State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

and-comment period, its regulations had been amended in response to the request of a private party, apparently to assist a specific client.

3. Inadequate Statutory Requirements to Ensure Job Requirements Are Consistently Met

The current statutory requirements and EDA regulations governing reporting requirements and required annual jobs reports for companies to receive awards are inadequate to ensure that companies are consistently creating or retaining the required number of jobs and achieving the aims of Grow NJ. Based on the language of the regulations, a company need only submit an annual report, certified by the company's chief financial officer or equivalent, showing that it created or retained the required number of jobs for the last tax year before the credit amount is approved and issued. There is no additional certification requirement to ensure that these jobs are maintained to further the aims of economic growth and job creation. In essence, a company could create the number of jobs required in its agreement, certify, receive the first tenth of its overall credit, and then eliminate or fail to retain the required number of jobs immediately after receiving its credit while still retaining the award for the full year.

Indeed, in one instance, World Business Lenders, LLC ("WBL"), moved to New Jersey from another state in July 2016. WBL's award was contingent on its promise to bring a specific number of jobs into New Jersey, and its Incentive Agreement provided that it would remain in New Jersey for fifteen years. By October 2016, WBL had hired enough employees to meet the employment numbers set forth in its Incentive Agreement. WBL's submission to the EDA showed that it had satisfied the employment numbers set forth in its Incentive Agreement in October 2016. In the beginning of December 2016, the EDA certified to the Division of Taxation that the company was eligible for its overall tax credit certificate of approximately $16 million. At the beginning of January 2017, however, the company laid off a significant number of its employees, sending its job numbers well below the number required to continue to qualify for a tax-incentive grant. The EDA learned of the mass layoffs through news reports. The company subsequently submitted a report showing that it had met the required employment numbers for November and December 2016. Therefore, despite having seen indications that the company had terminated its employees after satisfying the requirements to receive its tax credit for 2016, the EDA asked the Division of Taxation to issue the company the first tenth of its overall credit, amounting to approximately $1.6 million. The company received this award even though it had been located in New Jersey for only six months, had submitted only three months of employment data, and had laid off a significant number of employees shortly after qualifying for the first year of its award.

The Task Force is still investigating this issue and has not reached any conclusion regarding the company's conduct or intent in connection with its application, and the company has maintained

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

that it acted entirely in compliance with Grow NJ's requirements. Regardless, the Grow NJ regulations did not specifically require that the company prove that it maintained the agreed-upon number of jobs for a full twelve-months, did not require that it be located in New Jersey for a full year in order to receive a full year's award, and did not have a mechanism requiring that a company maintain a minimum number of jobs after the award was issued in order to retain its award. The company was not certified to receive the second tenth of its award in 2017 because it did not employ the required number of employees for that tax year.

V. EDA: THE ADMINISTRATION OF THE TAX-INCENTIVE PROGRAMS

In its examination of the EDA's implementation and administration of the Programs, the Task Force set out to: (1) further examine and assess the EDA's process and control failures, including in the EDA application-approval process, from pre-application through approval and certification; (2) evaluate the effectiveness of existing EDA policies and procedures relating to the roles and responsibilities of individual EDA officers, EDA staff training, and EDA officers' understanding of the purpose, implementation, requirements, and administration of the Grow NJ and ERG tax incentive programs; (3) assess the administration of the tax incentive programs and subsequent monitoring of grant recipients; and (4) determine whether or not external or internal pressures were brought to bear on the EDA in connection with its application approval, compliance, monitoring, and certification processes, as well as its rulemaking processes relating to the Programs.

A. Overview of the Application-Approval Process

In order to evaluate any problems relating to the Programs' design, implementation, or administration, the Task Force had to begin with an understanding of the relevant statutes and of the EDA's tax-incentive application and administration process, from application through the annual award of tax-incentive grants. As noted previously, the Task Force focused primarily on Grow NJ during the initial phase of its investigation. A high-level overview of the Grow NJ process is below:[81]

1. Pre-Approval Process: Application Review and Board Approval

Companies learn of EDA tax-incentive programs and make initial contact with the EDA through various channels. The EDA receives potential application referrals through a customer care telephone line, through the Business Action Center ("BAC"), which is housed within the New

[81] Although there is significant overlap between the Grow NJ and ERG processes, particularly in the pre-application through approval stages, the differences in the Grow NJ and ERG Program requirements result in divergent approaches to the administration of these Programs. We will provide an overview of the ERG process in a later report.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

Jersey Department of State, and through Choose New Jersey, a 501(c)(3) non-profit whose mandate is to act as the marketing arm of the State and attract out-of-state and international businesses to New Jersey. BAC personnel frequently work with EDA officers to attract and obtain program applicants, and the BAC has historically been the biggest driver of application lead referrals to the EDA. Separately, the EDA's Community Development Officers ("CDOs") and Business Development Officers ("BDOs")[82] are also charged with developing business relationships and recruiting potential applicants. Indeed, a BDO's year-end performance is evaluated, in part, on their outreach efforts as well as whether they have met yearly goals in the volume of applications submitted to the EDA. Potential applicants may also directly contact the EDA to obtain information about the Programs. In addition, applicants are often represented by consultants, lawyers, lobbyists, or real-estate agents, and those representatives may also reach out directly to EDA personnel prior to the submission of a tax-incentive application.

Before submitting a Program application, a potential applicant often has an initial meeting or conversation with EDA personnel—typically a BDO—in order to discuss the applicant's business, needs, and Program requirements. Potential applicants occasionally meet with members of the EDA's senior leadership team in addition to or in lieu of meeting with a BDO. Pre-application dialogue between Program applicants and the EDA is not required, but in practice, often precedes formal submission of a company application by weeks or months.

A company formally submits its application through the EDA's electronic application system. At that time, the company pays an application fee and a BDO is assigned to the application. Often, it is the same BDO that worked with the company pre-application. The BDO is responsible for conducting an initial review of the application and assisting the applicant—or "client"—in ensuring that the applicant has submitted all required documentation prior to transmittal of the application file to Underwriting. BDOs must consult their Program Manager and Managing Director for application reviews before the application is submitted to the Underwriting group.

During the underwriting phase, underwriters are responsible for conducting due diligence and vetting an application to ensure it sufficiently meets all Program requirements and to address any outstanding concerns. Although underwriters bear the primary responsibility for conducting due diligence and follow-up with applicants, they often include the assigned BDO in correspondence to the applicant as the face of the relationship. Among other factors, underwriters

[82] These roles and titles within the EDA are now consolidated and currently all Community Development Officers ("CDOs") are now referred to as Business Development Officers ("BDOs"). For the sake of consistency, the Task Force's First Report will refer to both CDOs and BDOs at various times as BDOs.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

assess the applicant's submitted cost benefit analysis[83] and conduct the required net benefits analysis.[84] Underwriters are also responsible for drafting project summary memoranda, which are presented during "Project Review Meetings." At those meetings, the assigned underwriter presents the application to EDA personnel and members of the New Jersey Attorney General's Office. The EDA staff discusses and raises any issues or concerns related to the application, which the assigned underwriter answers or addresses directly with the applicant as follow-up.

After the Project Review meeting, the underwriter presents the application to the Incentive Committee of the EDA Board, after which the Incentive Committee either does or does not recommend an application for approval by the Board. Although an application may proceed to Board review without a recommendation by the Incentive Committee, more often, the applicant will withdraw its application if the Incentive Committee does not recommend approval.

If the Incentive Committee recommends that the EDA Board approve an application, the application is presented during an EDA Board meeting for approval. EDA Board meetings are conducted on a regular basis and are open to the public. Prior to the Board Meeting, EDA personnel provides the EDA Board with memoranda detailing the project applications that are subject to review and approval at the upcoming meeting. If the Board votes on an application and it is approved, the Governor has ten days to veto the approval. Board-approved projects are required to pay a non-refundable fee of 0.5% of the approved award amount, capped between $50,000 to $500,000, prior to final approval.

Depending on the complexity of the application, the full review process may last a number of months. EDA employees said that, in the early period of Grow NJ's administration, they often processed applications in one or two months, but now, although they can process more complete applications in as little as two months, it could take several months to a year to process others.

---

[83] The EDA requires Grow NJ applicants to submit "Cost Benefit Analysis" (or "CBA") forms with their applications. These forms compare the costs of the applicant's proposed New Jersey site and the applicant's alternative site. The purpose of the form is to demonstrate that the applicant's proposed New Jersey location is more expensive than the alternative location—and thus, tax incentives are required to offset the higher costs.

[84] As discussed in further detail herein, the EDA conducts a net benefit analysis ("NBA") to determine that every Grow NJ award is anticipated to "yield a net positive benefit to the State" of at least 110%, with the exception of Camden, where the requirement is 100%.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

2. Post-Approval Process: Closing Services, Monitoring, and Certification

After Board approval, the EDA executes an approval letter and the project moves to Closing Services, during which a conditions of approval officer monitors the project to ensure that any conditions imposed on the project have been met. The conditions of approval, outlined in the approval letter, may include, for example, site plan approval, site control, committed project financing, eligible minimum capital investments, and updated status reports. Once the conditions have been met, Closing Services prepares an Incentive Agreement in consultation with the New Jersey Attorney General's Office. Once the Incentive Agreement is executed, a closing date is set. After closing, the company may receive a tax award the following year, provided it can certify that the project has met all the conditions of the Incentive Agreement in the prior year.

Once the closing process is complete and an Incentive Agreement has been executed, the project is transferred to the Portfolio Management and Compliance[85] group for monitoring and annual certification. Projects have three years to certify that they have met all the conditions and requirements of the Program and Incentive Agreement, with the possibility of up to two six-month extensions of time. Once a project certifies to the EDA that it has met all conditions and requirements of the Program and Incentive Agreement, the EDA's Portfolio Management and Compliance group then certifies the same to the Department of Treasury. The Treasury Department then issues the tax-incentive award. Projects are required to certify their compliance on an annual basis to obtain their tax-incentive award, which is distributed evenly in increments of 1/10th of the total award, across a ten-year period.

If the Portfolio Management and Compliance Group determines that a project is non-compliant with its Incentive Agreement or the Program requirements, the tax incentive award is subject to potential forfeiture, recapture, or recoupment.

B. EDA-Related Litigation

In the early stages of the Task Force's investigation, the Task Force discovered a whistleblower complaint, *Veyis Sucsuz v. New Jersey Economic Development Authority, John J. Rosenfeld, Michele Brown, Fred Cole, Anne Cardello, and John Does 1-10*,[86] filed on May 11, 2015 in New Jersey Superior Court, Mercer County, by a former EDA underwriter, Veyis "David" Sucsuz. Mr. Sucsuz was employed at the EDA for over ten years until his termination in September 2014. He began at the EDA as a legal assistant in lending services and later became an underwriter,

[85] The Portfolio Management and Compliance Group was reorganized and renamed in late 2018 and previously existed as the Finance & Development – Post-Closing Financial Services Group.
[86] No. MER-L-001083-15 (Super Ct., Mercer Cty. filed May 11, 2015).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

responsible for the review and processing of Grow NJ and ERG incentive award applications, among other incentive programs.

In his complaint, Mr. Sucsuz alleged employment discrimination claims in addition to claims that he witnessed misconduct in connection with Grow NJ and ERG incentive program approvals, and that he was fired when he resisted directives from senior management to alter or promote applications that should have otherwise been rejected. Among other claims of misconduct by both applicant companies and individuals within the EDA, Mr. Sucsuz alleged, both in his complaint and under oath in deposition testimony, that certain applicants to the Grow NJ Program provided fabricated or "phantom" out-of-state locations.[87] Mr. Sucsuz alleged that in some instances, applicants fabricated an alternate out-of-state location to conceal a pre-existing intention to locate or expand in New Jersey. Mr. Sucsuz alleged that such applicants were nevertheless approved for Grow NJ tax incentive grants. Mr. Sucsuz further alleged that he was directed by his supervisor to alter or manipulate cost inputs for the cost benefit analysis or net benefit test in order to qualify applicants that would not have otherwise qualified with the cost inputs provided. He alleged that when he refused to alter the cost inputs, his supervisor would do it himself.

The case ultimately went to jury trial, which began on April 30, 2018 and lasted eight days. The jury announced its verdict on May 10, 2018. While Mr. Sucsuz did not ultimately prevail on his retaliation claim, the jury unanimously found that Mr. Sucsuz had a reasonable belief that the EDA violated a law, rule or regulation in the processing of application for loans, grants and tax incentives, and had proven by a preponderance of the evidence that he performed a "whistleblowing" activity as defined by the New Jersey Conscientious Employee Protection Act ("CEPA").

Despite testimony at the May 2, 2019 hearing by a Senior Vice President of Operations for the EDA that Mr. Sucsuz's allegations "identif[ied] potential fraud or misrepresentation in the application[s] submitted to the EDA for tax incentive programs" and also "focused on the EDA's review and approval of tax incentive awards,"[88] the EDA took no action to investigate any of Mr. Sucsuz's whistleblower allegations. While the Task Force has taken no position on the accuracy

[87] As discussed in Section V(C)(2)(b) of this First Report, for incentivized projects in most parts of New Jersey, it is indisputable that, for a company to receive Grow NJ tax incentives for existing jobs in New Jersey, those jobs must be at risk of leaving the state or being eliminated. Thus, where jobs are not at risk of elimination, applicants must demonstrate an alternate out-of-state location. In any event, any proposed alternate out-of-state locations must be legitimate and comparable.
[88] Hr'g Tr. (May 2, 2019) at 58:18-59:2.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

or truthfulness of Mr. Sucsuz's allegations, the Task Force has taken steps to investigate Mr. Sucsuz's various claims, which will be detailed in a later report.[89]

We also found that the EDA lacks the proper internal controls with respect to the processing and review of internal whistleblower complaints. During the second day of the Task Force's public hearing, we heard testimony from a Senior Vice President of Operations at the EDA, Fred Cole, who admitted to a failure within the EDA to investigate a former EDA underwriter's whistleblower complaints regarding various failures within the EDA with respect to tax incentive applications. At the May 2, 2019 public hearing, Mr. Cole acknowledged that the whistleblower allegations implicated conduct related to the EDA's tax-incentive programs, specifically that the allegations "identif[ied] potential fraud or misrepresentation in the application submitted to the EDA for tax incentive awards" and "also focused on the EDA's review and approval of tax incentive awards."[90] Yet, Mr. Cole testified that neither he nor anyone else at the EDA conducted an internal investigation into the allegations of fraud and misconduct. The Task Force takes no position on the accuracy or truthfulness of the whistleblower allegations. However, the EDA's processes failed when it took no steps to investigate the whistleblower claims which, as Mr. Cole admitted, could have had merit and, if true, could have carried significant financial ramifications.

In addition to the EDA's failure to conduct an internal investigation into the former EDA employee's whistleblower allegations, the EDA further failed to disclose this litigation to the Office of the Comptroller during its 2018 audit despite an affirmative obligation to disclose pending claims and litigation against the EDA. Indeed, the EDA's failure to disclose occurred despite the fact that members of its senior leadership team were deposed shortly before and during the beginning stages of the Comptroller's audit in late 2017 and early 2018 and despite the fact that the trial took place in April 2018 while the Comptroller's audit was ongoing. In fact, at the conclusion of the Comptroller's audit on January 3, 2019, Mr. Cole signed a management representation letter to the Comptroller's office, representing that, for the ten years prior and through the close of the Comptroller's audit, the EDA was not aware of any allegations of fraud or suspected fraud affecting

[89] During its investigation, the Task Force made several attempts to contact Mr. Sucsuz for testimony but was ultimately unsuccessful. The Task Force first attempted to obtain Mr. Sucsuz's voluntary testimony by contacting him through his former counsel; however, when Mr. Sucsuz failed to return the Task Force's requests to meet, the Task Force requested the issuance of a subpoena from Professor Chen. After several attempts to serve Mr. Sucsuz, the Task Force ultimately effectuated proper service of two subpoenas for both deposition and public hearing testimony on Mr. Sucsuz. He nevertheless failed to appear at both the date set for his deposition and the May 2, 2019 public hearing of the Task Force.

