



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 14, 2003

Mark J. Langer, Clerk
U. S. Court of Appeals for the
District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., N.W.
Washington, D.C. 20001

RE: Public Citizen, Inc., and San Luis Obispo Mothers For Peace v. NRC,
No. 03-1181

Dear Mr. Langer:

Enclosed you will find an original and four copies each of Federal Respondents' Motion to Dismiss and Unopposed Motion to Postpone Filing Certified Index to Record. As required by local rule 27(a)(4), a Certificate as to Parties, Ruling, and Related Cases is attached to the Motion to Dismiss. Also enclosed is an Entry of Appearance for each of the respondents in the above-referenced case. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

Jared K. Heck
Attorney
Office of the General Counsel

Enclosures: As stated

cc: Service list

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PUBLIC CITIZEN, INC. and
SAN LUIS OBISPO MOTHERS FOR PEACE,

Petitioners,

v.

U.S. NUCLEAR REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,

Respondents.

No. 03-1181

FEDERAL RESPONDENTS' MOTION TO DISMISS

Pursuant to District of Columbia Circuit Rule 27(g), the Nuclear Regulatory Commission (NRC or Commission) and the United States of America¹ move to dismiss the instant petition for review for lack of jurisdiction. Petitioners Public Citizen and the San Luis Obispo Mothers for Peace challenge NRC orders imposing security requirements on NRC power reactor licensees and Category I fuel fabrication facility licensees.² The orders are titled "Order Modifying Licenses" and they specifically offer an agency hearing to persons adversely affected.

Nevertheless, Petitioners contend that the orders are a rulemaking that did not offer the notice and comment procedures specified in the Administrative Procedure Act. *See* Petition for Review

¹The petition for review names only the NRC as respondent. We have added the United States to the caption as a statutory party-respondent pursuant to 28 U.S.C. § 2344, and file the motion on behalf of both the NRC and the United States. *See generally* *Arnow v. NRC*, 868 F.2d 223, 225 n. 1 (7th Cir. 1989), *cert. denied*, 493 U.S. 813 (1989).

²"Category I" facilities are those facilities that possess at least a "formula quantity" of "strategic special nuclear material." *See* 10 C.F.R. § 70.4. Two Category I facilities exist in the United States, both of which produce fuel for nuclear reactors.

at 1-2. Petitioners chose not to request a hearing on this issue before the NRC, even though the challenged orders on their face provided an opportunity for a hearing. Thus, Petitioners never obtained "party" status in the administrative proceedings below, a jurisdictional prerequisite to judicial review under the Hobbs Act. *See* 28 U.S.C. § 2344. Their petition for review should be dismissed.

BACKGROUND

After the terrorist attacks of September 11, 2001, the NRC undertook a comprehensive review of its safeguards and security program requirements for NRC-licensed facilities, materials, and activities. As part of this review, the NRC reexamined the characteristics of the so-called "design basis threat" that the physical protection systems of nuclear power reactors and Category I facilities must be able to withstand. *See* 10 C.F.R. § 73.1. The "design basis threat" characterizes the acts of theft and radiological sabotage that certain NRC licensees' security plans and systems must protect against. *See id.*

After research, study, and consultation with intelligence and security experts, the NRC concluded that the current threat environment required a modification of nuclear power plant licenses and Category I facility licenses to meet a more stringent design basis threat (sometimes called "DBT"). On April 29, 2003, the NRC issued orders modifying nuclear power plant licenses and Category I facility licenses by requiring compliance with a more stringent DBT. While the details of these DBT orders are "safeguards information" that cannot be publicly disclosed,³ the revised DBT enhances physical security by requiring increased security patrols,

³"Safeguards information" is a special category of sensitive unclassified information that the NRC is authorized to designate and protect from unauthorized disclosure. *See* Atomic Energy Act of 1954, as amended, § 147, 42 U.S.C. § 2167. Unauthorized disclosure of

augmented security forces, additional physical barriers, greater stand-off distances for vehicle checks, greater coordination with local law enforcement and military authorities, and more restrictive site access controls. See NRC Website, *Frequently Asked Questions About NRC's Response to the 9/11/01 Events*, <http://www.nrc.gov/what-we-do/safeguards/911/faq.html#2>.

The NRC issued a public notice of the DBT orders in the Federal Register on May 7, 2003, (for nuclear power reactors) and May 16, 2003 (for Category I facilities). See *All Power Reactor Licensees, Order Modifying Licenses (Effective Immediately)*, 68 Fed. Reg. 24,517 (May 7, 2003); *In the Matter of BWX Technologies, Lynchburg, VA; Order Modifying License (Effective Immediately)*, 68 Fed. Reg. 26,675 (May 16, 2003); *In the Matter of Nuclear Fuel Services, Inc., Erwin, TN; Order Modifying License (Effective Immediately)*, 68 Fed. Reg. 26,676 (May 16, 2003). Each order explicitly provided that any person adversely affected by the order could submit an answer to the order and request a hearing in accordance with the Commission's regulations at 10 C.F.R. § 2.202.⁴ See 68 Fed. Reg. at 24,518; 68 Fed. Reg. at 26,676; 68 Fed. Reg. at 26,677. The power reactor order provided 35 days within which to request a hearing, while the Category I facility orders provided 20 days. *Id.*

The instant petition for review challenges the NRC's DBT orders on a procedural ground; i.e., an allegedly unlawful failure to provide notice and an opportunity to comment. Petitioners did not come to the Commission with this claim despite the DBT orders' offer of an agency

safeguards information may result in the imposition of civil penalties, criminal penalties, or both. See 42 U.S.C. §§ 2167, 2273.

⁴Hearing requests under 10 C.F.R. § 2.202 are governed by the NRC's formal rules of practice for adjudications. 10 C.F.R. § 2.700; see generally 10 C.F.R. Part 2, Subpart G.

hearing. Thus, the Commission has had no opportunity to address Petitioners' concerns prior to this lawsuit.

ARGUMENT

The Hobbs Act (also known as the Administrative Orders Review Act) governs judicial review of final NRC orders modifying licenses. *See* 28 U.S.C. § 2342(4); 42 U.S.C. §§ 2239(a), (b). Under that act, only a "party aggrieved" by a final NRC order may file a petition for review in the appropriate court of appeals. *See* 28 U.S.C. § 2344. The "party" requirement of the Hobbs Act is jurisdictional in nature and, like an exhaustion requirement,⁵ "acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992).

Someone not a party to an NRC proceeding reviewable under the Hobbs Act has no right to seek judicial review of the outcome of that proceeding. *See Gage v. AEC*, 479 F.2d 1214, 1218 n. 14 (D.C. Cir. 1973); *Easton Utilities Commission v. AEC*, 424 F.2d 847, 853 (D.C. Cir. 1970) (*en banc*). Participation before the agency is a "necessary condition" to satisfying the Hobbs Act's "party" requirement. *Southern Pacific Transport Co. v. ICC*, 69 F.3d 583, 587 (D.C. Cir. 1995).

