

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARDS

Before Administrative Judges:

Alan S. Rosenthal, Chairman
E. Roy Hawkens
Dr. Anthony J. Baratta

In the Matters of

All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Effective Immediately)

Docket No. EA-12-050
ASLBP No. 12-918-01-EA-BD01

All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status: Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (Effective Immediately)

Docket No. EA-12-051
ASLBP No. 12-918-01-EA-BD01

June 19, 2012

MEMORANDUM AND ORDER

(Directing Staff to Amend Filing on 10 C.F.R. § 2.206)

In a May 17, 2012 Order, this Board directed the NRC Staff to submit “a list of those occasions since January 1975 on which the NRC official to whom a [10 C.F.R. § 2.206] petition was submitted granted the substantive relief sought.”¹ In response, the Staff identified 142 Director’s Decisions that either granted the petition in whole or in part or, although denying the

¹ Licensing Board Memorandum and Order (Requesting Filing on Petitions under 10 C.F.R. § 2.206) at 1-2 (May 17, 2012) (unpublished) (emphasis in original); see also Licensing Board Memorandum and Order (Regarding Motion to Extend Time for Filing and to Reschedule Oral Argument) at 2 (May 24, 2012) (unpublished) (granting approximately a two week extension for Section 2.206 filing).

petition, either prompted action by the Staff or reflected action already taken by the Staff.² For each of these decisions, in accordance with the Board's request the Staff summarized the relief granted.

Upon reviewing the filing, it is plain that the Staff did not comply with the Board's directive. Rather than, as instructed, identifying solely those petitions in which substantive relief was provided to the petitioner, the Staff elected to supply the Board with each and every petition in response to which some action was taken by it. The most cursory examination of the Staff response reveals that in many, if not the majority, of the instances that action was patently not substantive in character.

To cite but one example, of the 387 Director's Decisions reviewed by the Staff only 2 petitions were granted in whole, one of which was that submitted in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), DD-90-3, 31 NRC 595 (1990). On an examination of the relief provided in that instance, it is obvious the relief could not possibly be characterized as substantive in nature. There, in response to allegations in a Section 2.206 petition that Pacific Gas & Electric Company (PG&E) violated certain antitrust license conditions in the Diablo Canyon operating licenses, the Director of the Office of Nuclear Reactor Regulation withheld a decision on the petition until completion of a ruling by the United States District Court for the Northern District of California on related issues and thereafter directed PG&E simply to submit a report regarding the steps it had taken and planned to take to comply with the District Court ruling.³

It is difficult to believe that the Staff is not conversant with the difference for present purposes between calling upon a licensee to file a report and what is being sought in the matters now before the Board, the augmentation of reliable hardened containment venting and

² NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R. § 2.206 at 2 (June 15, 2012).

³ Diablo Canyon, DD-90-3, 31 NRC at 595-96.

spent fuel storage. In the circumstances, we must conclude that in presenting the Board with all 142 instances where some affirmative action was taken with regard to a petition, the Staff chose simply to ignore the manifest distinction between substantive and procedural relief.

The Staff is directed to file, no later than noon (EDT) on Tuesday, June 26, 2012, an amended response to this Board's May 17, 2012 Order. That response shall identify those of the 142 Director's Decisions listed in the June 15, 2012 response that, in fact, provided substantive relief to the petitioner. To accommodate the filing of responsive comments, provided for by the Board's June 15, 2012 Order,⁴ those responsive comments shall now be filed no later than noon (EDT) on Tuesday, July 3, 2012.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 19, 2012

⁴ Licensing Board Memorandum and Order (Receiving Comments on 10 C.F.R. § 2.206 Filing) (June 15, 2012) (unpublished).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ALL OPERATING BOILING WATER)	
REACTOR LICENSEES WITH MARK I)	
AND MARK II CONTAINMENTS)	
)	
AND)	Docket Nos. EA-12-050 and EA-12-051
)	
ALL POWER REACTOR LICENSEES)	
AND HOLDERS OF CONSTRUCTION)	
PERMITS IN ACTIVE OR DEFERRED)	
STATUS)	
)	
(Fukushima-Related Orders Modifying)	
Licenses))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Directing Staff to Amend Filing on 10 C.F.R. § 2.206)** have been served upon the following persons by Electronic Information Exchange (EIE).