[90] Hr'g Tr. (May 2, 2019) at 58:18-59:2.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

the EDA received in communications from employees or former employees and had disclosed all details concerning any pending claims, assessments and litigation against the EDA of which the EDA was aware and which would have a significant impact on financial operations.[91] EDA representatives are unable to offer an explanation for their failure to disclose the whistleblower litigation and a basis for its false representations to the Comptroller that it had, in fact, disclosed all relevant and pending claims and litigation.

C. Initial Findings

1. Lack of Written Policies and/or Procedures

The Task Force sought to review all of the EDA's written policies and procedures relating to the Programs. In seeking that information, the Task Force discovered that in the immediate years following the passage of EOA 2013, from approximately 2013 through 2017, the EDA had virtually no written policies or procedures regarding its process for reviewing and approving applications.[92] Although some practices and procedures have recently been memorialized in written memoranda to senior leadership and the Board, the EDA continues to lack a sufficient set of formal written policies and procedures to disseminate to personnel and ensure a consistent application review and approval processes.

Furthermore, to the extent policies have been memorialized by the EDA, we do not believe, based on the inconsistency of responses received from EDA employees when asked about such documents, that those policy documents have been consistently and comprehensively distributed amongst EDA personnel. For example, several BDOs were unaware of existing BDO checklists or flowcharts when shown during interviews. Indeed, most of the current EDA employees interviewed did not recall reviewing or receiving a training manual, memorandum, or set of written policies relating to the EDA tax incentive program approval process.

The EDA also lacks sufficient written policies detailing the roles and responsibilities of specific positions within the EDA. The Task Force received a "Grow NJ Processing Steps" chart, which was finalized in April 2015, identifying the EDA employee responsible for each step in the Grow NJ application process. However, several of the EDA employees that the Task Force interviewed had never seen this document. Moreover, the chart does not provide detail or guidance

[91] Exhibit 10.

[92] The EDA does have a few written policies, including on the net benefit test and the factors (including the possibility an out-of-state location) affecting that test.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

on how to execute each step outlined and therefore does not provide guidance as to the roles and responsibilities for personnel.

The Task Force observed that BDOs and underwriters rely primarily on basic "checklists" implemented in 2014, which set forth the documentation required for a complete application. These checklists, however, do not provide guidance on how EDA personnel are expected to review or analyze required documentation, which would be more helpful to the guide the process. Rather, they require only that the BDOs and underwriters confirm that the Program applicant submitted required documentation before the application was transmitted to the Underwriting group. As indicated, they do not offer guidance on what is considered adequate documentation. It appears, moreover, that at least some EDA employees believed the documents listed on the checklists were not all required to proceed with an application: a senior underwriter responsible for ERG applications described the ERG checklist, which identified "Items required prior to submission to underwriting" as including both required items and items that would be "nice to have." That same underwriter told us that, for example, the Chief Executive Officer ("CEO") Certification is a "nice to have" item from this checklist, despite the clear regulatory requirement for a CEO Certification under the ERG Act.[93]

2. Failure to Comprehensively Train EDA Staff

The effect of the EDA's lack of written policies and procedures was exacerbated by its failure to comprehensively train its staff while onboarding and during promotions and role transfers, or on an ongoing basis. The EDA did not comprehensively train its staff regarding: (1) the requirements and responsibilities of roles within the EDA; (2) the Programs' requirements; (3) amendments to the Programs' requirements; and (4) the EDA's implementation of the Programs' requirements. Indeed, each of the employees the Task Force interviewed confirmed that he or she did not receive any formal training when onboarded to the EDA; they also did not receive any formal training following a promotion or transfer to a new role. Rather, training was "on the job" and involved shadowing senior management and/or colleagues. In some cases, employees stated that they were provided with the relevant statutes and instructed to "familiarize themselves" with the provisions.

EDA employees also did not receive comprehensive training regarding the statutory requirements of the Programs and the Programs' subsequent amendments. Some senior EDA employees recalled that, after the EOA 2013 was passed, employees attended a training seminar or

[93] The regulations governing ERG expressly require, as part of the Program's application submission requirements, a "written certification by the chief executive officer, or equivalent officer for North American operations." N.J. Admin. Code § 19:31-4.4.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

seminars with the New Jersey Attorney General's Office that provided an overview of the Programs and guidelines. However, all the interviewees indicated that the EDA did not provide subsequent trainings when new statutory amendments were passed. Although some EDA personnel recalled that senior leadership briefed EDA personnel regarding statutory and regulatory amendments and changes to the EDA's tax-incentive Programs during Pipeline Meetings, others indicated that although they might have received a copy of a regulatory amendment and had an opportunity to ask questions, they did not recall receiving formal notice or follow-up training when regulatory changes took place. Indeed, two senior underwriters stated that, when statutory or regulatory requirements were amended, underwriters simply reviewed the amended language and learned how to enforce the new amendments "on the job."

Furthermore, EDA personnel were not adequately trained to review and analyze information and documentary evidence applicants were required to submit. For example, employees did not receive training on how to review and identify problems with lease agreements, letters of intent, or requests for proposals that are consistently submitted with project applications to support proposed project locations. EDA employees generally seemed completely unaware of the kinds of documents a business would generate if it were seriously considering a move of its facilities to another state, and some appeared to be reluctant to "ask too many questions."[94] We discuss some examples of the impact of those failures in Section V(C)(4) of this First Report below.

Finally, given the critical importance of screening applications for potential misconduct, some training in fraud detection is critical for program underwriters. Not only did the Task Force determine that the EDA provided no such training at any time, up to the present, many EDA employees we interviewed expressed the view that their vetting required them to take information at "face value."

[94] At the Task Force's May 2, 2019 public hearing, John Boyd, a principal at a corporate site selection firm in New Jersey, testified that for a relocation of several hundred office employees, companies typically conduct a serious analysis to select the ideal location. The process often includes meetings with employees from multiple departments (including accounting, legal, human resources, and communications), memoranda and reports, and multiple site visits. Mr. Boyd testified at the Task Force's hearing that he "agree[d]" that, to determine whether a company was sincere in its considerations of a potential relocation site, there should be "a lot of documentation of [the company's] deliberations" that "the company should be able to produce." *See* Hr'g Tr. (May 2, 2019) at 101:9-107:17.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

a) Inconsistent Understanding of Roles and Responsibilities

The EDA's failure to comprehensively train its staff has resulted in an inconsistent understanding of the roles and responsibilities of specific positions within the EDA. The Task Force observed that among the BDOs we interviewed, there was a broad range in the understanding of their responsibilities. All BDOs interviewed understood their role as business developers and advocates for the applicants or "clients." However, several BDOs expressed the belief that their review of applications did not require independent verification of information and required only "perusing the application" for "red flags" or "glaring errors" that would potentially disqualify an applicant. Their supervisors, on the other hand, expected their officers to also conduct preliminary due diligence on the submitted documentation and conduct independent diligence in the form of internet-based searches on the applicant, including the business, its senior leadership, and the applicant's exposure to legal risks. Unfortunately, because of a complete lack of policies concerning how to conduct internet and other public searches for such information and what to look for, the quality of such diligence varied from BDO to BDO, and application to application. Indeed, as noted above, we found important information through simple internet-based searches which BDOs missed completely, including potentially disqualifying information.[95] BDO supervisors expected BDOs to review application materials and address as many potential issues or questions in order to present a complete application to Underwriting. Although some BDOs believed their role was to both assist and scrutinize the applicant, all the BDOs understood that it was primarily the underwriter's responsibility to conduct due diligence, investigate, and verify information provided by the applicant.

Nearly all of the underwriters interviewed understood their responsibility to conduct due diligence and investigate and verify information applicants provided; however, at least one senior underwriter understood the role to be that of a "processor" who "checks off the boxes." The same underwriter believed that the underwriters needed to review applications to ensure the required documentation and materials had been submitted but did not need to assess whether applicants' representations were truthful. This approach is inconsistent with the underwriters' gatekeeping role: the underwriters are the primary means to ensuring that applications comply with the Programs' requirements.

[95] However, the Task Force did observe other instances where BDOs did perform sufficient due diligence and identified one company's failure to disclose on its application potentially relevant lawsuits. The EDA eventually resolved the initial non-disclosure with the company.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

b) Inconsistent Understanding of the Program Requirements Concerning Camden and Atlantic City

The EDA personnel interviewed thus far have, in some important areas, exhibited inconsistent, incomplete, or inaccurate understandings of certain Program requirements, specifically with respect to (a) the circumstances in which Grow NJ applicants are required to demonstrate a risk that their jobs may be relocated outside of New Jersey and (b) the effect such a relocation risk may have on the terms of any tax incentives award.

As discussed in Section IV(A)(1)(e) of this First Report, the Grow NJ Act expressly states that a "purpose of the [Grow NJ] program is . . . to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State."[96] In most cases, Grow NJ applicants are indisputably required to demonstrate to the EDA, in order to qualify for tax incentives, that they are considering an out-of-state relocation. However, because of an ambiguity in the statute's text, it is arguable that tax incentives may be available (although only in a reduced amount, for reasons discussed below) for relocating existing New Jersey jobs to Camden or Atlantic City, even when no potential out-of-state relocation is contemplated.[97] The EDA has on one occasion approved tax incentives for a company that relocated from within New Jersey to Atlantic City even though that company was not contemplating a possible out-of-state relocation—thus, the company was approved for tax incentives even though its jobs were not "in danger of being relocated outside of the State."

Whether or not an out-of-state relocation is strictly required under the statute for projects in Camden or Atlantic City to receive tax incentives, it is indisputable, based on a separate provision of statute, that whether or not such an out-of-state relocation is contemplated is a critical factor bearing on, at a minimum, the potential size of any award. As discussed previously, the Grow NJ Act requires that every tax incentive award be anticipated to "yield a net positive benefit to the State."[98] In this context, the "benefit to the State" means tax revenues collectible by the State as a result of the fruition of the project for which the tax incentives were awarded—tax revenue, that is, that the State would not collect in the absence of the tax incentives. Under the statute, no tax incentive award under the Grow NJ program may be larger than the anticipated benefit to the State. If the anticipated benefit is smaller than the award that for which the applicant would otherwise be

[96] N.J. Stat. § 34:1B-244(a).
[97] As discussed previously, EOA 2013 introduced this provision with respect to Camden, and the statute was amended again in 2014 to have the provision apply to Atlantic City as well.
[98] N.J. Stat. § 34:1B-244(a)(3).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

eligible, then the award must be reduced. For example, if an applicant would otherwise be eligible for a $50 million award for a project in Camden, but the EDA anticipates that the project will yield only $10 million in resultant tax revenue to the State, then the applicant's award must be reduced to $10 million only rather than $50 million.

A company's certification that jobs are at risk of leaving the State—and thus that it is considering an out-of-state alternative—may have a critical and material effect on the net benefit test, particularly with respect to income taxes that accrue from employment. The net benefit test required by the Grow NJ Act is a statewide test that assesses benefits to the State as a whole—rather than to a particular locality within the State. When an applicant's jobs are already in New Jersey, any income taxes related to those jobs are factored into the net benefits calculation only if the jobs are at risk of being relocated out of state. There, the provision of tax incentives, which keeps the jobs in the State, provides a clear benefit to New Jersey. By contrast, if an applicant is not considering moving out of state, and a job will exist somewhere in New Jersey in any event, there can be no benefit to the State as a whole. Thus, the EDA's implementing regulations for Grow NJ provide that, for projects in Camden and Atlantic City, "[r]etained employees . . . shall not be included [in the net benefits calculation] unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State . . . ."[99] This rule is also set forth in several EDA policy documents.

Some EDA employees demonstrated a limited understanding of these issues. At least two EDA employees believed that, as administered by the EDA, projects moving to Camden did have to show jobs were at risk of leaving the State.[100] Some were unclear about whether the possibility of an out-of-state relocation is strictly required as a matter of threshold eligibility (rather than a factor in award size) for projects in Camden or Atlantic City, and did not know whether the EDA had ever processed applications concerning projects in Camden or Atlantic City for which no potential out-of-state relocation was contemplated. Although the existence of a potential out-of-state relocation clearly has an effect on the net benefit test and, therefore, on the size of any potential

[99] N.J. Admin. Code § 19:31-18.7(c).

[100] *See* Hr'g Tr. (May 2, 2019) at 135:9-20 (testimony of David Lawyer, the EDA's managing director of underwriting since May 2017: "Q. And for companies that were, at the time of their application, they were already in New Jersey, does every Grow applicant need to show that the jobs were at risk, as the program was administered, does every applicant have to show that the jobs were at risk of moving out of the state? A. That is my understanding. Q. And that is true even where an application proposes to move jobs intrastate from a city outside of Camden to Camden? A. That is my understanding, yes.").

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

award, at least one EDA employee misapprehended this rule. Given that the risk of jobs leaving the State is a core element of the Grow NJ program, it is important for all EDA employees responsible for processing Grow NJ programs to fully understand the pertinent issues, and EDA employees should have a firmer understanding of them.

3. Due Diligence Failures

The Task Force has found that the EDA's due diligence practices in connection with review of applications have generally been insufficient. Program applicants are required to make a number of representations in connection with their applications, both about the applicant itself and about the circumstances under which they are seeking tax incentives. Because these representations are critical to determining whether the applicant is eligible for the tax incentives requested, it is important to conduct sufficient due diligence to detect fraud, misrepresentations, or error.

Many EDA employees we interviewed did not believe independent verification of an application's accuracy or truthfulness was warranted because the EDA required an applicant's CEO to certify under penalty of perjury that the representations contained in the application were accurate and that the CEO had taken steps to ensure that the application materials were complete. However, if the answers provided by an applicant are taken at face value, without any effort to cross-corroborate or verify through public sources, applicants could easily present and certify false, misleading, or inaccurate information to the EDA without consequence.

Some EDA employees stated that they conducted internet searches regarding applicants and their senior personnel to identify potential red flags and issues, but it appears that those searches, when conducted at all, were insufficiently broad and failed to identify key information that should have raised red flags or at least warranted follow-up questions to applicants. For example, the Grow NJ application requires applicants to state whether the applicant has ever been debarred by any state or federal governmental department, agency, or instrumentality. Under the EDA's regulations, such a debarment could constitute grounds for the EDA to deny an application for tax incentives.[101] One company, Holtec International, represented in its application—certified by its CEO—that it had no prior history of debarment.[102] In fact, however, Holtec had previously been debarred by the Tennessee Valley Authority, a congressionally chartered corporation of the United States. The EDA then approved Holtec for a $260 million award under Grow NJ. Had the EDA conducted cursory internet research, it could have found that Holtec's answer was inaccurate. Yet EDA

[101] N.J. Admin. Code § 19:30-2.2(a)(1)(10).
[102] *See* Exhibits 11 and 12.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

personnel failed to independently uncover Holtec's misrepresentation when it approved Holtec's award, one of the largest tax incentive awards in New Jersey history.[103]

Although Holtec's undisclosed debarment was potentially disqualifying, other examples abound where readily available information—if the EDA had found it—would have at least merited follow-up questions to program applicants. However, even more concerning were examples found where EDA personnel did, in fact, conduct internet searches that yielded red flags, including relevant lawsuits involving the company, but EDA failed to investigate and conduct further due diligence that could have uncovered material misrepresentations. For example, NFI, L.P. ("NFI"), submitted its Grow NJ application on October 24, 2016. It asserted that in exchange for Grow NJ tax incentives, it would continue to employ 670 employees in New Jersey rather than move the jobs to Philadelphia. NFI submitted a chart of affiliates identifying the related companies, which included NFI Industries, Inc., National Freight, Inc., and NFI Interactive Logistics, LLC. As part of its application, NFI was required to answer a series of background questions related to legal matters. The application asked whether the "applicant, any officers or directors of Applicant, or any Affiliates (collectively, the 'Controlled Group') [had] been found guilty, liable or responsible in any Legal Proceeding for any of the following violations or conduct." NFI answered "No" for each listed question, which included offenses indicating a lack of business integrity or honesty, such as fraud, and violations of the governing hours or labor, minimum wage standards, and prevailing wage standards laws. While the EDA may have a timeframe that it considers relevant for legal proceedings, the actual application does not indicate that a company should limit disclosures to a period of five or ten years. Therefore, each company is presumed to have disclosed all legal proceedings relevant to the disclosure questions regardless of whether EDA would find it impactful on a company's eligibility.