In the present case, Petitioners did not request a hearing in conjunction with the NRC's issuance of the DBT orders, despite their clear opportunity to do so. Petitioners were therefore

⁵*See Rockland County v. NRC*, 709 F.2d 766, 773-74 (2d Cir. 1983), *cert. denied*, 464 U.S. 993 (1983).

never parties to the administrative proceedings below. This Court has insisted on party status as a prerequisite to judicial review in NRC cases:

Petitioner refrained from participating in the appropriate and available administrative procedure, which is the statutorily prescribed prerequisite for this court's jurisdiction to entertain the petition for review of an Atomic Energy Commission order . . . Since petitioners were never parties to the . . . proceedings, this court simply does not have jurisdiction over their claim.

Gage v. AEC, 479 F.2d at 1217-18 (internal citations omitted). *See also Professional Reactor Operator Society v. NRC*, 939 F.2d 1047, 1049 n. 1 (D.C. Cir. 1991) (holding that petitioner who failed to participate during prescribed comment period could not challenge subsequent NRC rule).

To be sure, in unusual cases where an agency provides a petitioner no opportunity to participate in the administrative proceedings, this Court has said that it will entertain a petition for review even though the petitioner was not, strictly speaking, a party to the proceedings. *See Natural Resources Defense Council, Inc. v. NRC*, 666 F.2d 595, 601 n. 42 (D.C. Cir. 1981). But Petitioners in this case cannot avail themselves of this limited exception to the Hobbs Act's party requirement, because the challenged DBT orders expressly provided an opportunity for a hearing. Petitioners simply ignored that opportunity and came straight to this Court. Had the Petitioners invoked their hearing opportunity, the Commission would have had a chance to explain its view on Petitioners' "notice and comment" grievance.

Although Petitioners' failure to participate in the administrative proceedings below forecloses their right to judicial review of the DBT orders, Petitioners have other means to pursue their concerns before the NRC. Under the NRC's regulations at 10 C.F.R. § 2.802, Petitioners may request the NRC to issue, amend, or rescind any regulation. Through this process,


Petitioners could potentially obtain the very relief requested in the instant petition for review—*i.e.*, a rulemaking proceeding to revise the DBT during which the DBT orders challenged in this case would remain in force. *See* Petition for Review at 2. Indeed, one of the Petitioners, the San Luis Obispo Mothers for Peace, has already submitted a petition for rulemaking seeking better protection against radiological sabotage of nuclear power plants. *See Union of Concerned Scientists and Mothers for Peace; Receipt of Petition for Rulemaking*, 68 Fed. Reg. 35,585 (June 16, 2003).

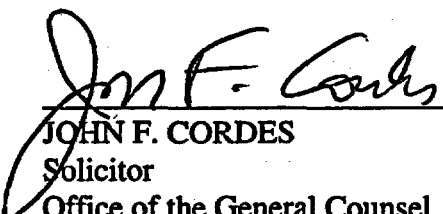
Denial of a petition for rulemaking by the NRC would be judicially reviewable as a final NRC order under the Hobbs Act. *See Gage v. AEC*, 479 F.2d at 1222 n. 27; *see also, e.g., Doris Day Animal League v. Veneman*, 315 F.3d 297 (D.C. Cir. 2003) (reviewing agency denial of a petition for rulemaking). At this point, however, Petitioners' failure to first bring their claim to the NRC defeats their right to seek judicial review of the agency's DBT orders.

CONCLUSION

For the reasons set forth above, the petition for review should be dismissed.

Respectfully submitted,


KATHRYN E. KOVACS
U.S. Department of Justice
Environment and Natural Resources Division
Appellate Section
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Washington, D.C. 20026
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August 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2003, copies of the foregoing Federal Respondents'

Motion to Dismiss were served by mail, postage prepaid, upon the following counsel:

Scott L. Nelson
Amanda Frost
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009



Jafed K. Heck

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PUBLIC CITIZEN, INC. and
SAN LUIS OBISPO MOTHERS FOR PEACE,

Petitioners,

v.

U.S. NUCLEAR REGULATORY COMMISSION
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No. 03-1181

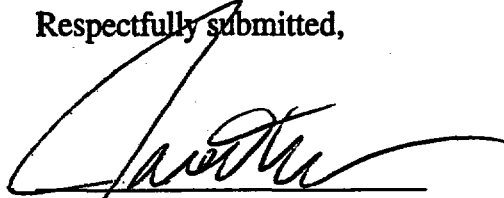
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

1. **Parties and Amici:** The parties to this case are Public Citizen, Inc. and the San Luis Obispo Mothers for Peace, petitioners; and the United States Nuclear Regulatory Commission (NRC) and the United States of America, respondents. There are no *amici*.

2. **Rulings Under Review:** The petition in No. 03-1181 challenges three NRC orders on security at certain nuclear facilities. *See All Power Reactor Licensees, Order Modifying Licenses (Effective Immediately)*, 68 Fed. Reg. 24,517 (May 7, 2003); *In the Matter of BWX Technologies, Lynchburg, VA; Order Modifying License (Effective Immediately)*, 68 Fed. Reg. 26,675 (May 16, 2003); *In the Matter of Nuclear Fuel Services, Inc., Erwin, TN; Order Modifying License (Effective Immediately)*, 68 Fed. Reg. 26,676 (May 16, 2003).

3. **Related Cases:** The NRC orders on review have not previously come before this or any other court. There are no related cases.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Heck', written over a horizontal line.

Jared K. Heck

Attorney

Office of the General Counsel

U.S. Nuclear Regulatory Commission

August 14, 2003

Wintersburg Road, Tonapah, Arizona 85354-7529.

Wayne Trump, Manager—Site Security, Peach Bottom Atomic Power Station, Units 2 & 3, Exelon Generation Company, LLC, Docket Nos. 50-277 & 50-278, License Nos. DPR-44 & DPR-56, 1848 Lay Road, Delta, PA 17314.

Thomas Mahon, Security Manager, Perry Nuclear Power, Unit 1, FirstEnergy Nuclear Operating Company, Docket No. 50-440, License No. NPF-58, 10 North Center Street, Perry, OH 44081.

Michael Bellamy, Senior Vice President, Pilgrim Nuclear Power Station, Unit 1, Entergy Nuclear Generation Company, Docket No. 50-293, License No. DPR-35, Rocky Hill Road, Plymouth, MA 02360.