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
Washington, DC 20555-0001

Administrative Judge
Alan S. Rosenthal, Chair
E-mail: alan.rosenthal@nrc.gov

Administrative Judge
E. Roy Hawken
E-mail: roy.hawken@nrc.gov

Administrative Judge
Dr. Anthony J. Baratta
E-mail: Anthony.baratta@nrc.gov

Jonathan Eser, Law Clerk
E-mail: jonathan.eser@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001

Carrie Safford, Esq.
E-mail: carrie.safford@nrc.gov
Christopher Hair, Esq.
E-mail: Christopher.hair@nrc.gov
Mauri Lemoncelli, Esq.
E-mail: Mauri.lemoncelli@nrc.gov
Catherine Scott, Esq.
E-mail: clm@nrc.gov

E-mail: OGCMailCenter.Resource@nrc.gov

Docket Nos. EA-12-050 and EA-12-051

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U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001

E-mail: OCAAMail.Resource@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001

E-mail: hearingdocket@nrc.gov

Pilgrim Watch
148 Washington Street
Duxbury, MA 02332

Mary E. Lampert, Director
E-mail: mary.lampert@comcast.net

Morgan, Lewis & Bockius, LLP
1111 Pennsylvania, Ave. N.W.
Washington, D.C. 20004

Paul M. Bessette, Esq.
E-mail: pbessette@morganlewis.com
Stephen J. Burdick, Esq.
E-mail: sburdick@morganlewis.com

National Legal Scholars Law Firm, P.C.
241 Poverty Lane – Unit 1
Lebanon, NH 03766

Anthony Z. Roisman, Esq.
aroisman@nationallegalscholars.com

Hogan Lovells, US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

Mary Anne Sullivan, Esq.
E-mail: maryanne.sullivan@hoganlovells.com
Daniel F. Stenger, Esq.
E-mail: daniel.stenger@hoganlovells.com
Jennifer Mansh, Esq.
E-mail: Jennifer.mansh@hoganlovells.com
Amy C. Roma, Esq.
E-mail: amy.roma@hoganlovells.com
Ruth M. Porter, Esq.
E-mail: ruth.porter@hoganlovells.com

Pillsbury Winthrop Shaw Pittman
2300 N Street, NW
Washington, DC 20037

David Lewis, Esq.
Counsel for Dominion
E-mail: David.lewis@pillsburylaw.com
Jay Silberg, Esq.
E-mail: jay.silberg@pillsburylaw.com
Stephen L. Markus, Esq.
E-mail: Stephen.markus@pillsburylaw.com

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Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203-2015

M. Stanford Blanton, Esq.
E-mail: SBlanton@balch.com
Derek J. Brice, Esq.
E-mail: dbrice@balch.com
April Leemon, Paralegal
E-mail: aleemon@balch.com

Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

Donald P. Irwin, Esq.
Counsel for Detroit Edison
E-mail: dirwin@hunton.com
Stephanie Meharg, Esq.
E-mail: smeharg@hunton.com

Detroit Edison Company
One Energy Plaza
Detroit, MI 48226-1279

Jon P. Christinidis, Esq.
Office of the General Counsel
E-mail: christinidisj@dteenergy.com

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111

Tyson Smith, Esq.
E-mail: trsmith@winston.com

Winston & Strawn LLP
1700 K Street
Washington, DC 20006

David A. Repka, Esq.
Counsel for Pacific Gas & Electric Co.
E-mail: drepka@winston.com
Carlos L. Sisco, Paralegal
E-mail: csisco@winston.com

Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

William A. Horin, Esq.
Counsel for Energy Northwest
E-mail: whorin@winston.com
Rachael Miras-Wilson, Esq.
E-mail: rwilson@winston.com

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Dominion Resources Services, Inc.
120 Tredegar Street, RS-2
Richmond, VA 23219

Lillian M. Cuoco, Esq.
Senior Counsel
E-mail: Lillian.cuoco@dom.com

Florida Power & Light Company
801 Pennsylvania Avenue, NW
Suite 220
Washington, DC 20004

Mitchell Ross, Esq.
E-mail: mitch.ross@fpl.com
Steven Hamrick, Esq.
steven.hamrick@fpl.com

Dated at Washington, DC
this 19th day of June 2012

Original signed by Nancy Greathead
Office of the Secretary of the Commission