The Task Force has reviewed the application and full company file of NFI and found that the EDA was aware of at least three lawsuits related to NFI.[104] In its Grow NJ transmittal form,

---

[103] Last month, Holtec acknowledged that it did not disclose its prior debarment in its application and sought to amend its application. The EDA has since suspended Holtec's tax-incentive award, pending further investigation.

[104] First, an Equal Employment Opportunity Commission action in which NFI paid $45,000 to settle gender-discrimination allegations about unequal pay; second, a Department of Labor action in which NFI was ordered to pay 350 workers over $1 million in back wages for misclassifying them as exempt from overtime; and third, a Department of Labor action in which NFI was ordered to reinstate a trucker and pay him $276,870 after he alleged he was fired for refusing to make a trip that would have violated federal "hours of service" restrictions.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

which is an internal request for application review, an EDA BDO, listed four articles highlighting these three lawsuits under the section "Google Search of Applicants/Owners." Our review of correspondence indicates that on October 24, 2016, the EDA BDO sent an email to Mr. Sheehan of Parker McCay, who represented NFI, asking for an explanation and status of the three cases she found based on her internet search. On October 31, 2016, Mr. Sheehan responded with a brief explanation and stated that NFI disputed each claim but settled "to avoid protracted and costly litigation." The EDA BDO referred the issue and lawsuits to an EDA Senior Legislative Officer. In her correspondence, the EDA BDO highlighted for the EDA Legislative Officer that NFI answered "No" for the legal questions on their application. Based on a review of the correspondence, it appears that the EDA Legislative Officer directed the EDA BDO to request the settlement agreements from Mr. Sheehan and had further communications with Mr. Sheehan regarding details and his initial concerns regarding lawsuits involving NFI.

While the Task Force appreciates that the EDA BDO conducted initial diligence, it believes that further diligence would have unveiled a criminal conviction and guilty plea by affiliate Interactive Logistics, Inc. d/b/a NFI Interactive Logistics, Inc. and at least two additional legal proceedings.[105] The Task Force reviewed publicly available documents indicating that in November 2005, an NFI-related entity, Interactive Logistics, Inc. d/b/a NFI Interactive Logistics, Inc., pled guilty to three counts of wire fraud for defrauding Anheuser-Busch.[106] In addition, the Task Force reviewed publicly available documents related to lawsuits alleging violations of wage and hours laws. The Task Force finds this concerning on numerous grounds. It further highlights potential misrepresentations by NFI, and Sidney Brown, NFI's CEO who certified on its behalf, that all information contained within the company's Grow NJ application was true. Second, it is concerning that—after the EDA questioned Mr. Sheehan and NFI about the discovered lawsuits—neither he nor Brown was forthcoming about the criminal conviction or additional lawsuits, especially those of a nature required to be disclosed on the EDA application. Finally, from an EDA perspective, the Task Force believes that in-depth due diligence would have found the publicly available lawsuits. While the EDA Legislative Officer identified the need to review the settlement agreements in the lawsuits that were found, neither he nor the EDA BDO seemed appropriately concerned that at the crux of the matter, NFI's application contained potential misrepresentations

[105] *Interactive Logistics, Inc. v. Markel Insurance Co.,* No. 08-CV-1834 (D.N.J.); *Brime v. Eckenrode and Interactive Logistics, LLC*, No. 08-CV-0095 (E.D.V.A.) (previously captioned *Brime v. Eckenrode and Interactive Logistics, Inc. t/a National Freight, Inc.*).
[106] *United States v. Interactive Logistics, Inc.,* No. 05-CR-00872 (D.N.J.); *see* Exhibit 13.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

and a potentially fraudulent CEO certification. Even more, despite learning this, the EDA approved NFI's application for an approximately $80 million award.

4. Deficiencies in Assessing Applicants' Alternative Relocation Sites

The Task Force has investigated applicants' consideration of locations outside of New Jersey. Because a core goal of the Grow NJ program is "to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State,"[107] Grow NJ applicants are required to provide information about the locations in New Jersey and other states to which they are considering relocating.[108] The Task Force's investigation to date has found clear deficiencies in the EDA's evaluation of applicant submissions about these alternative sites. In some instances, Grow NJ applicants have made representations about a potential out-of-state alternative site that should have raised serious red flags about whether the applicant genuinely intended to move out of state, but the EDA failed to take any action to investigate the issue.

The Task Force has examined the EDA's processing of several applications of Program awardees thus far, and that investigation is ongoing. The Task Force selected certain applications to prioritize for investigation if it received information about red flags in connection with a particular application or applicant—for example, if a whistleblower indicated that there were potential concerns with a company's application or compliance with Program requirements. In some instances, however, the Task Force did not initially intend to include certain companies in its priority review, but information arising during the Task Force's investigation alerted it to potential issues that should be further examined.

As noted previously, the draft versions of the EOA 2013 that included revisions from Parker McCay were, from the Task Force's perspective, a very significant red flag. The Task Force remains skeptical that a company whose lobbyist had placed special provisions for its benefit in the tax-incentive legislation would have a legitimate business plan to move jobs to a different state. Indeed, three of these companies—Conner Strong & Buckelew Companies, LLC ("CSB"), The Michaels Organization, LLC ("TMO"), and NFI—had publicly committed to moving to Camden on September 24, 2015—thirteen months prior to their Grow NJ applications, which would seem

[107] N.J. Stat. § 34:1B-244(a).

[108] N.J. Stat. § 34:1B-244(d) ("When considering an application involving intra-State job transfers, the authority shall require the business to submit the following information as part of its application: a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist.").

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

to directly belie their claim that they were considering an out-of-state move. Yet, although the Parker McCay-edited version of the EOA 2013 had, we have determined, been shared with the EDA's then President and Chief Operating Officer, Tim Lizura, we saw no evidence that Mr. Lizura considered these applications with any skepticism or alerted the BDOs and underwriters reviewing the applications to apply any heightened scrutiny themselves. We thus worried that the process may have been compromised.[109] We therefore made our review of the EDA's oversight of some of these applications a key priority.

To compound our concerns, on March 11, 2019, the Executive Chairman of CSB and member of the Board of Trustees of The Cooper Health System ("Cooper Health"), George Norcross, III, published an Op-Ed on *NJ.com*. In the Op-Ed, Mr. Norcross stated, among other things, that the Programs' tax credits were intended to "convince firms to move to Camden," but "were **not intended** to entice firms that were leaving the state to remain." (Emphasis added).[110] Mr. Norcross's contention caught the Task Force's attention because, in point of fact, every application for an in-state company that proposed a move to Camden did, in fact, certify that jobs were "at risk" of leaving the State (except one that had planned to eliminate jobs if denied tax incentives), including applications from entities with affiliations to Mr. Norcross, including CSB and Cooper Health.[111] We also learned that TMO and NFI were affiliated with Mr. Norcross in that their applications were related to CSB's application. The Op-Ed thus raised a concern about whether any of these companies had not, in fact, been considering moving out of the State at the time they applied for tax incentives under Grow NJ. The Task Force decided to review the applications for those companies and—even on a cursory review—additional concerns arose, and the Task Force determined that an examination of the EDA's oversight of these applications was appropriate.

Thus, we reviewed the applications of Cooper Health, CSB, TMO, and NFI, to examine whether the EDA gave any meaningful scrutiny to their certifications that jobs were at risk of leaving New Jersey and whether they had viable out-of-state locations that were bona fide, suitable,

---

[109] To date, we have found no direct evidence that Mr. Lizura's actions and inactions were motivated by any corrupt intent.

[110] George E. Norcross, III, *George Norcross: We need tax incentives to continue to rebuild Camden*, NJ.COM, March 11, 2019, http://s.nj.com/okKoUPg.

[111] Although Cooper Health's application indicated that jobs were not at risk of leaving the State, it subsequently informed the EDA during the course of EDA's processing of its application that—in fact—it was considering an out-of-state move to Philadelphia. These circumstances are described more fully below. The EDA did not require Cooper Health to submit a revised application, nor did it require a new certification from Cooper Health's CEO.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

and available.[112] After conducting this review, we found that the EDA's scrutiny of these four entities' applications was inadequate in several material respects and that, as a result, the EDA failed to discover significant problems with those applications. We describe below EDA's deficiencies in assessing these four applications.

a) The Cooper Health System

On November 7, 2014, Cooper Health applied to the EDA for tax incentives under the Grow NJ program. Just over a month later, the EDA approved Cooper Health for a tax-incentive award of $39,990,000, in exchange for Cooper Health's relocation of certain back-office operations from various existing sites in Cherry Hill and Mt. Laurel, New Jersey to Camden, New Jersey. During the EDA's processing of Cooper Health's Grow NJ application, Cooper Health represented to the EDA that it was considering relocating its operations to Philadelphia, Pennsylvania as an alternative to Camden. Based on this representation, an internal EDA memorandum recommended awarding the tax incentives to Cooper Health to "make New Jersey more competitive." However, there is significant evidence, described below, that Cooper Health's purported alternative location in Philadelphia was illusory, and the EDA failed to sufficiently investigate that possibility based on the information in its possession.

Cooper Health's tax credits were for its relocation of certain administrative functions to One Federal Street, Camden, New Jersey, in a building often referred to as the "L-3 Building." Internal Cooper Health documents indicate that Cooper Health favored the L-3 Building in Camden as a relocation site as early as March 2014, months before its November 2014 application for tax incentives: on March 28, 2014, Douglas Shirley, Cooper Health's CFO, sent an email to John Sheridan, Cooper Health's President and CEO: "I have the proposal . . . and it is very rich! From a cash flow and balance sheet [sic] the L-3 is the best deal by a long shot. No other option can touch it, so you need to be okay with this option before we go out with it."[113] In addition, an internal Cooper Health document dated April 1, 2014, entitled "Potential Cooper Office Options," contains a chart of three possibilities for Cooper Health's office, including the L-3 Building in Camden and two other potential locations—both also in Camden.[114] The chart does not list any potential Philadelphia location. The EDA did not request contemporary business records from Cooper Health concerning relocations it was considering, so it did not have the benefit of these documents.

[112] The Task Force has examined several other applications for these same purposes but has not found other instances—at this stage—where serious concerns were apparent.
[113] Exhibit 14.
[114] Exhibit 15.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

When Cooper Health initially applied to the EDA for tax incentives on November 7, 2014, it did not claim that it was considering relocating out of state. The application asked: "Are any jobs listed in the application at risk of being located outside of New Jersey?" Cooper Health answered "No."[115]

On November 8, 2014, the day after Cooper Health's application was filed, Cooper Health's representative, Kevin Sheehan of the Parker McCay law and lobbying firm, sent an email to an EDA employee that processes Grow NJ applications, copying EDA's Tim Lizura, to "give . . . a heads up that Cooper Hospital filed its GrowNJ application." Mr. Sheehan added, "As you review the application, if you need anything, let me know."[116]

A few days later, on November 10, 2014, the EDA employee responded to Mr. Sheehan with a list of several items the EDA needed, including a completed "Cost Benefit Analysis" (or "CBA") form.[117] The EDA's CBA forms are used by Grow NJ applicants to list certain information about the potential relocation sites the applicant is considering, and to show the difference in costs between, on the one hand, the more expensive New Jersey location for which the applicant is seeking tax incentives, and, on the other hand, the less expensive alternative location that the applicant will ostensibly relocate to if denied tax incentives in New Jersey. Responding to the EDA employee's request for a CBA form, Cooper Health's Vice President of Real Estate and Facilities, Andrew Bush, copying Kevin Sheehan, submitted to EDA on November 11, 2014, a CBA form that compared the costs of the L-3 Building in Camden, for which Cooper Health sought tax incentives, to the costs of Cooper Health's existing facilities in Cherry Hill and Mt. Laurel, New Jersey—not to the costs of any out-of-state alternative site.[118] In other words, the CBA form was consistent with Cooper Health's representation on its application that no jobs were at risk of being relocated outside of New Jersey, since the CBA listed only in-state locations as under consideration.

Two days later, on November 13, 2014, the EDA employee sent an email to Parker McCay's Mr. Sheehan: "I need to talk to you about Cooper, what time do you have today or tomorrow to talk?"[119] Mr. Sheehan responded later that day: "I have [sic] here for the rest of the day today. Let me know what time works for you."[120] Later that night, Mr. Sheehan wrote to the EDA employee

[115] Exhibit 16.
[116] Exhibit 17.
[117] Exhibit 17.
[118] Exhibit 17.
[119] Exhibit 18.
[120] Exhibit 18.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

again, under the subject line "Cost benefit." Mr. Sheehan wrote: "They are working on it. Will get to you ASAP."[121]

Several days later, on November 18, 2014, Mr. Sheehan sent an email to the EDA employee with an updated CBA form for the Cooper Health application.[122] That revised form compared the costs of the L-3 Building in Camden not, as previously, to the costs of Cooper Health's existing locations in New Jersey, but instead to the costs of a claimed alternative location at 1900 Market Street in Philadelphia.[123] The CBA form stated that the purported 1900 Market Street location was 120,000 sq. ft. and cost $23.50 per sq. ft. to rent.[124] In other words, the revised CBA form effectively communicated to the EDA that Cooper Health was considering potential relocation sites in Camden or in Philadelphia. The Task Force interviewed the EDA employee who had these communications with Cooper Health and its representative, Mr. Sheehan. The EDA employee said that he did not recall the phone call with Mr. Sheehan, but he insisted that he would not have suggested to Cooper Health that it should claim to be considering an out-of-state relocation when it was not sincerely considering one. The EDA employee stated that he believed Cooper Health was in fact considering an out-of-state relocation.

Once all necessary documents for Cooper Health's Grow NJ application were submitted, the application was transferred to an EDA underwriter. On November 24, 2014, the EDA underwriter assigned to the application sent an email to Mr. Bush seeking "back-up on the proposed terms for each of the locations, NJ and PA, ie term sheets, letters of intent and/or draft lease agreements."[125] The underwriter, in other words, asked Cooper Health to provide documentation of the Camden and Philadelphia locations that purportedly were under consideration for relocation.