Mark Fencil, Security Manager, Point Beach Nuclear Plant, Units 1 & 2, Nuclear Management Company, Docket Nos. 50-266 & 50-301, License Nos. DPR-24 & DPR-27, 610 Nuclear Road, Two Rivers, WI 54241.

John Waddell, Security Manager, Prairie Island, Units 1 & 2, Nuclear Management Company, Docket No. 50-282 & 50-306, License No. DPR-42 & DPR-60, 1717 Wakonade Drive East, Welch, MN 55089.

Tim Tulon, Site Vice President, Quad Cities Nuclear Power Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50-254 & 50-265, License Nos. DPR-29 & DPR-30, 22710-206th Ave., North, Cordova, IL 61242.

Ronald C. Teed, Site Security Supervisor, R. E. Ginna Nuclear Power Plant, Rochester Gas & Electric Corporation, Docket No. 50-244, License No. DPR-18, 1503 Lake Road, Ontario, NY 14519.

Andre James, Security Manager, River Bend Station, Entergy Operations, Inc., Docket No. 50-458, License No. NPF-47, 5485 U.S. Highway 61, St. Francisville, LA 70775.

Ted Straub, Manager of Nuclear Security & Fire, Security Center, Salem Nuclear Generating Station, Units 1 & 2, Docket Nos. 50-272 & 50-311, License No. DPR-70 & DPR-75, Hope Creek Generating Station, Unit 1, Docket No. 50-354, License No. NPF-57, PSEG Nuclear LLC, End of Buttonwood Road, Hancocks Bridge, NJ 08038.

John Todd, Manager, Site Security, San Onofre Nuclear Station, Units 2 & 3, Southern California Edison, Docket Nos. 50-361 & 50-362, License Nos. NPF-10 & NPF-15, 5000 Pacific Coast Highway (A82), San Clemente, CA 92674.

James Pandolfo, Security Manager, Seabrook Station, Unit 1, FPL Energy Seabrook, LLC, Docket No. 50-443, License No. NPF-86, Central Receiving, Lafayette Road, Seabrook, NH 03874.

Kenneth Stevens, Security Manager, Sequoyah Nuclear Plant, Units 1 & 2, (OPSSN), Tennessee Valley Authority (TVA), Docket Nos. 50-327 & 50-328, License Nos. DPR-77 & DPR-79, Sequoyah Road, Soddy Daisy, TN 37384.

Denny Braund, Shearon Harris Nuclear Power Plant, Unit 1, Carolina Power & Light Company, Docket No. 50-400, License No. NPF-63, 5413 Shearon Harris Road, New Hill, NC 27562.

William T. Cottle, President & Chief Executive Officer, South Texas Project Electric Generating, Company, Units 1 & 2, STP Nuclear Operating Company, Docket Nos. 50-498 & 50-499, License Nos. NPF-76 & NPF-80, 8 Miles West of Wadsworth, on FM 521, Wadsworth, TX 77483.

Gary L. Varnes, Site Security Manager, St. Lucie Nuclear Plant, Units 1 & 2, Florida Power & Light Company, Docket Nos. 50-335 & 50-389, License Nos. DPR-67 & NPF-16, 6351 South Ocean Drive, Jensen Beach, FL 34957.

Curtis Luffman, Surry Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50-280 & 50-281, License Nos. DPR-32 & DPR-37, 5570 Hog Island Road, Surry, VA 23883-0315.

Roland Ferentz, Manager, Nuclear Security, Susquehanna Steam Electric Station, Units 1&2, Pennsylvania Power and Light Company, Docket Nos. 50-387 & 50-388, License Nos. NPF-14 & NPF-22, 769 Salem Blvd., Berwick, PA 18603.

Michael Bruecks, Three Mile Island Nuclear Station, Unit 1, Amergen Energy Company, LLC, Docket No. 50-289, License No. DPR-50, Route 441 South, Middletown, PA 17057.

William S. Johns, Site Security Supervisor, Turkey Point Nuclear Generating Station, Units 3 & 4, Florida Power & Light Company, Docket Nos. 50-250 & 50-251, License Nos. DPR-31 & DPR-41, 9760 SW 344th Street, Florida City, FL 33035.

Mr. Jay K. Thayer, Site Vice President, Vermont Yankee Nuclear Power Station, Entergy Nuclear Vermont Yankee, LLC, Docket No. 50-271, License No. DPR-28, 185 Old Ferry Road, Brattleboro, VT 05302-0500.

Stephen A. Byrne, Senior Vice President—Nuclear Operations, Virgil C. Summer Nuclear Station, South Carolina Electric & Gas Company, Docket No. 50-395, License No. NPF-12, Hwy 215 N at Bradham Blvd., Jenkinsville, SC 29065.

Doug G. Huyck, Security Manager, Vogtle Electric Generating Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 & 50-425, License Nos. NPF-68 & NPF-81, 7821 River Road, Waynesboro, GA 30830.

Joseph E. Venable, Vice President, Operations, Waterford Steam Electric Generating Station, Unit 3, Entergy Operations, Inc., Docket No. 50-382, License No. NPF-38, 17265 River Road, Killona, LA 70066-0751.

Bonnie A. Schnetzler, Security Manager, Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority, Docket No. 50-390, License No. NPF-90, Highway 68 Near Spring City, Spring City, TN 37381.

William A. Evans, William B. McGuire Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50-369 & 50-370, License Nos. NPF-9 & NPF-17, Mail—MG01SC, 12700 Hagers Ferry Road, Huntersville, NC 28078.

David Erbe, Security Manager, Wolf Creek Generating Station, Unit 1, Wolf Creek Nuclear Operating Corporation, Docket No.

STN 50-482, License No. NPF-42. 1550 Oten Lane, NE, Burlington, KS 66839.

[FR Doc. 03-11301 Filed 5-6-03; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1); License Nos. (as shown in Attachment 1); EA-03-086]

All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements for reactors are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, and eventually Orders to selected licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued Orders to the licensees of all operating power reactors on February 25, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at these facilities. In addition, the Commission issued Orders to all operating power reactor licensees on January 7, 2003, to enhance access authorization requirements.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this

information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 CFR 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 2¹ of this Order, on all operating power reactor licensees. The revised DBT, which supercedes the DBT specified in 10 CFR 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 2 of this Order, all licensees must revise their physical security plans, safeguards contingency plans, and guard training and qualification plans that are required by 10 CFR 50.34(c), 50.34(d), and 73.55(b)(4)(ii), respectively.

