storage facility while the plant is at power "is not a safety issue but a procedural one" and (2) whether there is some special factor at Oyster Creek that would indeed justify Mr. Barton's sworn statement that it is unsafe to operate the Oyster Creek reactor without full core offload capacity. If no special situation is found that prevents Oyster Creek from operating without full offload capacity, Petitioner requests that the Commission take appropriate disciplinary action against GPU Nuclear management for making a false statement under oath.

As a basis for the request regarding the first concern that the statement in the "Neighborhood Update" is untrue, Petitioner referenced the following excerpts from NRC Bulletin 96-02 (NRCB 96-02) of April 11, 1996:

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

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

As a basis for the Petitioner's other concerns, the Petitioner sets forth the relevant excerpts from Mr. Barton's testimony of March 7, 1994, and states that "the NRC ruled in February 1985 in 10 CFR Part 53 that reactors may safely be run without full core offload capacity."

Notice is hereby given that by a Director's Decision (DD 96-22) dated December 11, 1996, the Acting Director, Office of Nuclear Reactor Regulation, has denied the Petitions. The staff concluded that the issues raised by the Petitioner are without merit and that there is no basis to take disciplinary action against GPU, as explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD 96-22), the complete text of which follows this notice and is available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington DC, and at the local public document room located at Ocean County Library, Reference Department, 101 Washington Street, Tom's River, NJ.

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

For The Nuclear Regulatory Commission
Frank J. Miraglia,
Acting Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206 I. Introduction

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

The specific statements of concerns are (1) the statement in the "Neighborhood Update" that GPU and the Commission agree that a license amendment request that involves the movement of spent fuel from the Oyster

Creek Nuclear Generating Station spent fuel pool to the storage facility while the plant is at power "is not a safety issue but a procedural one" and (2) a sworn statement by Mr. Barton, who was the Director of the Oyster Creek Nuclear Generating Station, before the Zoning Board that it is unsafe to operate the Oyster Creek reactor without full core offload capacity. The Petitioner, furthermore, requests that if no special situation is found that prevents Oyster Creek from operating without full offload capacity, the Commission take appropriate disciplinary action against GPU management for making a false statement under oath.¹

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

II. Discussion

A. GPU Statement That the Movement of the Fuel Raises a Procedural Issue, Not a Safety Issue

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

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

GPU met with the NRC staff on November 19, 1993, to discuss plans for using the reactor building crane to move spent fuel out of the spent fuel pool in a transfer cask for transportation to the dry cask storage facility during power operations at Oyster Creek. During the discussions, the NRC staff raised concerns regarding the use of the crane and its ability to meet the heavy load

criteria of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants." GPU indicated that this special application of the crane would be evaluated pursuant to 10 CFR 50.59.² NRC stated that it would conduct an audit of the 50.59 evaluation.

In April 1995, GPU informed NRC that the 50.59 evaluation for use of the crane to move the transfer cask was complete. On May 2 and 3, June 12, and October 12 and 13, 1995, the NRC staff conducted onsite audits and met with GPU at Oyster Creek regarding the use of the crane. On November 2, 1995, in a telephone call between the NRC staff and Mr. Keaten, Vice President and Director, Technical Functions, GPU, the NRC staff advised GPU that the staff's concerns regarding the use of the non-single-failure-proof crane to move the 100-ton transfer cask while the plant was at power had not been resolved by its 50.59 evaluation. Specifically, the staff was concerned that the activity involved the movement of loads heavier than previously considered in the final safety analysis report (FSAR) and, therefore, might reduce the margin of safety, and that a load drop in the reactor building might result in consequences greater than previously evaluated in the FSAR and, therefore, may pose an unreviewed safety question.

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

The NRC staff inspected the licensee's updated 10 CFR 50.59 evaluation which considered the reactor building crane upgrades. The NRC staff's inspections included sending a team to Oyster Creek. The staff concluded that its safety concerns had been addressed and resolved. The NRC staff also determined that the licensee's planned movement of spent fuel to the dry storage facility during plant operation was safe and in accordance with all license requirements. Notwithstanding the

technical acceptability of the licensee's methodology and analysis in the updated 10 CFR 50.59 evaluation, NRC staff determined that since the possibility of an unreviewed safety question (USQ) had been involved before the licensee made modifications to upgrade the reactor building crane, GPU must submit a license amendment application for the proposed cask movement activities. At the public meeting on February 29, 1996, GPU was informed by the NRC staff that an amendment was required. When the NRC receives an amendment application, it is required to follow specific procedures set forth in 10 CFR 50.91.³

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

B. GPU Statement Concerning Safe Operation and Full Core Discharge Capability

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

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

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

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

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

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

³ 10 CFR 50.91 requires the Commission to use specified procedures when it receives an application requesting an amendment to an operating license including procedures that concern consulting the State in which the facility is located and procedures concerning providing notification to the public of the licensee's amendment, the Commission's findings or determinations regarding the amendment, and opportunity for a hearing.

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

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

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

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

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

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

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

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

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

V. Conclusion

The NRC staff has reviewed the statements made by GPU in the April

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

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

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

For the Nuclear Regulatory Commission
Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96-32349 Filed 12-19-96; 8:45 am]

BILLING CODE 7590-01-P

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 4.20, "Constraint on Releases of Airborne Radioactive Materials to the Environment for Licensees Other than Power Reactors," provides guidance on methods acceptable to the NRC staff for compliance with the constraint on air emissions to the environment. This constraint is required by the NRC's regulations in 10 CFR Part 20, "Standards for Protection Against Radiation," in Section 20.1101(d). The draft of this Regulatory Guide 4.20 was issued in December 1995 as DG-8016.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or copying for a fee at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides, both active and draft, may be obtained free of charge by writing the Office of Administration, Attn: Distribution and Services Section, USNRC, Washington, DC 20555-0001, or by fax at (301) 415-2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. 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 4th day of December 1996.

For the Nuclear Regulatory Commission
Themis P. Speis,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 96-32348 Filed 12-19-96; 8:45 am]

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Availability of Final Branch Technical Position on the Use of Expert Elicitation in the High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG-1563, the "Branch Technical Position (BTP) on the Use of Expert Elicitation in the High-Level Waste (HLW) Program."

ADDRESSES: A copy of NUREG-1563 and the staff's responses to public comments on the February 1996 draft BTP are available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW, Washington, DC 20555-0001. Copies of the NUREG-1563 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C., 20013-7082, telephone 202/512-2249. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Performance Assessment and High-Level Waste Integration Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545

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