Several days later, on December 1, 2014, Cooper Health's Mr. Bush wrote to the EDA underwriter: "Sorry for the delay in the response. . . . I am touring alternate locations in PA on Wednesday and hope to have term sheets by the end of the week."[126] The underwriter responded: "Thanks, it is very important that I have some back-up to the lease terms as presented in the Cost Benefit analysis – it's all verbal at this point?"[127] Mr. Bush replied: "All quoted numbers are verbal

[121] Exhibit 19.
[122] Exhibit 20.
[123] Exhibit 20.
[124] Exhibit 20.
[125] Exhibit 21.
[126] Exhibit 21.
[127] Exhibit 22.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

from prospective landlords in Pennsylvania. I expect to have proposals to justify the numbers by the end of the week."[128]

On December 5, 2014, Mr. Bush sent the EDA underwriter, copying the EDA employee who had previously communicated with Cooper Health, and Parker McCay's Mr. Sheehan, a lease proposal from a real estate broker, dated that same day, for space in Centre Square in Philadelphia.[129] The proposal was for 113,756 sq. ft. in the building at 1500 Market Street, in Philadelphia's Centre Square, offered for either $22 or $24.75 per rentable sq. ft. depending on the terms of the lease. Mr. Bush explained in his cover email that the lease proposal was from a prospective Philadelphia landlord, and noted that "**[t]he terms are slightly more aggressive than those presented in the cost benefit analysis meaning that there is more of a burden to Cooper to remain in NJ**." (Emphasis added).[130] The Task Force interviewed the EDA employees who received this email from Mr. Bush. Both EDA employees told the Task Force that, based on Mr. Bush's representation that there was a "burden to Cooper to remain in NJ" because of the purported cost savings from relocating to Philadelphia, Cooper Health was sincerely considering relocating there.[131]

---

[128] Exhibit 22. The Task Force has interviewed both the BDO and the underwriter responsible for the Cooper Health application. Both have indicated, credibly in our view, that they believed Cooper Health's representations that it was considering an out-of-state location as an alternative to Camden. Although Cooper Health has now publicly asserted that "the EDA, not Cooper, initiated requests for comparable leases of Philadelphia properties," both have denied this assertion. *See* Thomas W. Rubino, *Cooper Health official says the company's tax incentive award is appropriate, justified and legitimate*, NJ.COM, June 12, 2019, https://www.nj.com/opinion/2019/06/cooper-health-official-says-the-companys-tax-incentive-award-is-appropriate-justified-and-legitimate.html.

[129] Exhibit 23.

[130] Exhibit 23.

[131] Cooper Health's CEO certification, signed by the health system's CEO, Adrienne Kirby, was dated November 11, 2014—that is, prior to Cooper Health's November 18, 2014 submission of the CBA form with a purported Philadelphia alternative location at 1900 Market Street, and also prior to Cooper Health's December 5, 2014 submission of the lease proposal for 1500 Market Street in Philadelphia. Cooper Health did not submit a new CEO certification to EDA after it changed its application in this respect. Because Cooper Health has declined to cooperate with the Task Force's investigation, the Task Force has been unable to determine what Ms. Kirby did or did not know or believe concerning Cooper Health's relocation deliberations at the time she executed the certification.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

The EDA underwriter prepared a Confidential Memorandum of Analysis, dated December 9, 2014.[132] The memorandum stated that Cooper Health had demonstrated that "rental costs in Camden are higher than leasing comparable space in Philadelphia, PA . . . . As a result, [Cooper Health] has applied for Grow NJ tax credits to offset these costs and make New Jersey more competitive."[133] In the "Conclusions" section of the memorandum, the underwriter stated that Cooper Health's jobs were "at risk of being located outside of New Jersey" and that the grant of tax credits under the Grow NJ program would be "a material factor in the company's decision."[134] The EDA underwriter also prepared a Project Summary memorandum, which similarly stated that Cooper Health was considering alternative relocation sites in Camden and Philadelphia, that hundreds of New Jersey jobs were "at risk of being located outside the State," and that Grow NJ tax credits would be "a material factor in the applicant's decision to make a capital investment and locate in Camden."[135] Under the "Conditions of Approval" section of the memorandum, it stated as Condition No. 1 that Cooper Health "has not . . . committed to remain in New Jersey."[136] The memorandum concluded by recommending that EDA's Board "approve the proposed Grow New Jersey grant to encourage Cooper Health System to locate in Camden."[137] The memoranda were provided to EDA's Board and, on December 9, 2014, the Board voted to approve Cooper Health to receive almost $40 million in tax incentives.

The Task Force has found evidence that the claimed alternative site in Philadelphia was not a genuine alternative site but, rather, was created solely for the purpose of submitting evidence of an alternative site to the EDA, thereby bolstering Cooper Health's claim for tax incentives. On November 25, the day after the EDA underwriter had sent an email to Cooper Health's Andrew Bush asking for "back-up" for the locations described on Cooper Health's CBA form, including the Philadelphia location, Mr. Bush emailed a real estate broker, Jon Sarkisian at the CBRE brokerage firm, under the subject line "favor."[138] Mr. Bush's email asked the broker to produce a term sheet for a "credible" rental location in Philadelphia that would match the space (120,000 sq. ft.) and cost

---

[132] Exhibit 24.
[133] Exhibit 24.
[134] Exhibit 24.
[135] Exhibit 25.
[136] Exhibit 25.
[137] Exhibit 25.
[138] Exhibit 26. The Task Force notes that CBRE has been entirely cooperative with the Task Force's investigation to date. The Task Force has no reason to believe that anybody at CBRE other than the persons named in this First Report had any awareness of or improper involvement in the matters discussed herein.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

($23.50 per rentable sq. ft.) specifications of the Philadelphia location described in the CBA that Cooper Health had submitted to the EDA on November 18, 2014:

> As part of our EDA application we need a term sheet for a potential location outside of NJ.
>
> I need a **credible location that is LESS expensive than L3**. I think that Center Sq may be the right comp – the building is listed by CBRE Given that this building is within the CBRE family – can you get me a term sheet for 120k sf? **Quietly? No probability of us moving to Center Sq, so I don't want to make too much noise**
>
> I need a full service number of $24/sf or less to make the numbers work. Space can be as-is for 10 or 15 year term.
>
> Let me know
>
> Thanks
>
> Andy

(Emphasis added).[139] The obvious reference is that Mr. Bush was asking Mr. Sarkisian to provide a sham term sheet that could be supplied to the EDA as evidence of its bona fide intent to relocate outside New Jersey, when in fact Cooper Health had no such intention.

Although obviously the EDA was not copied on that email, Cooper Health's application file contained numerous red flags that should have called into question the sincerity of its statement that it was considering relocating to Philadelphia and that the cost differential between the two proposed locations presented a "burden to Cooper to remain in NJ."[140] Cooper Health's initial application did not claim any possibility of an out-of-state relocation—and, indeed, expressly disclaimed the possibility. Only after the application was submitted to the EDA did Cooper Health provide purported evidence of an out-of-state location and claim that there was a "burden . . . to remain in NJ." Even at that point, Cooper Health made inconsistent representations about the Philadelphia site in question, first citing one address (1900 Market Street), and then citing another (1500 Market

[139] After Mr. Bush sent the request to Mr. Sarkisian for a "credible" location, Mr. Sarkisian responded later that day, noting that he had received the email as well as a voicemail from Mr. Bush. Mr. Sarkisian added, "I like [sic] to speak to you the numbers may not come in the area that you thought. Call me in the office tomorrow." Mr. Bush responded, "Will do." Exhibit 26.
[140] Exhibit 23.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

Street). Those facts should have alerted the EDA underwriter to a potential problem, prompting additional diligence. However, the EDA failed to further investigate the facts to ensure that Cooper Health was genuinely considering relocating to Philadelphia, and that the location was bona fide, suitable, and available.

The EDA Board approved Cooper Health for an almost $40 million award on December 9, 2014.[141] The Task Force requested that the EDA recalculate the award that Cooper Health could have received if it had communicated to the EDA, as it had communicated to the real estate broker, that there was "[n]o probability"[142] of Cooper Health relocating to Philadelphia instead of Camden. Based on a recalculated net benefits analysis, the EDA concluded that Cooper Health would have qualified for only a $7.15 million award at most. Therefore, the failures in the EDA's processing of Cooper Health's Grow NJ application appear to have resulted in over $32 million in improperly approved tax incentives, putting aside the potential ramifications of Mr. Bush's apparent misrepresentation.

b) Conner Strong & Buckelew, The Michaels Organization, and NFI

CSB, TMO, and NFI submitted Grow NJ applications on October 24, 2016.[143] The three companies sought tax incentives in connection with joint plans to move into a new office tower on the Delaware River waterfront of Camden, New Jersey (the "Camden Tower"). Floors 15 through 18 of the Camden Tower (110,161 sq. ft.) were allocated to CSB, floors 12 through 14 (101,511 sq. ft.) were allocated to TMO, and floors 9 through 11 (101,511 sq. ft.) were allocated to NFI. The Camden Tower was to be constructed by the Liberty Property Trust development firm.

i) Background Context

Although CSB, TMO, and NFI submitted their Grow NJ applications to the EDA in October 2016, the EDA was aware of their plans to relocate to Camden long before then.

In September 2014, more than two years before the companies filed their applications, senior EDA management held a meeting with Philip Norcross of Parker McCay and several

[141] Cooper Health could have potentially qualified for a larger award, but during EDA's processing of the application, Cooper Health removed a number of jobs from the application to keep the award under $40 million. Under EDA policy, awards over $40 million require additional scrutiny and processing time.
[142] Exhibit 26.
[143] Exhibits 27, 28, and 29.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

representatives from Liberty Property Trust. The purpose of the meeting, as described in an email setting it up, was to discuss "a large office building on the Camden Waterfront."[144]

A year later, on September 24, 2015, CSB's Executive Chairman, George E. Norcross, III, sent an email attaching a press release to the EDA's then President and Chief Operating Officer Tim Lizura discussing Liberty Property Trust's plans for the Camden waterfront, including the Camden Tower. The press release listed "local leaders who have **committed** to investing in the project either personally or through their firms," including "George E. Norcross, III, Executive Chairman, Conner Strong & Buckelew," "John O'Donnell, President, The Michael's Organization," and "Sidney Brown, Chief Executive Officer, NFI, and his family." (Emphasis added).[145]

That same day, then-Governor Chris Christie, then-Mayor Dana Redd, and others hosted a major press conference announcing the Camden waterfront development at the Camden Aquarium. George Norcross attended the event. At the event, a reporter for *NJTV News* asked Mr. Norcross, "It's been reported that you're going to put $50 million into the project, is that true?" He responded, "It's absolutely true. I **committed** to do this when I was trying to persuade one of the biggest real estate concerns in the country to become part of this effort, and we all thought that was going to be a credible act, and we're putting our money where our mouths are, and we're looking forward to being a part of it." (Emphasis added).[146] Press coverage around that time indicated that CSB, TMO, and NFI were expected to relocate to the new Camden development.[147]

Internal emails from the EDA show that Mr. Lizura attended the press event, at which he spoke to at least one reporter and one representative from Liberty Property Trust, the developer of the project.[148] But, later, when the companies were preparing their applications for tax incentives

---

[144] Exhibit 30.
[145] Exhibit 31.
[146] *See* Michael Aron, *Christie Announces Historic $700 Million Redevelopment Project in Camden*, NJTV NEWS, Sept. 24, 2015, https://www.njtvonline.org/news/video/christie-announces-historic-700-million-redevelopment-project-in-camden/ (transcription from video).
[147] *See, e.g.*, Allison Steele, *Plans for Vast New Development on Camden Waterfront*, PHILA. INQUIRER, Sept. 24, 2015, https://www.inquirer.com/philly/business/20150924_Top_developer_to_announce_Camden_waterfront_project.html (reporting, based on an anonymous source, that CSB was "considering moving its headquarters into the development" and TMO and NFI were also "expected to join the project").
[148] Mr. Lizura sent an email to several EDA staff members saying that he was "[h]eading down now" when he was leaving for the event. *See* Exhibit 32.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

based on representations that they were considering out-of-state locations and requested an initial assessment of the net benefits test, an EDA employee indicated that he planned to run the test assuming that no jobs were at risk of leaving the state—and Mr. Lizura directed the employee to run a preliminary assessment as if the jobs were at risk.

Specifically, on August 31, 2016, Kevin Sheehan of Parker McCay sent an email to an EDA BDO requesting that preliminary award calculations be run for CSB, TMO, and NFI.[149] The BDO forwarded Mr. Sheehan's email to an EDA underwriting supervisor, Director of Bonds and Incentives John Rosenfeld, saying: "[These] are all the applicants that may go into the LPT [Liberty Property Trust] space at the Camden Waterfront. All three would like to know what their award could potentially be before focusing their efforts on an application for this space, especially since it's expensive."[150] When Mr. Rosenfeld ran the numbers for two of the three companies later that day, he explained the results internally to others at EDA as follows: "I would advise caution on these numbers but, based on the extremely limited information involved, it looks like these applicants COULD have a Net Benefit of approximately $36.8M and $43.3M respectively."[151]

A few days later, the assigned EDA BDO copied Mr. Lizura into her email chain with Mr. Rosenfeld, saying as follows: "Hi John, are these [calculations] including the new and retained job numbers that are listed below? Also Tim has requested to see the reports so he can review them as well, thanks!" Mr. Rosenfeld replied that he did not include any credit for income taxes related to jobs retained in New Jersey, because he had "assumed that this was a situation where the jobs would stay where they are in NJ without the award . . . ." Mr. Lizura flatly told Mr. Rosenfeld, "**The retained jobs are at risk. Can you run them as such**." (Emphasis added).[152]

Mr. Lizura's instruction to Mr. Rosenfeld to assume that the jobs were at risk, given the well-publicized commitment made by Mr. Norcross at the press conference that he attended, certainly invites skepticism. In an interview with the Task Force, Mr. Lizura said that he was merely instructing Mr. Rosenfeld to run the assessment using the numbers that Mr. Sheehan had provided and was not making a factual statement about whether the "retained jobs" were "at risk." He further indicated that, at that stage, he deferred to Mr. Sheehan about whether the jobs were "at risk" because Mr. Sheehan knew the tax-incentive programs well and understood their requirements. Mr. Lizura also stated that he viewed the statements in the September 2015 press

[149] Exhibit 33.
[150] Exhibit 33.
[151] Exhibit 33.
[152] Exhibit 33.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

release and press conference that CSB, TMO, and NFI had "committed" to the Camden waterfront development project only as a commitment to invest in the real estate project, and that he was not aware of whether CSB, TMO, or NFI had committed to relocate to Camden at any point before their applications were filed.[153] Given the statements a year earlier that the very companies applying had "committed" to Camden, the Task Force believes that these applications should have been scrutinized, particularly given the size of the awards at stake. Indeed, despite his instruction to Mr. Rosenfeld to defer to Mr. Sheehan's numbers about at-risk jobs, Mr. Lizura indicated during this interview with the Task Force that he instructed his team to pay particular attention to the applications because they involved companies related to Mr. Norcross. Mr. Lizura did not, however, identify any particular steps he asked the team to take to scrutinize the applications, and the Task Force has found no evidence of any. In any event, Mr. Rosenfeld, after re-running the test based on Mr. Lizura's instruction, said: "With the at risk jobs, they both get to about $88.8M in net benefit . . . ."[154] The final awards were granted based substantially on that calculation.

ii) The Applications

When CSB, TMO, and NFI submitted their Grow NJ applications on October 24, 2016, notwithstanding the prior public reports that the three companies had already "committed" to relocating to Camden, the companies all stated that they were considering a potential relocation to Philadelphia as an alternative.[155] Specifically, each company stated "Yes" in response to the application's question of whether jobs were at risk of being located outside of New Jersey and listed "Pennsylvania" as in competition with New Jersey for the jobs.[156] Each company stated, in virtually identical language, that the company's "business is expanding and requires additional space. If the credits are not awarded, the business will seek to relocate at a less expensive location outside of New Jersey."[157] Each company's application stated that the company had retained real

[153] Even if CSB's, TMO's, and NFI's only "commitment" was to invest in the real estate project, and not to relocate their offices there, as Mr. Lizura claims to have believed, it nonetheless is difficult to understand why a different understanding would not emerge once the companies filed their applications and indicated their intent to relocate there. The EDA had the authority to request documentation from CSB, TMO, and NFI that would have revealed the nature of the "commitment" the companies had made and when they made it, but the EDA failed to exercise such authority.
[154] Exhibit 33.
[155] Exhibits 27, 28, and 29.
[156] Exhibits 27, 28, and 29.
[157] Exhibits 27, 28, and 29.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

estate brokers "to identify Class A office space in Philadelphia."[158] Real estate proposal letters from real estate brokers for Philadelphia space for each company were attached to the applications.[159] However, TMO's and NFI's proposal letters for space in Philadelphia had already expired by the time the applications were filed. (CSB's proposal letter did not specify an expiration date.)