In order to provide assurance that licensees are implementing prudent measures to protect against the revised DBT, all licenses identified in Attachment 1 to this Order shall be modified to require that the physical security plans, safeguards contingency plans, and the guard training and qualification plans required by 10 CFR 50.34(c), 50.34(d), and 73.55(b)(4)(ii) be revised to provide protection against this revised DBT. Consistent with the provisions of 10 CFR 73.55(a), the licensee may provide measures for protection against the DBT specified in Attachment 2 to this Order other than those required by 10 CFR 73.55 if the licensee demonstrates: (1) That the measures have the same high assurance objective as specified in 10 CFR 73.55(a); and (2) that the overall level of system performance provides protection against the DBT specified in Attachment 2 to this Order equivalent to that which would be provided by 10 CFR 73.55(b) through (h) and meets the general performance requirements of 10 CFR 73.55. Upon completion of NRC review and approval of the revised physical security plans, including pertinent requirements of the Order issued on February 25, 2002, safeguards contingency plans, and guard training and qualification plans, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on February 25, 2002, imposing ICMs. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety, and

interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, *it is hereby ordered, effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:*

A. 1. All licensees shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise their physical security plans and safeguards contingency plans, prepared pursuant to 10 CFR 50.34(c) and 50.34(d), to provide protection against the DBT set forth in Attachment 2 to this Order. In addition, all licensees shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise their guard training and qualification plans, required by 10 CFR 73.55(b)(4)(ii), to implement the DBT set forth in Attachment 2 to this Order. The licensees shall submit the revised physical security plans, safeguards contingency plans, and guard training and qualification plans, including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.

2. The revised physical security plans, revised safeguards contingency plans, and revised guard training and qualification plans, must be fully implemented by the licensees no later than October 29, 2004.

B. 1. All licensees shall, within thirty-five (35) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation of, any specific requirement.

2. Any licensee that considers that implementation of any of the requirements of this Order would adversely impact safe operation of the facility must notify the Commission, within thirty-five (35) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the

facilities to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. All licensees shall report to the Commission, in writing, when they have fully implemented the approved revisions to their physical security plans, safeguards contingency plans, and guard training and qualification plans, to protect against the DBT described in Attachment 2 to this Order.

D. Notwithstanding the provisions of any Commission regulation, license, or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that licensees may make changes to their revised physical security plans and safeguards contingency plans and guard training and qualification plans if authorized by 10 CFR 50.54(p).

Licensee responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 CFR 50.4. In addition, licensee submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within thirty-five (35) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the

¹ Attachment 2 contains safeguards information and will not be released to the public.

Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final thirty-five (35) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this Order.*

For the Nuclear Regulatory Commission.

Dated this 29th day of April 2003.

Samuel J. Collins,
Director, Office of Nuclear Reactor Regulation.

Attachment 1

List of Addressees

Michael R. Higgins, Superintendent of Plant Security, Arkansas Nuclear One, Units 1 & 2, Entergy Operations, Inc., Docket Nos. 50-313 & 50-368, License Nos. DPR-51 & NPF-6, 1448 S.R. 333, Russellville, AR 72802.

Mark Bezilla, Vice President, Beaver Valley Power Station, Units 1 & 2, FirstEnergy Nuclear Operating Company, Docket Nos. 50-334 & 50-412, License Nos. DPR-66 & NPF-73, Route 168, Shippingport, PA 15077-0004.

Gregory Baker, Braidwood Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50-456 & STN 50-457, License Nos. NPF-72 & NPF-77, 35100 S. Rt. 53, Suite 84, Braceville, IL 60407.

Ashok S. Bhatnagar, Site Vice President, Browns Ferry Nuclear Plant, Units 1, 2, & 3, Tennessee Valley Authority, Docket Nos. 50-259, 50-260 & 50-296, License Nos. DPR-33, DPR-52 & DPR-68, Intersection Limestone Country Roads 20 and 25, Athens, AL 35611.

Allen Brittain, Security Manager, Brunswick Steam Electric Plant, Units 1 & 2, Progress Energy, Docket Nos. 50-325 & 50-324, License Nos. DPR-71 & DPR-62, Hwy 87, 2.5 Miles North, Southport, NC 28461.

David Combs, Byron Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50-454 & STN 50-455, License Nos. NPF-37 & NPF-66, 4450 N. German Church Road, Byron, IL 61010.

J. Mark Dunbar, Security Manager, Callaway Plant, Unit 1, Ameren Union Electric Company, Docket No. STN 50-483, License No. NPF-30, Highway CC (5 Miles North of Highway 94), Portland, MO 65067.

Vince Williams, Security Programs Specialist, Calvert Cliffs Nuclear Power Plant, Units 1 & 2, Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 & 50-318, License Nos. DPR-53 & DPR-69, 1650 Calvert Cliffs Parkway, Lusby, MD 20657.

G. R. Peterson, Vice President Catawba Site, Catawba Nuclear Station, Units 1 & 2, Duke Power Company, Docket Nos. 50-413 & 50-414, License Nos. NPF-35 & NPF-52, 4800 Concord Road, York, SC 29745.

Ed Wrigley, Security Manager, Clinton Power Station, AmerGen Energy Company, LLC, Docket No. 50-461, License No. NPF-62, Route 54 East, Clinton, IL 61727.

J. V. Parrish, Chief Executive Officer, Columbia Generating Station, Energy Northwest, Docket No. 50-397, License No. NPF-21, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352.

Neil Harris, Comanche Peak Steam Electric Station, Units 1 & 2, TXU Electric & Gas, Docket No. 50-445 & 50-446, License Nos. NPF-87 & NPF-89, FM 56, 5 Miles North of Glen Rose, Glen Rose, TX 76043.

Martin Faulkner, Security Manager, Cooper Nuclear Station, Nebraska Public Power District, Docket No. 50-298, License No.

DPR-046, 1200 Prospect Road, Brownville, NE 68321-0098.

Marty Folding, Security Manager, Crystal River Nuclear Generating Plant, Unit 3, Progress Energy, Docket No. 50-302, License No. DPR-72, Crystal River Energy Complex, 15760 West Power Line Street (NAID), Crystal River, FL 34428-6708.

William Mugge, Security Manager, Davis-Besse Nuclear Power Station, FirstEnergy Nuclear Operating Company, Docket No. 50-346, License No. NPF-3, 5501 N. State, Route 2, Oak Harbor, OH 43449.

Ron Todaro, Security Director, Diablo Canyon Nuclear Power Plant, Units 1 & 2, Pacific Gas & Electric Company, Docket Nos. 50-275 & 50-323, License Nos. DPR-80 & DPR-82, 9 Miles Northwest of Avila Beach, Avila Beach, CA 93424.

Garland Gibson, Manager, Site Protective Services, Donald C. Cook Nuclear Plant, Units 1 & 2, American Electric Power, Docket Nos. 50-315 & 50-316, License Nos. DPR-58 & DPR-74, 1 Cook Place, Bridgman, MI 49106.

Valheria Gengler, Dresden Nuclear Power Station, Units 2 & 3, Exelon Generation Company, Docket Nos. 50-237 & 50-249, License Nos. DPR-19 & DPR-25, 6500 North Dresden Road, Morris, IL 60450-9765.

Ben Kindred, Security Manager, Duane Arnold Energy Center, Nuclear Management Co., Docket No. 50-331, License No. DPR-49, 3277 DAEC Road, Palo, Iowa 52324.

John R. Thompson, Security Manager, Edwin I. Hatch Nuclear Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50-321 & 50-366, License Nos. DPR-57 & NPF-5, Plant E. I. Hatch, U.S. Hwy #1 North, Baxley, GA 31515-2010.

Joe Korte, Nuclear Security Manager, Fermi, Unit 2, Detroit Edison Company, Docket No. 50-341, License No. NPF-43, 6400 N. Dixie Highway, Newport, MI 48166.

John Sefick, Manager, Security & Emergency Planning, Fort Calhoun Station, Omaha Public Power District, Docket No. 50-285, License No. DPR-40, 9750 Power Lane, Blair, NE 68008.

Greg D. Brown, Grand Gulf Nuclear Station, Unit 1, Entergy Operations, Inc., Docket No. 50-416, License No. NPF-29, Bald Hill Road—Waterloo Road, Port Gibson, MS 39150.

Scott Young, Security Superintendent, H.B. Robinson Steam Electric Plant, Unit 2, Carolina Power & Light Company, Docket No. 50-261, License No. DPR-23, 3581 West Entrance Road, Hartsville, SC 29550.

David Thompson, Security Manager, Indian Point Nuclear Generating Station, Units 2 & 3, Entergy Nuclear Operations, Inc., Docket Nos. 50-247 & 50-286, License Nos. DPR-26 & DPR-64, Mail Stop K-IP2-4331, 295 Broadway, Suite 1, Buchanan, NY 10511.

J. Haley, Security Manager, James A. FitzPatrick Nuclear Power Plant, Entergy Nuclear Operations, Inc., Docket No. 50-333, License No. DPR-59, 268 Lake Road, Lycoming, NY 13093.

Ken Dyer, Site Security Manager, Joseph M. Farley Nuclear Plant, Units 1 & 2, Southern