On November 18, 2016, the EDA underwriter assigned to the three companies' applications sent an email to Kevin Sheehan of Parker McCay, who represented all three companies, to ask whether the companies still had valid offers for space in Philadelphia, because the real estate proposal letters submitted with the companies' applications appeared to have expired.[160] The underwriter followed up ten days later, also asking Mr. Sheehan to clarify how many employees at the three companies were at risk of moving out of New Jersey.[161] Mr. Sheehan replied that "[a]ll employees are at risk in all 3 companies."[162] On November 30, 2016, Mr. Sheehan sent the EDA underwriter a new real estate proposal letter for CSB, dated December 1, 2016, outlining a proposal for space in Philadelphia.[163] The December 1, 2016 real estate proposal differed significantly from the prior real estate proposal that CSB had submitted with its application. The initial proposal offered approximately 150,000 sq. ft. of space on the third through seventh floors, and the eleventh and twelfth floors, of the building located at 1601 Market Street in Pennsylvania.[164] CSB's new letter offered the company "approximately 110,000" sq. ft. of space on the third through seventh floors and the thirteenth floor of the building. The letter stated that it would expire on December 31, 2016.[165]

Two months later, on March 1, 2017, Mr. Sheehan sent the EDA underwriter new real estate letters for NFI and TMO, outlining proposals for both companies for space at 1500 Spring Garden Street in Philadelphia.[166] Both real estate proposals differed from the initial, expired proposals that the companies submitted with their applications in respects, but the changes with respect to TMO's proposals were significant. TMO's initial real estate proposal, dated August 30, 2016, had offered

[158] Exhibits 27, 28, and 29.
[159] Exhibits 34, 35, and 36.
[160] Exhibit 37.
[161] Exhibit 38.
[162] Exhibit 38.
[163] Exhibit 39.
[164] Exhibit 34.
[165] Exhibit 39.
[166] Exhibits 40 and 41.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

the company 103,491 sq. ft. of space on the second floor of 1500 Spring Garden Street.[167] The proposal further stated that, in the alternative, TMO was offered 103,710 sq. ft. of space on the first and seventh floors of the building.[168] TMO's second real estate proposal, dated February 28, 2017, offered the company 95,928 sq. ft. of space divided between the basement level, two separate suites on the first floor, a suite on the seventh floor, and another suite on the twelfth floor.[169] The proposal letter also stated that the space on the seventh floor—which comprised approximately a third of the total space offered to TMO—was "encumbered by a Right of First Offer in favor of [another company]."[170] Both NFI's and TMO's real estate proposal letters stated that they would expire on March 24, 2017.[171]

The differences between CSB's, NFI's, and TMO's first and second sets of real estate proposal letters for Philadelphia are summarized below:

Company	**CSB**		**NFI**		**TMO**	
Address	**1601 Market Street**		**1500 Spring Garden Street**		**1500 Spring Garden Street**	
Proposal	**First**[172]	**Second**[173]	**First**[174]	**Second**[175]	**First**[176]	**Second**[177]
Date	8/29/2016	12/1/2016	8/29/2016	2/28/2017	8/30/2016	2/28/2017
Total sq. ft.	153,345	~110,000	103,491	93,308	103,491 OR 103,710	95,928
Floors	3-7, 11-12	3-7, 13	2	2	2 OR 1,7	Basement, 1, 7, 12
Expiration	Unspcfd.	12/31/2016	9/9/2016	3/24/2017	9/9/2016	3/24/2017

[167] Exhibit 35.
[168] Exhibit 35.
[169] Exhibit 41.
[170] Exhibit 41.
[171] Exhibits 40 and 41.
[172] Exhibit 34.
[173] Exhibit 39.
[174] Exhibit 36.
[175] Exhibit 40.
[176] Exhibit 35.
[177] Exhibit 41.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

The EDA underwriter prepared Project Summary memoranda based on the information provided by the companies.[178] Each company's memorandum stated that the company was considering between relocation in the Camden Tower or an alternative location in Philadelphia, that their New Jersey jobs were "at risk of being located outside the State," and that Grow NJ tax credits would be a "material factor" in the company's decision whether to locate in Camden.[179] Under the "Conditions of Approval" section of each memorandum, it stated as Condition No. 1 that the company "has not . . . committed to remain in New Jersey."[180] Each memorandum concluded by recommending that EDA's Board "approve the proposed Grow New Jersey grant to encourage [the respective company] to locate in Camden."[181] The memoranda were provided to EDA's Board and, on March 24, 2017, the Board voted to approve CSB, TMO, and NFI for total tax incentive awards of almost $245 million—$86,239,720 for CSB, $79,378,750 for TMO, and $79,377,980 for NFI.

The Task Force has discovered evidence appearing to indicate that the three companies did not genuinely consider Philadelphia as an alternative location to Camden. In August 2016, only a few months before submitting their applications, and almost a year after the press conference during which their "commitment" to the Camden project was reported, Kevin Sheehan appears to have reached out to a real estate broker, Ken Zirk at CBRE, to solicit offers for real estate in Philadelphia. After the initial outreach, the companies collaborated to obtain proposals for Philadelphia real estate to submit to the EDA, and NFI led the efforts on behalf of all companies.

On August 26, 2016, NFI's Chief Financial Officer, Steven Grabell, sent an email to TMO's Chief Financial Officer, Joseph Purcell, and CSB's Chief Financial Officer, John Muscella, to explain that he had authorized the real estate broker "to proceed full speed ahead with getting a proposal for 1500 Spring Garden."[182] NFI's Mr. Grabell wrote that the building located at 1500 Spring Garden Street was large enough for both NFI and one other company to obtain proposals from, and further, the real estate broker had "identified an additional possibility for 95,000 square feet at 1601 Market" that the third company "could use."[183]

---

[178] Exhibits 42, 43, and 44.
[179] Exhibits 42, 43, and 44.
[180] Exhibits 42, 43, and 44.
[181] Exhibits 42, 43, and 44.
[182] Exhibit 45.
[183] Exhibit 45. Meanwhile, Mr. Zirk reached out to another broker who represented the landlord for 1601 Market Street. Mr. Zirk's note, expressing interest in the building on behalf of CSB, was forwarded to the building's landlord, who was surprised by the request: "This does not make any sense, we get on Friday afternoon a [request for proposal] that is due on Monday? Where is this

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

Several days later, on August 29, 2016, NFI's Mr. Grabell wrote to Mr. Zirk, the real estate broker, to ask when the companies would be getting term sheets for the 1500 Spring Garden and 1601 Market properties in Philadelphia.[184] Later that day, Mr. Zirk sent one proposal letter, for NFI alone, for 1500 Spring Garden Street.[185] That evening, Parker McCay's Mr. Sheehan wrote to the group of CFOs for the three companies and the broker, noting that the proposal was for NFI and asking, "Is there one for Michaels?"[186] In response, NFI's Mr. Grabell stated: "Enough space for Michael's in that building as well. **I think it would be a little suspicious to ask for a duplicate**. Any thoughts?" (Emphasis added).[187] TMO's Mr. Purcell responded and wrote that he had understood that all three of the companies were "going with the 1500 Spring Garden Property."[188] However, in view of the concern that it would be "a little suspicious" for multiple companies to claim the same alternative location in Philadelphia, TMO's Mr. Purcell wrote that he would be willing for TMO "to go with" a different location in another city entirely—Fort Washington, Pennsylvania, instead of Philadelphia—if one of the other two companies requested it.[189] NFI's Mr. Grabell replied that "1500 Spring Garden has space for 2 of us, but not 3. That is why we reached out to 1601 Market."[190] Mr. Grabell asked Mr. Zirk whether he would "feel comfortable getting a similar quote for Michael's for 1500 Spring Garden?"[191] Mr. Zirk responded that he would discuss with the landlord's broker "tomorrow first thing."[192] TMO ultimately obtained a

---

tenant from? How would we not have known about a 100,000 SF prospects [sic]?" The broker responded with a lengthy explanation, noting, among other things, that CSB's "principal, George Norcross, is a major political figure in South Jersey & very well connected locally." The broker wrote to the landlord that CSB "had been attempting to [relocate to] Camden with Liberty Property Trust but the deal apparently got too expensive & they didn't get the tax breaks/incentives that they were seeking," so CSB had decided to move the jobs to Philadelphia instead. Exhibit 46. In fact, however, CSB had not yet applied for tax incentives in New Jersey at that point, let alone been rejected for them.

[184] Exhibit 47.
[185] Exhibit 47.
[186] Exhibit 48.
[187] Exhibit 48.
[188] Exhibit 48.
[189] Exhibit 48.
[190] Exhibit 48.
[191] Exhibit 48.
[192] Exhibit 48.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

proposal letter for 1500 Spring Garden, and CSB obtained a proposal letter for 1601 Market Street, which both companies submitted with their applications in October 2016.

Although the EDA did not have access to the companies' emails with the real estate broker, which the Task Force obtained, there were nonetheless clear red flags in CSB's, TMO's, and NFI's EDA application and in the public record that should have caused EDA personnel to question the three companies' statements that they were considering relocating out of the State. As discussed above, there were public statements, of which senior EDA leadership was aware, indicating that the three companies had already "committed" to relocate to Camden long before they claimed to be considering relocating to Philadelphia. Despite these public statements, EDA leadership appear to have instructed EDA staff that the companies' jobs were "at risk."

In addition, at the Task Force's public hearing on May 2, 2019, the current Managing Director of the EDA's the Underwriting department, David Lawyer (who did not work on these applications and was not responsible for the Grow NJ program at the time they were processed) testified that it was "unusual" for companies to submit expired proposal letters with their tax incentive applications, and the fact that the letters had expired when they were submitted "casts doubt on whether that site [was] available."[193] Mr. Lawyer also testified that the changes to the amount and the configuration of the space in TMO's alternative-site proposal, as well as the fact that a significant portion of the space was encumbered by a right of first offer, raised red flags about the sincerity of the company's consideration of the property.[194] Mr. Lawyer testified that, in his view, the issues with CSB's, TMO's, and NFI's real estate proposals raised serious questions, "because . . . there's a pattern."[195] Similarly, John Boyd, an expert in corporate site selection, testified that it is common for companies considering relocation to negotiate for extended offer periods to provide adequate time to assess the suitability of potential real estate.[196] That these companies did not do so but instead submitted expired real estate offers, therefore, was a red flag. Mr. Boyd further testified that in his experience, barring extraordinary circumstances like emergency relocation after a natural disaster, companies never want office space spread out over noncontiguous floors of a building of the sort TMO was purportedly considering, spread out across

[193] Hr'g Tr. (May 2, 2019) at 150:4-25, 162:12-16.
[194] Hr'g Tr. (May 2, 2019) at 163:12-17, 164:14-19.
[195] Hr'g Tr. (May 2, 2019) at 164:23-165:6.
[196] Hr'g Tr. (May 2, 2019) at 108:10-109:6.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

four separate floors, including the building's basement.[197] The EDA staff, however, took no action to further investigate based on these and other red flags.

In 2017, the EDA approved CSB, TMO, and NFI for almost $245 million in tax incentive awards collectively—approximately $86.2 million for CSB, $79.4 million for TMO, and $79.4 million for NFI. The Task Force requested the EDA recalculate the awards the three companies could have received if they had communicated to the EDA that they were not considering any potential relocation to Philadelphia instead of Camden—which, based on the evidence discussed above, appears to have likely been the truth. Based on recalculated net benefits analyses, the EDA concluded that CSB's award would have stayed the same ($86.2 million), that TMO would have qualified for only a $60.8 million award at most (rather than $79.4), and that NFI would have qualified for only a $27.2 million award at most (rather than $79.4). Therefore, the EDA's failure to investigate the red flags in these companies' applications could have resulted in over $70 million in improperly approved tax-incentive awards.

5. Lack of Proper Reporting Channels

The EDA does not have official reporting channels in place for the processing, review and recording of internal or external complaints about Program awardees or applicants and does not maintain a "hotline" or reporting line for outside parties to report potential misconduct related to the EDA's tax incentive or other programs. The absence of such reporting mechanisms makes it more likely that misconduct—whether on the part of EDA employees or companies—will be missed.

Several EDA employees we interviewed suggested that external complaints or tips should be elevated to an individual in Human Resources or the Deputy Attorney General, but there was no official reporting line or process for ensuring that all complaints and tips were carefully considered and escalated to the appropriate individuals. Nor was there an official record of such complaints or tips maintained within the EDA. Two BDOs we interviewed recalled outreach from FBI agents regarding a potentially fraudulent application. Those BDOs recalled that the information was generally "disseminated" amongst the directors and Deputy Attorney Generals, but there was no formal system for tracking flagged companies. In another instance, a local contact advised a BDO Program Manager that a Grow NJ awardee had recently fired 80 employees—or 30% of its workforce. The Program Manager who received this notice recalled that he referred the information to the Director of Portfolio Management and Compliance but was not involved in any further action. The Managing Director of Business Development indicated that there was no policy regarding how to treat this type of information but believed the information would have been "socialized" within

[197] Hr'g Tr. (May 2, 2019) at 109:11-110:8.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

the EDA and referred to the Portfolio Management and Compliance group if it involved a tax incentive grant recipient. Although we believe that, in the latter example, the information ultimately reached the appropriate individuals, an express policy regarding the steps required to process and record this type of information would substantially improve the EDA complaint processing to ensure that information from outside parties regarding potential misconduct is not missed.

VI. THE ACCELERATED RECERTIFICATION PROGRAM (THE "ARP")

A. Introduction

As discussed above, in order to fully investigate the administration of the Programs, the Task Force undertook to examine the EDA's processing of awards for companies that applied for and received tax-incentive credits under the Programs. Given the findings of the Comptroller's audit, moreover, the Task Force has sought to determine whether each company in scope was compliant with applicable statutory, regulatory, and administrative requirements when the EDA approved its application and when it received tax credits under Grow NJ or ERG. To facilitate an investigation and review process that promotes resource efficiency, collaboration with companies, and expedient processing for compliant companies, the Task Force established the ARP. During its initial outreach and communications with companies in scope, the Task Force received overwhelming interest in the ARP. As a result, the Task Force announced the ARP during its first public hearing on March 28, 2019.

Without an expedited process of the sort provided by ARP, the Task Force would have conducted a broader investigation into each company's award. This could have included expansive document requests, interviews of relevant company personnel, and extensive document and data review. As an alternative, the ARP provides companies a streamlined process to proactively establish that they are in compliance with the Programs' requirements. If a company declined to participate in the ARP, or if the Task Force deemed it ineligible, the company's award is subject to the broader investigative process necessary to carry out the Task Force's mission.

B. ARP Participant Companies

The Task Force deems companies eligible for the ARP if the company (1) completes and submits an initial affidavit (the "ARP Initial Affidavit") and (2) the Task Force has not received or identified information suggesting misconduct, fraud, or other non-compliance with applicable requirements with respect to the company's application for, approval for, or issuance of tax incentives.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

The Task Force requires each company's CEO, or equivalent personnel, to execute the ARP Initial Affidavit, which provides additional company information to the Task Force. The ARP Initial Affidavit requires companies to describe their efforts to comply with the Task Force's document preservation directive and to identify document custodians and third parties that may possess relevant documents. Companies must also agree to voluntarily and promptly produce relevant documents to the Task Force. As of the date of this Report, 53 companies have pursued participation in the ARP. Despite the overwhelming participation in ARP, we note that approximately 8 otherwise eligible companies expressly declined to participate in the ARP. We appreciate that each company operates under a different set of resources, frameworks, and stakeholders. Therefore, we emphasize that at this time, we cannot— and have not—drawn any conclusions about companies that did not elect to participate in the ARP.