- Nuclear Operating Co., Docket Nos. 50-348 & 50-364, License No. NPF-2 & NPF-8, 7388 North State Highway 95, Columbia, AL 36319-4120.
- Mark Fencil, Security Manager, Kewaunee Nuclear Power Plant, Nuclear Management Co., Docket No. 50-305, License No. DPR-43, N 490 Highway 42, Kewaunee, WI 54216-9510.
- Cindy Wilson, LaSalle County Station, Units 1 & 2, Exelon Generation Company, Docket No. 50-373 & 50-374, License Nos. NPF-11 & NPF-18, 2601 North 21st Road, Marseilles, IL 61341-9757.
- Peter R. Supplee, Limerick Generating Station, Units 1 & 2, Exelon Generation Company, LLC, Docket No. 50-352 & 50-353, License Nos. NPF-39 & NPF-85, Evergreen & Sanatoga Road, TSC 1-2, Sanatoga, PA 19464.
- J. Alan Price, Site Vice President, c/o Mr. David W. Dodson, Millstone Power Station, Units 2 & 3, Dominion Nuclear Connecticut, Inc., Docket Nos. 50-336 & 50-423, License Nos. DPR-65 & NPF-49, Rope Ferry Road, Waterford, CT 06385.
- Brian B. Linde, Security Manager, Monticello Nuclear Generating Plant, Nuclear Management Company, Docket No. 50-263, License No. DPR-22, 2807 W. Highway 75, Monticello, MN 55362.
- Mr. John T. Conway, Site Vice President, Nine Mile Point Nuclear Station, Units 1 & 2, Nine Mile Point Nuclear Station, LLC, Docket Nos. 50-220 & 50-410, License Nos. DPR-63 & NPF-69, 348 Lake Road, Oswego, NY 13126.
- Tim Maddy, Manager, Station Nuclear Security, North Anna Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50-338 & 50-339, License Nos. NPF-4 & NPF-7, 1022 Haley Drive, Mineral, Virginia 23117.
- Terry King, Security Manager, Oconee Nuclear Station, Units 1, 2, & 3, Duke Energy Corporation, Docket Nos. 50-269, 50-270 & 50-287, License Nos. DPR-38, DPR-47 & DPR-55, 7800 Rochester Highway, Seneca, SC 29672.
- Rick Ewart, Security Manager, Oyster Creek Nuclear Generating Station, AmerGen Energy Company, LLC, Docket No. 50-219, License No. DPR-16, Route 9 South, Forked River, NJ 08731.
- Douglas Cooper, Site Vice President, Palisades Plant, Nuclear Management Company, Docket No. 50-255, License No. DPR-20, 27780 Blue Star, Memorial Highway, Covert, MI 49043.
- Michael W. Priebe, Dept. Leader-Security Operations, Palo Verde Nuclear Generating, Units 1, 2 & 3, Arizona Public Service Company, Docket Nos. STN 50-528, 50-529 & STN 50-530, License Nos. NPF-41 & NPF-51 & NPF-74, 5801 S. Wintersburg Road, Tonapah, Arizona 85354-7529.
- Wayne Trump, Manager—Site Security, Peach Bottom Atomic Power Station, Units 2 & 3, Exelon Generation Company, LLC, Docket Nos. 50-277 & 50-278, License Nos. DPR-44 & DPR-56, 1848 Lay Road, Delta, PA 17314.
- Thomas Mahon, Security Manager, Perry Nuclear Power, Unit 1, FirstEnergy Nuclear Operating Company, Docket No. 50-440, License No. NPF-58, 10 North Center Street, Perry, OH 44081.
- Michael Bellamy, Senior Vice President, Pilgrim Nuclear Power Station, Unit 1, Entergy Nuclear Generation Company, Docket No. 50-293, License No. DPR-35, Rocky Hill Road, Plymouth, MA 02360.
- Mark Fencil, Security Manager, Point Beach Nuclear Plant, Units 1 & 2, Nuclear Management Company, Docket Nos. 50-266 & 50-301, License Nos. DPR-24 & DPR-27, 610 Nuclear Road, Two Rivers, WI 54241.
- John Waddell, Security Manager, Prairie Island, Units 1 & 2, Nuclear Management Company, Docket No. 50-282 & 50-306, License No. DPR-42 & DPR-60, 1717 Wakonade Drive East, Welch, MN 55089.
- Tim Tulon, Site Vice President, Quad Cities Nuclear Power Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50-254 & 50-265, License Nos. DPR-29 & DPR-30, 22710—206th Ave., North, Cordova, IL 61242.
- Ronald C. Teed, Site Security Supervisor, R. E. Ginna Nuclear Power Plant, Rochester Gas & Electric Corporation, Docket No. 50-244, License No. DPR-18, 1503 Lake Road, Ontario, NY 14519.
- Andre James, Security Manager, River Bend Station, Entergy Operations, Inc., Docket No. 50-458, License No. NPF-47, 5485 U.S. Highway 61, St. Francisville, LA 70775.
- Ted Straub, Manager of Nuclear Security & Fire, Security Center, Salem Nuclear Generating Station, Units 1 & 2, Docket Nos. 50-272 & 50-311, License No. DPR-70 & DPR-75, Hope Creek Generating Station, Unit 1, Docket No. 50-354, License No. NPF-57, PSEG Nuclear LLC, End of Buttonwood Road, Hancocks Bridge, NJ 08038.
- John Todd, Manager, Site Security, San Onofre Nuclear Station, Units 2 & 3, Southern California Edison, Docket Nos. 50-361 & 50-362, License Nos. NPF-10 & NPF-15, 5000 Pacific Coast Highway (A82), San Clemente, CA 92674.
- James Pandolfo, Security Manager, Seabrook Station, Unit 1, FPL Energy Seabrook, LLC, Docket No. 50-443, License No. NPF-86, Central Receiving, Lafayette Road, Seabrook, NH 03874.
- Kenneth Stevens, Security Manager, Sequoyah Nuclear Plant, Units 1 & 2 (OPSSN), Tennessee Valley Authority (TVA), Docket Nos. 50-327 & 50-328, License Nos. DPR-77 & DPR-79, Sequoyah Road, Soddy Daisy, TN 37384.
- Denny Braund, Shearon Harris Nuclear Power Plant, Unit 1, Carolina Power & Light Company, Docket No. 50-400, License No. NPF-63, 5413 Shearon Harris Road, New Hill, NC 27562.
- William T. Cottle, President & Chief Executive Officer, South Texas Project Electric Generating Company, Units 1 & 2, STP Nuclear Operating Company, Docket Nos. 50-498 & 50-499, License Nos. NPF-76 & NPF-80, 8 Miles West of Wadsworth, on FM 521, Wadsworth, TX 77483.
- Gary L. Varnes, Site Security Manager, St. Lucie Nuclear Plant, Units 1 & 2, Florida Power & Light Company, Docket Nos. 50-335 & 50-389, License Nos. DPR-67 & NPF-16, 6351 South Ocean Drive, Jensen Beach, FL 34957.
- Curtis Luffman, Surry Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50-280 & 50-281, License Nos. DPR-32 & DPR-37, 5570 Hog Island Road, Surry, VA 23883-0315.
- Roland Ferentz, Manager, Nuclear Security, Susquehanna Steam Electric Station, Units 1&2, Pennsylvania Power and Light Company, Docket Nos. 50-387 & 50-388, License Nos. NPF-14 & NPF-22, 769 Salem Blvd., Berwick, PA 18603.
- Michael Bruecks, Three Mile Island Nuclear Station, Unit 1, Amergen Energy Company, LLC, Docket No. 50-289, License No. DPR-50, Route 441 South, Middletown, PA 17057.
- William S. Johns, Site Security Supervisor, Turkey Point Nuclear Generating Station, Units 3 & 4, Florida Power & Light Company, Docket Nos. 50-250 & 50-251, License Nos. DPR-31 & DPR-41, 9760 SW 344th Street, Florida City, FL 33035.
- Mr. Jay K. Thayer, Site Vice President, Vermont Yankee Nuclear Power Station, Entergy Nuclear Vermont Yankee, LLC, Docket No. 50-271, License No. DPR-28, 185 Old Ferry Road, Brattleboro, VT 05302-0500.
- Stephen A. Byrne, Senior Vice President-Nuclear Operations, Virgil C. Summer Nuclear Station, South Carolina Electric & Gas Company, Docket No. 50-395, License No. NPF-12, Hwy 215 N at Bradham Blvd., Jenkinsville, SC 29065.
- Doug G. Huyck, Security Manager, Vogtle Electric Generating Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 & 50-425, License Nos. NPF-68 & NPF-81, 7821 River Road, Waynesboro, GA 30830.
- Joseph E. Venable, Vice President, Operations, Waterford Steam Electric Generating Station, Unit 3, Entergy Operations, Inc., Docket No. 50-382, License No. NPF-38, 17265 River Road, Killona, LA 70066-0751.
- Bonnie A. Schnetzler, Security Manager, Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority, Docket No. 50-390, License No. NPF-90, Highway 68 Near Spring City, Spring City, TN 37381.
- William A. Evans, William B. McGuire Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50-369 & 50-370, License Nos. NPF-9 & NPF-17, Mail—MG01SC, 12700 Hagers Ferry Road, Huntersville, NC 28078.
- David Erbe, Security Manager, Wolf Creek Generating Station, Unit 1, Wolf Creek Nuclear Operating Corporation, Docket No. STN 50-482, License No. NPF-42, 1550 Oten Lane, NE, Burlington, KS 66839.

[FR Doc. 03-11302 Filed 5-6-03; 8:45 am]

BILLING CODE 7590-01-P

estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators*. NSF publishes statistics from the survey in many reports, but primarily in the biennial series, *Characteristics of Recent Science and Engineering Graduates in the United States*. A public release file of collected data, designed to protect respondent confidentiality, also will be made available to researchers on CD-ROM and on the World Wide Web.

Mathematica Policy Research, Inc. of Princeton, New Jersey will conduct the study for NSF. Data are obtained by mail questionnaire, computer assisted telephone interviews and web survey beginning October 2003. The survey will be collected in conformance with the Privacy Act of 1974, the National Science Foundation Act of 1950, as amended, and the Confidential Information Protection and Statistical Act of 2002. The individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes and for preparing scientific reports and articles.

Expected Respondents: A statistical sample of approximately 18,000 bachelor's and master's degree recipients in science, engineering, and health will be contacted in 2003. A total response rate in 2001 was 80%.

Burden on the Public: The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. The total annual burden will be 6,000 hours during the year.

Dated: May 12, 2003.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03-12215 Filed 5-15-03; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-27, License No. SNM-42, EA 03-087]

In the Matter of BWX Technologies, Lynchburg, VA; Order Modifying License (Effective Immediately)

BWX Technologies, Inc., ("BWXT" or the "licensee") is the holder of Special

Nuclear Material License No. SNM-42 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 70. BWXT is authorized by its license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The BWXT license, originally issued on August 22, 1956, was last renewed on October 2, 1995, and is due to expire on September 30, 2005.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees and eventually Orders to selected licensees, including BWXT, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued an Order to BWXT on August 21, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at this facility.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 CFR 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 1¹ of this Order. The DBT, which supercedes the DBT specified in 10 CFR 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order will remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 1 of this Order, BWXT is required to revise its physical security plan, safeguards contingency plan, and guard training

and qualification plan that are required by 10 CFR 70.22.

In order to provide assurance that BWXT is implementing prudent measures to protect against the DBT, Materials License SNM-42 shall be modified to require that the physical security plans, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, required by 10 CFR 70.22 be revised to provide protection against this DBT. Upon completion of NRC review and approval of the revised physical security plan, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on August 21, 2002, imposing ICMs. In addition, pursuant to 10 CFR 2.202, 70.32, and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 70.32, and 70.81, it is hereby ordered, effective immediately, that material license SNM-42 is modified as follows:

A. 1. BWXT shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise its physical protection plan, safeguards contingency plan, and guard training and qualification plan prepared pursuant to 10 CFR 70.22 to provide protection against the DBT set forth in Attachment 1 to this Order. BWXT shall submit the revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.

2. The revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan must be fully implemented by the licensee by October 29, 2004.

B. 1. BWXT shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if

¹ Attachment 1 contains classified information and will not be released to the public.

implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or its facility license. The notification shall provide BWXT's justification for seeking relief from, or variation of, any specific requirement.

2. If BWXT considers that implementation of any of the requirements of this Order would adversely impact safe operation of its facility, BWXT must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. BWXT shall report to the Commission, in writing, when it has fully implemented the approved revisions to its physical security plan, safeguards contingency plan, and guard training and qualification plan to protect against the DBT described in Attachment 1 to this Order.

D. Notwithstanding the provisions of any Commission regulation, license or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that BWXT may make changes to their revised physical security plan, safeguards contingency plan, and guard training and qualification plan if authorized by 10 CFR 73.32 (e) or (g).

BWXT's responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 CFR 70.5. In addition, BWXT's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV

In accordance with 10 CFR 2.202, BWXT must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown,

consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which BWXT or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II and to BWXT if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by BWXT or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), BWXT may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.
Dated this 29th day of April, 2003.

Martin J. Virgilio,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03-12255 Filed 5-15-03; 8:45 am]
BILLING CODE 7530-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-143, License No. SNM-124, EA 03-087]

In the Matter of Nuclear Fuel Services Inc., Erwin, TN; Order Modifying License (Effective Immediately)

Nuclear Fuel Services Inc., ("NFS" or the "licensee") is the holder of Special Nuclear Material License No. SNM-124 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 70. NFS is authorized by its license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The NFS license, originally issued on September 18, 1957, was last renewed on July 2, 1999, and is due to expire on July 31, 2009.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees and eventually Orders to selected licensees, including NFS, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the

Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued an Order to NFS on August 21, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at this facility.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 CFR 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 1¹ of this Order. The DBT, which supercedes the DBT specified in 10 CFR 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order will remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 1 of this Order, NFS is required to revise its physical security plan, safeguards contingency plan, and guard training and qualification plan that are required by 10 CFR 70.22.

In order to provide assurance that NFS is implementing prudent measures to protect against the DBT, Materials License SNM-124 shall be modified to require that the physical security plan, safeguards contingency plan, and the guard training and qualification plan, required by 10 CFR 70.22 be revised to provide protection against this DBT. Upon completion of NRC review and approval of the revised physical security plan, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on August 21, 2002, imposing ICMs. In addition, pursuant to 10 CFR 2.202, 70.32, and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10

CFR 2.202, 70.32, and 70.81, it is hereby ordered, effective immediately, that material license SNM-124 is modified as follows:

A. 1. NFS shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise its physical protection plan, safeguards contingency plan, and guard training and qualification plan prepared pursuant to 10 CFR 70.22 to provide protection against the DBT set forth in Attachment 1 to this Order. NFS shall submit the revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.

2. The revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan must be fully implemented by the licensee by October 29, 2004.

B. 1. NFS shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause NFS to be in violation of the provisions of any Commission regulation or its facility license. The notification shall provide NFS's justification for seeking relief from, or variation of, any specific requirement.

2. If NFS considers that implementation of any of the requirements of this Order would adversely impact safe operation of its facility, NFS must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, NFS must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. NFS shall report to the Commission, in writing, when it has fully implemented the approved revisions to its physical security plan, safeguards contingency plan, and guard training and qualification plan to protect against the DBT described in Attachment 1 to this Order.

D. Notwithstanding the provisions of any Commission regulation, license or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that NFS may make changes to their revised physical security plan, safeguards contingency plan, and guard training and qualification plan if authorized by 10 CFR 73.32(e) or (g).

NFS's responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 CFR 70.5. In addition, NFS's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by NFS of good cause.

In accordance with 10 CFR 2.202, NFS must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which NFS or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II and to NFS if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary

¹ Attachment 1 contains classified information and will not be released to the public.

of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by NFS or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), NFS may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of April, 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,
Director, Office of Nuclear Material Safety
and Safeguards.

[FR Doc. 03-12257 Filed 5-15-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Tuesday and Wednesday, June 3-4,

2003, at the Alexis Park, located at 375 East Harmon, Las Vegas, Nevada 89109. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94-463, 86 Stat. 770-776).

Agenda: The meeting will be held from 8:30 a.m. to 5 p.m. on Tuesday, June 3 and from 8:30 to close of business on Wednesday, June 4. The preliminary agenda includes the topics listed below. Additional details regarding timing of presentations and changes to the agenda may be obtained through the contacts listed below and will be announced prior to the meeting.

1. Introductory Remarks—NRC/LSNARP
NRC Organizational responsibilities and roles
2. LSN Status Report—NRC-ASLBP/
LSN Administrator
Status and Schedule for document loading—NRC/DOE/Potential Parties
3. Large Document Summary Paper (review of 4 options)—NRC-OCIO
4. Large Document Draft Guidance—NRC-OCIO
5. Discussion of LSNARP membership on Options and Guidance—LSNARP
6. Scope of documents to be loaded on LSN—NRC-OGC
Document Duplication
Status of Revised Topical Guidelines
Meaning of Certification
7. Need for Part 2 rule changes/
schedule—NRC-OGC
Electronic and/or CD-submittal
Ambiguities in rule
Document Duplication

SUPPLEMENTARY INFORMATION: The LSN is an Internet based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended. In 1998, the NRC Rules of Practice in 10 CFR part 2, subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Office of the Secretary, Mail Stop O-16 C1,

Washington, DC 20555-0001; Attn: Andrew Bates (telephone 301-415-1963; e-mail ALB@NRC.GOV) or Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, Attn: Jack G. Whetstone (telephone 301-415-7391; e-mail JGW@NRC.GOV).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: May 9, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03-12254 Filed 5-15-03; 8:45 am]

BILLING CODE 7590-01-P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Government Performance and Results Act of 1993; Revised Strategic Plan

AGENCY: Occupational Safety and Health
Review Commission.