There have been several instances where companies sought inclusion into the ARP, but their eligibility is still under consideration by the Task Force for myriad reasons. In some instances, the Task Force has become aware of concerning information regarding the company's application or award. For example, for a number of companies, the Task Force has learned through independent evidence and information that the company's assertions regarding its intention to relocate are questionable. In these cases, proposed jobs may not have actually been at risk of leaving or locating outside of New Jersey, contrary to the companies' representations to the EDA. The Task Force reserved the option to investigate further before allowing the companies in question to participate in the ARP.

For other companies, the Task Force has become aware of information suggesting that these companies committed to locate in New Jersey before they submitted their EDA application. In other circumstances, the Task Force is aware of information suggesting misrepresentations or misconduct in connection with the jobs requirements of the award. In these cases, the Task Force reserved the ability to further investigate and review written responses and assertions made to the EDA to determine whether a company's application contained misrepresentations.

Several companies that exhibited threshold issues of the sort described above submitted the ARP Initial Affidavit. In the interest of transparency and continued cooperation, the Task Force contacted these companies to discuss obstacles to their ability to participate in the ARP. In many instances, companies were not deterred by this message and have continued to work with the Task Force to provide requested documents and information. The Task Force is reviewing this information before confirming the companies' categorization going forward.

Finally, there is a tranche of companies that the Task Force disqualified or deemed ineligible for ARP participation. The Task Force has disqualified companies where the Task Force has

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

identified a reasonable basis to believe that further investigation may reveal instances of misconduct, fraud, violations of applicable requirements, or other issues suggesting the company's lack of good faith. Separately, the Task Force may also disqualify companies where they fail to comply with the Task Force's requests or the ARP requirements.

C. ARP Process

In order to establish a process that would enable it to determine whether a company was in compliance with Program requirements, the Task Force carefully reviewed related statutes, EDA regulations and requirements, and met with key EDA personnel to determine exactly what it means "to be compliant." Thereafter, the Task Force created a framework for information requests, document collection, and interviews that would provide adequate information for the Task Force to review and make a determination of compliance with Program requirements. The Task Force has taken care to continue an open dialogue with each participating company to better understand the company's framework, business, and key stakeholders. Accordingly, while the Task Force has established a process for the ARP, it also is working collaboratively with each company, with an understanding that each company's documentation, application, and purported needs for the tax incentives vary significantly.

From a process perspective, once companies submit the ARP Initial Affidavit and are deemed eligible by the Task Force, the Task Force requests certain written responses, with supporting documents where necessary ("Verifying Documents"), related to each company's application. The Task Force's ARP for Grow NJ requires the company to submit additional documentation related to the company's good faith business plan to relocate or locate in New Jersey, its plan for new or retained full-time jobs, and its expenditures comprising its capital investment. The Task Force's ARP for ERG requires submission of documentation related to the project's financing gap and development and the project developer's good standing. While the ARP requires documentation beyond what the EDA requested, these requests are narrowly tailored to identify representative materials that will allow the Task Force to examine the company's application and award.[198] As part of the review process, the Task Force engages in open communication with the company for clarifications, context, and additional information.

A company must provide a final affidavit from its CEO, or equivalent personnel, ("Verification Affidavit") and the requested Verifying Documents. To assist companies, the Task Force provides a template Verification Affidavit that the company tailors to its specific

[198] For example, to assess the company's good faith intentions to locate to New Jersey, the Task Force requests contemporaneous business records or communications discussing the relocation plan and the suitability of the proposed alternative site.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

circumstances. Thereafter, the company submits a draft affidavit. The Task Force reviews the information supplied to determine whether the company applied for its tax-incentive in good faith and with accurate information; met the application's requirements; and complied with the program requirements for each and every subsequent year it participated in the Programs. If the Task Force can make these determinations based on the information the company provides, the Task Force will accept a final Verification Affidavit. Upon successful completion of ARP, the Task Force will send a verifying closing letter ("Closing Letter"), confirming the company's successful re-certification.[199]

D. Initial Findings

The ARP process has provided the Task Force with opportunities to identify deficiencies with the Programs' designs and with the EDA processes to implement the Programs. By engaging with companies in the ARP and by collecting, reviewing, and analyzing information and data from the company's internal deliberations, the Task Force has been able to evaluate the requirements and EDA regulations from the company perspective.

Based on this examination, the Task Force has determined that both the existing legislation and the EDA requirements are ambiguous in certain respects that has impacted the EDA's ability to ensure consistency in how these requirements are applied across project applicants.[200] Some examples include:

- **EDA verification of cost benefit analysis**: An ARP company explained that after it submitted its application materials and cost benefit analysis, the EDA did not request any support for the line-item estimates in the company's cost benefit analysis, which showed that New Jersey was more expensive than the proposed alternate location. The company agreed that at the time of its application, the EDA had no verification that the line items in

[199] However, the Task Force's Closing Letter has no binding effect on any other agency or office of the State of New Jersey. Moreover, should the Task Force become aware of credible reason to believe there was misconduct, the Task Force reserves the right to make such information known to other law enforcement agencies.

[200] We understand that the EDA has, in the last year or so, begun to implement solutions to these deficiencies through its own processes and approval requirements.

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

its proposed estimate were accurate and not exaggerated, estimated, or manipulated in any way.[201]

- **Clear legislative guidance and definitions for award bonuses categories**: After another ARP company submitted its initial application to the EDA, the EDA questioned whether it qualified as a technology business for the purposes of an award bonus. Under the Grow NJ statute as amended by EOA 2013, "technology" is a "targeted industry" such that qualifying "technology" companies are eligible for an additional grant of up to $500 annually per job.[202] However, neither the Grow NJ statute, nor EDA's implementing regulations, nor any policy documents maintained by EDA define what constitutes a "technology" company. Based on the Task Force's review, the Task Force found that EDA employees struggled over the appropriate characterization for the company.

- **EDA requirements related to applicants' submissions regarding potential alternative locations**: The EDA has not consistently required applicants to submit the same materials regarding the viability of the proposed alternative site.

VII. RECAPTURE

The Task Force seeks to achieve not only recommendations for the tax-incentive programs prospectively but to recommend recapture of improperly credited taxpayer dollars. These recommendations and efforts for recapture have involved cooperation and coordination with several areas of New Jersey State government, including the EDA, the Department of Taxation, and the New Jersey Attorney General's Office.

A. Statutory Recapture Process

The current Grow NJ legislation specifically sets forth language identifying the EDA's authority to recapture tax-incentive awards under certain circumstances.

Under the Grow NJ Act, applicants must enter into an incentive agreement with the EDA before the awardees receives any tax credits. One of the required provisions of this incentive agreement is that the applicant commits to remaining in its New Jersey facility for a minimum period of time. Typically, this period would include a ten-year term, during which the company

[201] The Task Force closely examined supporting information provided by the company, including the actual costs accrued after the company successfully received its grant and moved to New Jersey, and found no indication that the proposed analysis was made in bad faith.
[202] *See* N.J. Stat. §§ 34:1B-246(c)(8), 34:1B-243 ("targeted industry" definition).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

receives its award amount as annual credits, plus an additional five years after all annual credits are issued.[203] The statute further requires that if the company fails to honor this commitment, the EDA may recapture all or part of the tax credits awarded, although EDA retains the discretion to recognize the period of time that the company complied with the award requirements.[204]

B. Task Force Recommendations for Recapture

The Task Force has instituted its own processes to recommend recapture of tax-incentive awards and to assist the EDA with its recapture of tax-incentive awards.

When companies have indicated a willingness to cooperate and disclose any potential non-compliance, the Task Force has offered, and will continue to recommend and connect the company with the State Treasury for settlement. The Task Force considers such settlement recommendations based on the company's specific factual circumstances. However, for the Task Force to consider a settlement recommendation, the company must be willing to agree to several terms. First, the company must voluntarily terminate its tax-incentive award, including taking all steps that the EDA requires for the company to terminate its award. Second, the company must repay the value of the tax-incentive benefit already claimed. Third, if it becomes aware of credible evidence of criminal misconduct relating to the tax-incentive programs, the Task Force reserves its right to make such information known to other enforcement authorities. Finally, any settlement agreement with a State agency does not bind any other agency or office of the State of New Jersey. Companies that settle do not admit to any liability.

Separate from potential settlements, the Task Force has also referred, and will continue to refer, certain companies and awards to the EDA to consider whether additional credits should issue or whether previously received credits should be recaptured. The Task Force may also refer companies to appropriate law enforcement authorities for further investigation. Should law enforcement authorities pursue a criminal investigation and charges, this could generate sufficient evidence that a company's award was improperly awarded.

---

[203] *See* N.J. Stat. Ann. § 34:1B-243 (defining the "eligibility period" as "the period in which a business may claim a tax credit," beginning with the first year the company certifies for a credit but that the term will be no longer than 10 years); *Id.* (defining "commitment period" as "1.5 times the eligibility period").

[204] *See* N.J. Stat. Ann. § 34:1B-245(d); *see also* N.J. Admin. Code § 19:31–18.10(b)(3).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

Currently, the Task Force has referred a number of applicants for suspension /or termination of their tax-incentive awards or obtained voluntary termination. In all, the aggregate amount of the grants at issue exceeds $500 million.

VIII. RECOMMENDATIONS

Executive Order No. 52 called for the Task Force to offer advice concerning the future of New Jersey's tax-incentive programs. Although the Task Force's work remains ongoing, its investigation and analysis to date have revealed certain deficiencies in the design, implementation, and oversight of the Programs now in place. Based on its findings, the Task Force offers the following recommendations with respect to the State's current and future tax-incentive programs, which will be supplemented as the Task Force's work continues.

Recommendation 1: The Task Force's investigation to date has found that special interests have had a significant hand in molding the current Programs' legislation and implementing regulations in their favor. As a result, in certain respects, the Programs have not been "neutral" in their design but have instead been structured to favor the business interests of certain parties, and in some cases to disfavor other parties. Future tax-incentive legislation should be designed to ensure that legitimate public policy goals are applied neutrally, without favoring specific business interests.

Recommendation 2: Future tax-incentive legislation should be transparent with respect to the benefits or costs of the programs. Under the current Grow NJ program, all tax incentive awards are statutorily required to "yield a net positive benefit to the State."[205] Based on this statutory provision, the State should profit from the program. However, this requirement is undermined by provisions of the statute allowing the benefits calculation to include the value of certain taxes that the State will never actually collect. By allowing such so-called "phantom taxes" to be included in the benefits calculation, the "net positive benefit to the State" that is supposed to be required by the law may be rendered illusory, obfuscating the potential costs of the tax incentives and contributing to public confusion.

Recommendation 3: To further promote transparency and public understanding, the goals of future tax-incentive legislation should be clearly defined, and the program should be structured to effectuate those explicit goals—not other unspecified aims. Currently, the Grow NJ Act expressly states that a "purpose of the [Grow NJ] program is . . . to preserve jobs that currently exist

[205] N.J. Stat. § 34:1B-244(a)(3).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

in New Jersey but which are in danger of being relocated outside of the State."[206] However, as discussed in Section IV(A)(1)(e) of this First Report, certain provisions of the Grow NJ Act are sufficiently vague that companies may be able to receive tax credits for relocating existing jobs in New Jersey to Camden or Atlantic City, even if the jobs were never "in danger of being relocated outside the State." Tax incentives in these circumstances clearly do not advance the statutory aim of preserving jobs in the State. If it was also an intended purpose of Grow NJ to incentivize the relocation of existing jobs from other parts of New Jersey to Camden or Atlantic City, it would have aided public understanding to set out this purpose explicitly in the statute, along with the other intended purposes.

Recommendation 4: Relatedly, the Task Force's examination has found that the current statutory text for the Programs contains ambiguities in certain respects. This is illustrated by the issues relating to the "material factor" test that applies to projects in Camden and Atlantic City. It also applies in other areas: for example, as discussed in Section VI(D) of this First Report, there was one instance in which it was unclear whether a company qualified under certain provisions of Grow NJ for "technology" companies—a statutory term that is not defined in the law. Ambiguities in statutory text are inevitable. However, when such ambiguities arise in the administration of a statute, the responsible agency should both determine the resolution of the issue and further publicize its decision so that the rules are clear and known and are applied consistently. When the EDA addresses statutory ambiguities such as this one, it should embody its decisions in published rules (whether in the form of regulations, formal policies, or other guidance documents) that are available to the public.

Recommendation 5: Future legislation should be designed to ensure that the EDA can better control whether companies that meet the employment or other requirements for only a small portion of their commitment period are eligible to receive their full annual award. It should also include provisions ensuring that companies cannot receive a full year's award without meeting the requirements for a full year, and without providing a full year's worth of data to prove their compliance.

Recommendation 6: The EDA should issue comprehensive written policies and procedures to guide its employees in administering the Programs and should implement formal internal training mechanisms with respect to all aspects of the current Programs and any future tax-incentive programs. Although the Task Force fully appreciates that the Programs are complex and often amended, the Task Force's investigation to date has nonetheless found undeniable

[206] N.J. Stat. § 34:1B-244(a).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

deficiencies in certain EDA employees' understandings of the applicable requirements in various respects. The EDA's shortfall in the issuance of regulations and policy and guidance documents likely contributed to these deficiencies, as it limited the resources available to these employees.

Recommendation 7: As described above, the Task Force, third parties, and the media have all discovered significant and adverse information about program applicants, much of which required very little effort. Thus, it seems quite clear that—whatever the EDA's underwriters are doing in the way of independent research on applicants—the work has been deficient. Moreover, the notion of awarding applicants millions, tens of millions, or even hundreds of millions of dollars in tax incentives without a rigorous background check on the company, its officers, and affiliates defies common sense. Thus, we strongly urge that any new legislation include a provision directing the EDA to use a qualified professional services firm to conduct rigorous background checks.

Recommendation 8: With respect to the specific issue of assessing an applicant's representation that the applicant is considering locating outside of New Jersey, the Task Force's investigation to date has found clear deficiencies in the EDA's assessments. There have been instances in which Grow NJ applicants have made representations concerning the possibility of an out-of-state location that should have raised serious red flags concerning the applicant's sincerity, and yet the EDA failed to take any action to investigate the issue. As discussed above, the Grow NJ Act explicitly states that a "purpose of the [Grow NJ] program is . . . to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State."[207] If tax incentives are awarded to incentivize a company to stay in the State when the company never actually intended to leave, then public funds are essentially wasted. The Task Force has found, however, that the EDA's administration of the Grow NJ program has in many ways not sufficiently appreciated this principle. The EDA should improve its performance with respect to this aspect of the program, including by providing clear guidance and training to employees on how to conduct such assessments and instructing them on the importance of this issue. The EDA should provide its employees with a clear framework to apply in assessing applicant representations concerning alternative locations.

Recommendation 9: Grow NJ applicants are required to include certifications, signed by the company's CEO (or an equivalent officer), representing that the CEO "has reviewed the information submitted to the [EDA in connection with the application] and that the representations contained therein are accurate."[208] However, issues may arise when a company modifies its

[207] N.J. Stat. § 34:1B-244(a).
[208] N.J. Stat. § 34:1B-244(d).

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

application at some point after it is submitted, but does not submit a new CEO certification attesting to the truthfulness of the new information. The EDA should have a formal policy or regulation requiring the submission of a new CEO certification whenever an application is materially changed after its submission.

IX. NEXT STEPS

As we noted at the outset, the Task Force is continuing its investigation. It will continue to review documents it has received in response to requests to the EDA and third parties, and to interview witnesses to gain a deeper understanding of any flaws in the design, implementation, or administration of the programs. Among other things, the Task Force intends to:

- Hold further public hearings in which the public will have the opportunity to share its views and perspectives;
- Focus its investigation on the design, implementation, and administration of the ERG Program;
- Continue its investigation of the EDA's oversight over Grow NJ and ERG applications;
- Consider additional ways to make the application and compliance verification process more robust;
- Continue the re-certification process for companies participating in the ARP; and
- Continue its efforts to recapture tax-incentive awards where warranted and, as necessary, make additional referrals to the appropriate enforcement authorities.