ACTION: Notice of request for
commission.

SUMMARY: The Occupational Safety and Health Review Commission (Review Commission) announces the availability of its revised Strategic Plan for fiscal years 2003-2008 for public comment. Prepared in accordance with the Government Performance and Results Act of 1993, the revised Strategic Plan may be viewed at the Review Commission's Web site, <http://www.oshrc.gov> under "What's New." The revised Strategic Plan defines the Review Commission's strategic goal and objectives, and the methods for achieving them. The Review Commission seeks the views of those who practice before it and those who are affected by its case dispositions.

DATES: Comments should be submitted on or before June 16, 2003. The revised Strategic Plan will become effective in October 2003, without any further notice in the Federal Register, unless comments or government approval procedures necessitate otherwise.

ADDRESSES: Submit any written comments to Patricia A. Randle, Executive Director, Occupational Safety and Health Review Commission, 1120 20th St., NW., Ninth Floor, Washington, DC 20036-3419.

FOR FURTHER INFORMATION CONTACT: Patricia A. Randle, Executive Director, Occupational Safety and Health Review Commission, 1120 20th St., NW., Ninth

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**PUBLIC CITIZEN, INC. and
SAN LUIS OBISPO MOTHERS FOR PEACE,**

Petitioners,

v.

**U.S. NUCLEAR REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,**

Respondents.

No. 03-1181

UNOPPOSED MOTION TO POSTPONE FILING CERTIFIED INDEX TO RECORD

The federal respondents -- the Nuclear Regulatory Commission and the United States of America -- move to postpone filing of the certified index to the administrative record in this case, pending this Court's decision on our motion to dismiss for lack of jurisdiction. We have consulted Petitioners prior to filing this motion, and they have no objection to a postponement.

We request a postponement for the following reasons:

1. This is a direct review action in this Court. The Court's current scheduling order calls for the filing of the certified index to the administrative record on August 15, 2003. On that same day the NRC and the United States are filing a dispositive motion seeking dismissal of this lawsuit for lack of jurisdiction. This Court does not require a certified index or the administrative record itself to resolve our dispositive motion, which rests on Petitioners' having never been a party at the administrative level.

2. The petition for review in this case challenges, on procedural grounds, three NRC orders on security at nuclear facilities. Portions of those orders, and some agency documents

underlying the orders, contain material that is either classified as national security information or is designated "safeguards information" under section 147 of the Atomic Energy Act, 42 U.S.C. § 2167, and hence are not available to the public. Section 147 of the AEA directs the Commission to prohibit the unauthorized disclosure of security measures necessary for the physical protection of nuclear plants and materials.

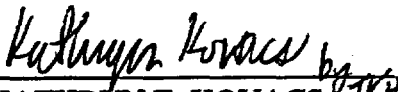
3. Some documents underlying the challenged NRC orders in this case originated in other federal agencies and have been classified as national security information by other federal agencies. Prior to listing such documents in a certified index of record, NRC must consult with the originating agency to ensure proper handling of that agency's classified information.

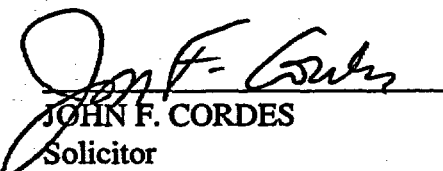
4. Given our pending motion to dismiss petitioners' entire lawsuit for lack of jurisdiction, neither the parties nor this Court need now engage in a complex and potentially unnecessary inquiry into whether any "safeguards" or "classified" information belongs in the administrative record.

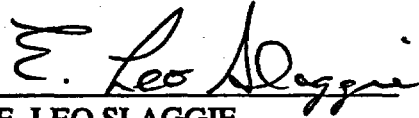
5. If this Court denies our motion to dismiss, or refers it to a merits panel, we ask that the Court allow Respondents 21 days to file a certified index to the administrative record, plus an appropriate motion, if necessary, to protect the confidentiality of safeguards or classified information.

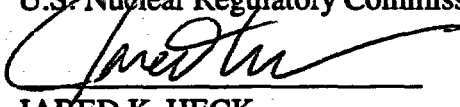
For the foregoing reasons, we respectfully ask this Court to grant this motion to postpone the filing of the certified index to record until 21 days after an order addressing Respondents' motion to dismiss.

Respectfully submitted,


KATHRYN E. KOVACS JKA
U.S. Department of Justice
Environment and Natural Resources Division
Appellate Section
P.O. Box 23795
Washington, D.C. 20026
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JOHN F. CORDES
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U.S. Nuclear Regulatory Commission


E. LEO SLAGGIE
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August 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2003, copies of the foregoing Unopposed Motion to Postpone Filing of Certified Index to Record were served by mail, postage prepaid, upon the following counsel:

Scott L. Nelson
Amanda Frost
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009


Jared K. Heck

United States Court of Appeals

District of Columbia Circuit
Washington, D.C. 20001-2866

General Information
(202) 216-7000

Facsimile Number
(202) 219-8530

ENTRY OF APPEARANCE

Case No. 03-1181

CAPTION Public Citizen, Inc. and San Luis Obispo Mothers for Peace

V.

U.S. Nuclear Regulatory Commission and the United States of America

PARTY

The Clerk will enter my appearance as counsel for:

☐ Appellant(s)

☐ Petitioner(s)

Name of Party

☐ Appellee(s)

☒ Respondent(s)

U.S. Nuclear Regulatory Commission

Name of Party

☐ Intervenor(s)

Name of Party

☐ Amicus Curiae

Name of Party

ATTORNEY

Name John F. Cordes

Phone 301-415-1600

Name E. Leo Slaggie

Phone 301-415-1600

Name Jared K. Heck

Phone 301-415-1623

Firm U.S. Nuclear Regulatory, Office of the General Counsel

Address Mail Stop 0-15D21, Washington, D.C. 20555-0001

NOTE: Must be submitted by a member of the Bar of the USCA for the D.C. Circuit.

United States Court of Appeals

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U.S. Nuclear Regulatory Commission and the United States of America

PARTY

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☐ Petitioner(s) _____
Name of Party

☐ Appellee(s)
☒ Respondent(s) United States of America _____
Name of Party

☐ Intervenor(s) _____
Name of Party

☐ Amicus Curiae _____
Name of Party

ATTORNEY

Name Kathryn E. Kovacs Phone 202-514-4010

Name _____ Phone _____

Name _____ Phone _____

Firm U.S. Department of Justice

Address P.O. Box 23795, Washington, D.C. 20026.

NOTE: Must be submitted by a member of the Bar of the USCA for the D.C. Circuit.