In addition, the Task Force will examine the impacts of certain aspects of the Programs that may differ from other states' programs, from prior New Jersey tax-incentive programs, or from best practices described by policy experts. In that regard, the Task Force intends to further examine the policy recommendations made by two of the experts that testified during the first day of the public hearings, Josh Goodman, Senior Officer for State Fiscal Health, at The Pew Charitable Trust, and Jon Whiten, Deputy Director of State Communications at the Center on Budget and Policy Priorities. In particular, the Task Force intends to explore:

- Whether the State should consider targeting its tax incentives to businesses that will increase the State's economic growth by serving national and international markets, rather than local markets;
- Whether the State should shorten the timeframes for receiving tax incentives, in an effort to spend less on incentives while achieving the same impact, and to enable it to better predict the costs and benefits of awarding incentives to businesses;

State of New Jersey
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

- Whether the Programs' approach to awarding tax incentives in distressed areas sufficiently benefits the residents of those areas and what steps, if any, could be taken to fine tune New Jersey's approach to using tax incentives to help economically distressed areas to ensure that residents of distressed areas actually benefit from tax incentives targeted at improving the economy in distressed areas;
- Relatedly, whether to revise the method for calculating the net benefit to the State for companies moving to distressed areas;
- Whether capping the tax incentives by setting annual cost limits would improve the Programs, and what other options for increasing fiscal protections might be undertaken;
- Whether New Jersey should regularly conduct independent evaluations of the effectiveness of the tax incentives programs and to establish systems mandating greater oversight and annual evaluations of the Programs; and
- Whether the State should limit or prohibit the transfer of tax credits awarded under the Programs.

The Task Force will also seek the input of additional policy experts to the extent they have views on these issues.

EXHIBIT 27

Internal reports contradict regulators' public findings over San Onofre spent fuel

sandiegouniontribune.com/news/watchdog/story/2019-09-22/internal-reports-contradict-nrc-public-findings-

September 22, 2019

When a 50-ton cask filled with radioactive waste got wedged 18 feet above the bottom of its concrete silo back in August 2018, work crews at the San Onofre nuclear plant were able to lower the container to its intended resting place after nearly an hour.

Majority plant owner Southern California Edison halted plans to transfer millions more pounds of spent nuclear fuel from wet to dry storage while federal regulators investigated what happened and made sure the process was safe.

Federal inspectors found many of the waste-filled canisters had been scraped and scratched as they were lowered into the interim storage facility. Even so, the U.S. Nuclear Regulatory Commission allowed the waste transfer program to resume in July.

Documents recently obtained by The San Diego Union-Tribune show that an agency field inspector reviewing the August 2018 incident issued internal reports noting that the canisters were designed — and certified — to be lowered into the storage vault without any scratches.

NRC inspector Lee Brookhart wrote that the required final safety analysis report and the certificate of compliance and technical specifications call for no scratches on the caskets.

"The original FSAR (final safety analysis report) statement for no scratches mirrored the CoC/TS (Certificate of Compliance and Technical Specifications) design basis that no scratches would ensure the code adherence," Brookhart wrote in March.

NRC officials did not respond Friday to questions about those internal reports. An Edison spokesman said the utility is fully compliant with federal regulations and the reloading work has been proceeding safely.

Edison spokesman John Dobken said Friday the utility is following federal rules.

"There's another process available for licensees: 72.48," Dobken said, referring to the U.S. Code of Federal Regulations section that allows a licensee to make changes in procedures or design of the casks used to store spent nuclear fuel. "That's what we used to account for the incidental contact going forward," he said.

The regulation is here:
https://www.nrc.gov/reading-rm/doc-collections/cfr/part072/

Dobken said that the company visually inspected eight of the canisters and found no evidence that the scratches would prevent the containers from safely storing spent nuclear fuel.

The canisters Edison is relying on to store spent fuel are licensed to be use for two decades.

The current plan calls foreventuallymoving the canisters away from San Diego once a more permanentstoragesite is agreed to. But critics of the process worry that the scratches outside so many of the canisters could make them difficult to move.

“If you have scrapes, scratches and gouges, that is a trigger for cracks to start,” said Donna Gilmore, an activist in San Clemente who runs a community group called San Onofre Safety.

Brookhart, the NRC inspector, concluded in March that a formal design change would be required to allow the canisters to remain in service.

Instead of pursuing changes to the approved canister design process, Edison relied on a different safety standard to argue that its existing method are compliant and safe.

Brookhart did not agree that a different methodology would satisfy the requirements of the canisters’ previous certification.

“I just don’t see how that meets CoC,” the NRC inspector said. “… Essentially the change (in methodology) is adding an alternative to the code to not have to do inspections and repair these new defects.”

Brookhart’s supervisors at the regulatory agency did not embrace the inspector’s conclusions. On July 15, the commission allowed Edison to restart the fuel transfer program and move forward with decommissioning the plant.

“The licensee implemented an oversight program to ensure that contractors conducted decommissioning work activities in accordance with procedural requirements as well as license expectations,” the NRC said in a report to an Edison vice president, Doug Bauder.

“The licensee implemented operational, radiological and housekeeping programs to ensure safe storage of spent fuel,” senior regulators concluded.

San Diego attorney Michael Aguirre, who has filed several lawsuits aimed at stopping the burial of 3.6 million pounds of nuclear waste in the beach north of Oceanside, said the internal reports show that the NRC disregarded its own inspector in favor of Southern California Edison.

“These decisions should be based on professional inspectors and not on lobbyists and political players at the NRC,” Aguirre said. “It underscores why the downloading has to stop because it is interfering with the ability to transfer the canisters to a safer location.”

Questions over the interim storage of nuclear waste at San Onofre have persisted since the plant was closed in 2012. At least 8 million people live within 50 miles of the plant and many of them are scared that the site could present a public health threat.

Under U.S. law, the U.S. government is responsible for the permanent storage of the San Onofre waste — as well as all of the other spent nuclear fuel in North America. But for decades, federal officials have been unable to agree on a permanent storage facility.

The San Onofre decommissioning plan calls for moving the waste into about 80 heavy concrete canisters by the end of next year so Edison can dismantle the rest of the shuttered plant and return the property to its owner, the U.S. Navy.

Two years ago, Edison agreed to make “commercially reasonable” efforts to relocate the San Onofre waste to settle a lawsuit Aguirre filed in 2015.

EXHIBIT 28

Spent Fuel Storage in Pools and Dry Casks Key Points and Questions & Answers

On this page:

  - How does the NRC conduct oversight of Licensees?
  - How does the NRC verify that canisters are properly loaded in accordance with their NRC Certificate of Compliance?
  - How can the fuel or internal components be inspected on canisters with welded lids?
  - How would welded stainless steel canisters be repaired if necessary?

- Questions and Answers – Waste Confidence & Future Plans
  - How long is spent fuel allowed to be stored in a pool or cask?
  - What is the plan for storage of spent nuclear fuel going forward? Will on-site storage continue to be the way for the foreseeable future?
  - These casks are already pretty old and could be storing spent fuel for decades to come. How can you protect them from deteriorating over time, especially from effects that have been seen at other nuclear installations such as alkali-silica reaction or chloride-induced stress corrosion cracking?
  - How are the long-term impacts of onsite storage of spent fuel analyzed, and what measures are taken to minimize potential impacts on public health and safety?
  - After a plant is decommissioned there will be no infrastructure to handle the repackaging of spent fuel if the storage systems need replacement. Is there a plan for this contingency, and what are the safety implications of reopening the storage cask?

- Questions and Answers – Security
  - What about security? How do you know terrorists won't use all of this waste against us?
  - How are dry storage systems canisters at ISFSIs protected against terrorism such as the September 11, 2001 terrorist attacks using hijacked airplanes?

- Questions and Answers – Emergency Planning
  - Are potential seismic effects considered in the assessment of canisters for continued operation? –EP
  - What are the emergency plans for nuclear waste at an ISFSI in the case of mishandling, leaks, natural disasters or acts of terrorisms?
  - What emergency plans are required for spent fuel storage facilities at nuclear power plants undergoing decommissioning or sites that have completed decommissioning?

Index to all Frequently Asked Question Pages

TOP

Questions and Answers – General

What is spent nuclear fuel?

"Spent nuclear fuel" refers to fuel elements that have been used at commercial nuclear reactors, but that are no longer capable of economically sustaining a nuclear reaction. Periodically, about one-third of the nuclear fuel in an operating reactor needs to be unloaded and replaced with fresh fuel.

TOP

Why does spent fuel need to be cooled?

Spent fuel continues to generate heat because of radioactive decay of the elements inside the fuel. After the fission reaction is stopped and the reactor is shut down, the products left over from the fuel's time in

the reactor are still radioactive and emit heat as they decay into more stable elements. Although the heat production drops rapidly at first, heat is still generated many years after shutdown. Therefore, the NRC sets requirements on the handling and storage of this fuel to ensure protection of the public and the environment.

TOP

Why not require real time radiation monitoring or EPA RadNet monitors around an independent spent fuel storage installation (ISFSI)?

The regulations require that an independent spent fuel storage installation (ISFSI) must have the capability for continuous monitoring of the storage confinement system in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions. For dry spent fuel storage, periodic monitoring is sufficient, provided that periodic monitoring is consistent with the dry spent fuel storage cask design requirements. The monitoring period must be based upon the spent fuel storage cask design requirements. Therefore, the NRC determined that adequate radiological monitoring capabilities already exist at licensed facilities.

All ISFSIs have multiple radiation monitors to ensure they meet NRC dose limits. This is typically accomplished using multiple thermoluminescent dosimeters (TLDs) on the ISFSI fence. These TLDs are regularly monitored. The results of the monitoring program are one of many items, procedures, and operations reviewed by NRC staff. NRC staff inspection reports are made publicly available, unless they contain classified, safeguards, or sensitive information.

TOP

How are licensees required to fund dry storage facilities?

Licensees are required to set aside funding for the management of spent fuel after a plant permanently shuts down until the fuel is transferred to the Department of Energy (DOE) for final disposal. Although the annual costs for continued storage are manageable, cumulative costs will continue to increase.

Under 10 CFR 50.54(bb), licensees are required to obtain approval from the Commission concerning the program by which they intend to manage the irradiated fuel. This includes all plans to provide funding for the management of the fuel at the reactor until title and possession of the fuel is transferred to DOE for permanent disposal in a repository.

The NRC has requirements in 10 CFR 72.22(e) for license applicants to show they have the necessary funds available to cover estimated construction costs, estimated operating costs over the license term, and estimated decommissioning costs. NRC staff review this at the time of initial license application and at the time of license renewal to determine if the applicant has demonstrated reasonable assurance that funding will remain available for the duration of the facility's license.

TOP

What is high burnup fuel?

Burnup is a measure of how much energy is obtained from the fission of uranium, or fuel, in the reactor. Burnup is measured in gigawatt-days per metric ton of uranium (GWd/MTU). Spent fuel is considered high burnup at a value greater than 45 GWd/MTU.

For more information, see the Backgrounder on High Burnup Spent Fuel

TOP

Could high burnup fuel degrade in storage?

The NRC has conducted testing through the National Laboratories and found that high burnup fuel is robust against storage and transportation loads. The inert environment inside the casks maintained during storage provides assurance that high burn up fuel will maintain its integrity under normal and accident conditions. Ongoing long-term demonstrations of loaded high burn-up fuel with other material types are being conducted by the U.S. Department of Energy and Electrical Power Research Institute (EPRI), and are expected to confirm the previous laboratory testing.

For more information, see the following:

- NUREG-2224 – Dry Storage and Transportation of High Burnup Spent Nuclear Fuel
- High Burnup Dry Storage Cask Research and Development Project: Final Test Plan

TOP

What were the inspection results of the canisters located at the Diablo Canyon ISFSI?

The assessment of the conditions on the Diablo Canyon canisters are described in the Electrical Power Research Institute report EPRI-3002002822 and the Sandia National Laboratories report SAND2014-16383. The canister surfaces appeared in good condition with no signs of degradation or corrosion. Researchers noted a mixture of dust and pollen, along with sodium chloride (NaCl) and some magnesium sulfate (MgSO4) on the surface of the canisters. Sodium chloride can cause corrosion in some metals, but it is unlikely given the environment the casks are in.. Using temperature and humidity data from the Vandenberg weather station, the time required for chloride induced stress corrosion cracking (CISCC) to corrode through the cask would be greater than 1,800 years. NRC staff will continue to monitor the situation to ensure such corrosion does not become a problem. Another CISCC-inducing compound, magnesium chloride (MgCl2), was not present on the Diablo Canyon canisters. The conclusion section of the SANDIA report explains limitations for the sample collection and analysis.

Additional information is available in the following EPRI and Sandia reports:

- EPRI-3002002822
- SAND2014-16383
- Susceptibility Assessment Criteria for Chloride-Induced Stress Corrosion Cracking (CISCC) of Welded Stainless Steel Canisters for Dry Cask Storage Systems

TOP

Questions and Answers – Spent Fuel Pool Safety

What do you look at when you license a fuel storage facility? How do I know it can withstand a natural disaster?

The NRC's requirements for both wet and dry storage can be found in Title 10 of the Code of Federal Regulations (10 CFR), including the general design criteria in Appendix A to Part 50 and the spent-fuel

storage requirements in Part 72. The staff uses these rules to determine that the fuel will remain safe under anticipated operating and accident conditions. There are requirements on topics such as radiation shielding, heat removal, and criticality. In addition, the staff reviews fuel storage designs for protection against:

- natural phenomena, such as seismic events, tornados, and flooding
- dynamic effects, such as flying debris or drops from fuel handling equipment and drops of fuel storage and handling equipment
- hazards to the storage site from nearby activities

TOP

How do you know the fuel pools are safe? Does the NRC inspect these facilities, or just the reactor itself?

NRC inspectors are responsible for verifying that spent fuel pools and related operations are consistent with a plant's license. For example, our staff inspects spent fuel pool operations during each refueling outage. We also performed specialized inspections to verify that new spent fuel cooling capabilities and operating practices were being implemented properly.

TOP

What would happen to a spent fuel pool during an earthquake? How can I be sure the pool wouldn't be damaged?

All spent fuel pools are designed to seismic standards consistent with other important safety-related structures on the site. The pool and its supporting systems are located within structures that protect against natural phenomena and flying debris. The pools' thick walls and floors provide structural integrity and further protection of the fuel from natural phenomena and debris. In addition, the deep water above the stored fuel (typically more than 20 feet above the top of the spent fuel rods) would absorb the energy of debris that could fall into the pool. Finally, the racks that support the fuel are designed to keep the fuel in its designed configuration after a seismic event.

TOP

Can spent fuel pools leak?

Spent fuel pools lined with stainless steel are designed to protect against a substantial loss of the water that cools the fuel. Pipes typically enter the pool above the level of the stored fuel, so that the fuel would stay covered even if there were a problem with one of the pipes. The only exceptions are small leakage-detection lines and, at two pressurized water reactor (PWR) sites, robust fuel transfer tubes that enter the spent fuel pool directly. The liner normally prevents water from being lost through the leak detection lines, and isolation valves or plugs are available if the liner experiences a large leak or tear.

TOP

How would you know about a leak in such a large pool of water?

The spent fuel pools associated with all but one operating reactor have liner leakage collection to allow detection of very small leaks. In addition, the spent fuel pool and fuel storage area have diverse

instruments to alert operators to possible large losses of water, which could be indicated by low water level, high water temperature, or high radiation levels.

TOP

How can operators get water back in the pool if there is a leak or a failure?

All plants have systems available to replace water that could evaporate or leak from a spent fuel pool. Most plants have at least one system designed to be available following a design basis earthquake. In addition, the industry's experience indicates that systems not specifically designed to meet seismic criteria are likely to survive a design basis earthquake and be available to replenish water to the spent fuel pools. Furthermore, plant operators can use emergency and accident procedures that identify temporary systems to provide water to the spent fuel pool if normal systems are unavailable. In some cases, operators would need to connect hoses or install short pipes between systems. The fuel is unlikely to become uncovered rapidly because of the large water volume in the pool, the robust design of the pool structure, and the limited paths for loss of water from the pool.

TOP

Do U.S. nuclear power plants store their fuel above grade? Why is this considered safe?

For boiling water reactor (BWR) Mark I and II designs, the spent fuel pool structures are located in the reactor building at an elevation several stories above the ground (about 50 to 60 feet above ground for the Mark I reactors). The spent fuel pools at other operating reactors in the U.S. are typically located with the bottom of the pool at or below plant grade level. Regardless of the location of the pool, its robust construction provides the potential for the structure to withstand events well beyond those considered in the original design. In addition, there are multiple means of restoring water to the spent fuel pools in the unlikely event that any is lost.

TOP

How are spent fuel pools kept cool? What happens if the cooling system fails?

The spent fuel pool is cooled by an attached cooling system. The system keeps fuel temperatures low enough that, even if cooling were lost, operators would have substantial time to recover cooling before boiling could occur in the spent fuel pool. Licensees also have backup ways to cool the spent fuel pool, using temporary equipment that would be available even after fires, explosions, or other unlikely events that could damage large portions of the facility and prevent operation of normal cooling systems. Operators have been trained to use this backup equipment, and it has been evaluated to provide adequate cooling even if the pool structure loses its water-tight integrity.

TOP

What keeps spent fuel from re-starting a nuclear chain reaction in the pool?

Spent fuel pools are designed with appropriate space between fuel assemblies and neutron-absorbing plates attached to the storage rack between each fuel assembly. Under normal conditions, these design features mean that there is substantial margin to prevent criticality (i.e., a condition where nuclear fission would become self-sustaining). Calculations demonstrate that some margin to criticality is maintained for a variety of abnormal conditions, including fuel handling accidents involving a dropped fuel assembly.

TOP

Questions and Answers – Dry Cask Safety

What is dry cask storage?

Dry cask storage allows spent fuel that has already been cooled in the spent fuel pool for several years to be surrounded by inert gas inside a container called a cask. The casks are typically steel cylinders that are either welded or bolted closed. The steel cylinder provides containment of the spent fuel. Each cylinder is surrounded by additional steel, concrete, or other material to provide radiation shielding to workers and members of the public.

TOP

What is an "ISFSI"?

An independent spent fuel storage installation, or ISFSI, is a facility that is designed and constructed for the interim storage of spent nuclear fuel. These facilities are licensed separately from a nuclear power plant and are considered independent even though they may be located on the site of another NRC-licensed facility.

TOP

What kind of license is required for an ISFSI?

NRC authorizes storage of spent nuclear fuel at an ISFSI in two ways: site-specific or general license. For site-specific applications, the NRC reviews the safety, environmental, physical security and financial aspects of the licensee and proposed ISFSI and, if we conclude it can operate safely, we issue a license. This license contains requirements on topics such as leak testing and monitoring and specifies the quantity and type of material the licensee is authorized to store at the site. A general license authorizes storage of spent fuel in casks previously approved by the NRC at a site already licensed to possess fuel to operate a nuclear power plant. Licensees must show the NRC that it is safe to store spent fuel in dry casks at their site, including analysis of earthquake intensity and tornado missiles. Licensees also review their programs (such as security or emergency planning) and make any changes needed to incorporate an ISFSI at their site. Of the currently licensed ISFSIs, 48 are operating under general licenses and 15 have specific licenses.

TOP

How does the NRC determine that a dry storage system is safe?

Before approving any dry storage system and issuing a Certificate of Compliance or a license, the NRC staff conducts a thorough engineering review to ensure the system design meets all necessary safety requirements. Dry storage systems must be designed to protect the public and workers from radiation exposure. In addition, dry storage systems must be able to withstand credible natural disasters and accidents. The NRC staff's dry storage system reviews are documented in safety evaluation reports, which are publicly available in the NRC Agencywide Documents Access and Management System (ADAMS). The NRC staff also conducts quality assurance inspections of vendors who design and manufacture the storage systems and operating spent fuel storage facilities to ensure compliance with the NRC's safety requirements.

For more information, see NUREG/BR-0528

TOP

What are the requirements for the selection and use of a dry storage system at an NRC licensed commercial power reactor site?

A licensee's selection of a dry cask storage system is based on the operational needs of a specific reactor site (A list of approved casks can be found in 10 CFR 72.214). A licensee must first determine whether a particular system addresses the storage site's parameters, including analyses of potential earthquake intensity and tornado missiles. A licensee must provide reasonable assurance that the location's conditions meet the necessary safety requirements for adequate protection. The evaluation requirements for a dry storage system user can be found in 10 CFR 72.212.

TOP

What Risk Assessments have been conducted for dry storage systems?
The NRC and the Electrical Power Research Institute (EPRI) have performed risk assessments for dry storage systems. These analyses considered the release of radioactive gases and found the radiation doses to be below NRC's safety requirements. The NRC staff also evaluated a post-accident release of radioactive gases from breached storage canisters that contain damaged fuel assemblies. EPRI has also conducted a risk assessment regarding the radiological risks to the public during the life cycle of a bolted spent fuel cask. NUREG-1864 assesses a comprehensive list of initiating events, including dropping the cask during handling, and external events during onsite storage (such as earthquakes, floods, high winds, lightning strikes, accidental aircraft crashes, and pipeline explosions). All of these studies concluded that the risks of the public receiving a dose above regulatory limits is very low.

For more information, see the following:

- NUREG-1864
- EPRI Technical Report 1002877

TOP

How do the NRC requirements ensure that dry storage systems do not release radioactive material and expose workers and members of the public to radiation?

The NRC requires dry storage systems to meet NRC safety requirements at all times, including during or after a design basis accident. A design basis accident is any event that could significantly affect the storage system. Accident conditions include events such as fuel rod rupture and air flow blockage, as well as natural phenomena like earthquakes, burial under debris, lightning strikes, and other phenomena (e.g., seiches, tsunamis, and hurricanes). Different accident conditions are evaluated as appropriate depending on the storage cask's location. NRC requirements in 10 CFR 72.104 define annual dose limits for normal operations and anticipated events, while requirements in 10 CFR 72.106 define dose limits for a design basis accident. These dose limits do not pose a significant safety concern to workers or the public, and are a fraction of the average annual dose received from background radiation.

TOP

How are dry storage systems inspected?

Nondestructive examination (NDE) methods for the inspection of canisters already exist and have been used in the nuclear industry for decades. These NDE methods include visual testing (VT), Eddy current testing (ECT), and Ultrasonic testing (UT). ECT utilizes magnetic fields to identify cracks and defects. Similarly, UT utilizes sound waves as the method for detection. Together, the three methods can detect and characterize potential aging effects like localized corrosion. Methods to apply existing NDE techniques to stainless steel canisters have been developed, and currently are being tested by both the Electrical Power Research Institute (EPRI) and dry storage system manufacturers.

Additional information is available in the following EPRI reports:

- EPRI-3002008234
- EPRI-3002010617
- EPRI-3002010621

TOP

What can remote visual testing be used to detect?

Remote visual testing (RVT) is a nondestructive way to detect cracking, corrosion, wear and component failures. The ability of RVT methods to detect cracking was reviewed and documented in NUREG/CR-7246. Crack size was found to be an important feature that limits the detection of cracks by RVT. Very small cracks are harder to detect using RVT. Detection by RVT is also challenged when cracks are located in the proximity of surface features, such as grinding marks or weld ripples. RVT is still a viable inspection method despite its limitations. Because the detection of CISCC cracks on canisters using RVT could be challenging, the example aging management programs developed by NRC staff and aging management guidance developed by the Electrical Power Research Institute (EPRI) have relied on indications of localized corrosion, such as pitting, that can be reliably detected using visual testing methods.

For more information, see the following:

- NUREG/CR-7246
- NUREG-2214
- EPRI-3002008193

TOP

How does the NRC conduct oversight of Licensees?

Licensees are responsible for operating their facilities safely. The NRC verifies licensees' compliance with safety regulations through its inspection program. This includes inspections of operating facilities and cask vendors. The frequency of these inspections is based on the licensee's performance and the presence of activity (cask loadings, extreme weather conditions, etc.). The NRC requires prompt corrective action by the licensee if a safety problem or failure to comply with requirements is discovered. Enforcement action may follow depending on the severity of the inspection findings.

For more information on how specifically inspections are done, see the NRC Inspection Manual, Manual Chapter 2690

TOP

How does the NRC verify that canisters are properly loaded in accordance with their NRC Certificate of Compliance?

Before the licensee has loaded a single canister, the NRC inspects the licensee's spent fuel loading procedures by observing and assessing the implementation of those procedures during a "dry run" rehearsal before actual loading is performed. The NRC also observes the initial cask loading. This means the very first cask loaded by a licensee is always observed. NRC inspectors generally observe and review licensee's identification, parameters, and characteristics of each fuel assembly. Verification is also performed through review of procedures that lead to the selection and verification of fuel assemblies prior to each loading. After the first loading has been observed, inspectors will periodically observe future cask loadings to ensure canisters are still being properly loaded. If a misloading is identified the licensee must immediately conduct an evaluation to show the NRC the loading still meets the acceptance criteria. In no misloading case has there ever been a safety concern.

TOP

How can the fuel or internal components be inspected on canisters with welded lids?

At this time there are no methods available for inspecting the internal components of welded stainless steel canisters once they are loaded. Several measures are taken during the loading process to ensure there will be no need to re-open a welded canister. Each canister is leak tested prior to use to ensure the inert helium environment will remain inside the canister. The inert environment prevents the stored spent fuel from degrading and eliminates the need to inspect the fuel or the interior of the canister. If there is a safety need to open a welded canister, there is a procedure approved by NRC staff in the dry storage system's safety analysis report.

TOP

How would welded stainless steel canisters be repaired if necessary?

In the unlikely event that a canister repair would be needed, corrective actions would be performed on a case-specific basis for the affected dry storage system component. Corrective actions may be proposed to mitigate an identified degradation before the canister integrity is compromised, or to bring a canister back into compliance if the degradation has compromised the canister integrity. The licensee would propose corrective actions to the NRC in either case, and NRC staff would evaluate whether the corrective actions are sufficient to preserve the intended safety functions of the dry storage system and maintain compliance with the regulations of 10 CFR Part 72. Proposed repair methods also require demonstration and compliance with an NRC-approved quality assurance program.

TOP

Questions and Answers – Waste Confidence & Future Plans

How long is spent fuel allowed to be stored in a pool or cask?

NRC regulations do not specify a maximum time for storing spent fuel in pool or cask. The agency's “waste confidence decision" expresses the Commission's confidence that the fuel can be stored safely in either pool or cask for at least 60 years beyond the licensed life of any reactor without significant environmental effects. At current licensing terms (40 years of initial reactor operation plus 20 of extended operation), that would amount to at least 120 years of safe storage.

However, it is important to note that this does not mean NRC "allows" or "permits" storage for that period. Dry casks are licensed or certified for 20 years, with possible renewals of up to 40 years. This shorter licensing term means the casks are reviewed and inspected, and the NRC ensures the licensee has an adequate aging management program to maintain the facility.

TOP

What is the plan for storage of spent nuclear fuel going forward? Will on-site storage continue to be the way for the foreseeable future?

The U.S. policy for nuclear waste management, as set forth in the Nuclear Waste Policy Act, is for permanent disposal of spent fuel in a deep underground geological repository. Decades of scientific research supports the use of a repository for disposal of spent fuel. Federal responsibility for siting and building a repository remains national policy. The NRC acknowledges the challenges encountered over the years in siting and licensing the proposed repository at Yucca Mountain. The Commission remains confident that a repository will be built. The Commission does not consider that accumulated spent fuel will be stored permanently at current or former reactor sites and does not endorse permanent storage at reactor sites.

Although the NRC considers that 25 to 35 years is a reasonable timeframe for repository development, it acknowledges that there is sufficient uncertainty in this estimate that the possibility that more time will be needed cannot be ruled out. International and domestic experience have made it clear that technical knowledge and experience alone are not sufficient to bring about the broad social and political acceptance needed to construct a repository. The time needed to develop a societal and political consensus for a repository could add to the time to site and license a repository, or overlap it to some degree.

TOP

These casks are already pretty old and could be storing spent fuel for decades to come. How can you protect them from deteriorating over time, especially from effects that have been seen at other nuclear installations such as alkali-silica reaction or chloride-induced stress corrosion cracking?

Dry cask storage systems have been used at U.S. nuclear power plants for more than 30 years with an excellent safety record. Part of the reason for that success is the robust design of the systems. Another reason is proper care and maintenance, including implementation of aging management programs (AMPs) required by the NRC.
The NRC conducted an extensive review of the materials used in dry cask storage systems, looking at how these materials might degrade over time. This review was documented in NUREG-2214. The NRC reviewed specific dry cask storage system designs, and the environments in which the systems operate. The report describes the scientific methods used to determine the likely effects of aging on the storage systems, and what might cause those effects. It also includes examples of generic AMPs licensees may use to develop their own programs. Additional guidance on aging management for dry storage systems was published in NUREG-1927. NRC inspectors examine a licensee's AMPs to verify that any potential degradation is quickly identified, and corrective actions taken to ensure the storage cask continues to function properly.

Two ways dry storage systems could possibly degrade over time are alkali-silica reaction (ASR) on concrete, and chloride-induced stress corrosion cracking (CISCC) of welded stainless steel canisters. No ASR has been reported on a dry storage system to date, though it is something licensees must include in

their AMPs. NRC staff research on CISCC concluded that the risk is not credible during the first 20 years of operation because of the long time needed for cracks to grow through the stainless steel canister wall. After 20 years, CISCC is covered by the AMP. The Electrical Power Research Institute (EPRI) has also conducted a thorough assessment of the potential for CISCC in dry storage system canisters.

TOP

How are the long-term impacts of onsite storage of spent fuel analyzed, and what measures are taken to minimize potential impacts on public health and safety?

All storage systems approved by the NRC have been reviewed to ensure they meet all the regulatory safety requirements. These requirements address the credible hazards from natural disasters and accidents that the spent fuel storage systems may encounter. Long term, the NRC requires dry storage system users to have Aging Management Programs (AMPs) to ensure safety. NUREG-1927 and NUREG-2214 provide more detailed information about aging management activities for dry storage systems. These guidance documents will continue to be updated as necessary.

NRC staff also conduct an environmental review of each independent spent fuel storage installation (ISFSI) to comply with the National Environmental Policy Act (NEPA). The NRC's NEPA requirements are in 10 CFR Part 51. In 2014, NRC staff evaluated the environmental impacts of continued storage of spent fuel. This evaluation is documented in NUREG-2157 and shows that the long-term storage of spent fuel has a low environmental impact.
For more information, see the following:

- NUREG-1927
- NUREG-2214
- NUREG-2157

TOP

After a plant is decommissioned there will be no infrastructure to handle the repackaging of spent fuel if the storage systems need replacement. Is there a plan for this contingency, and what are the safety implications of reopening the storage cask?

Storage casks should not be opened unless there is a specific safety need. Most welded stainless steel canisters are designed to be transportable inside a specifically designed transportation overpack. This allows fuel to be transported without directly handling the fuel. The canisters are leak tested and this assures that the helium environment will be maintained inside the canister. A helium environment is important because helium is an inert gas, meaning it does not undergo chemical reactions. If safety issues are identified, it is the responsibility of the licensee to propose corrective actions, and the NRC's responsibility to ensure these actions maintain the safety functions of the storage system. Each specific dry storage system has specific procedures for opening the canister outlined in the dry storage system or the independent spent fuel storage installation (ISFSI) safety analysis report. These procedures are reviewed by NRC staff.

TOP

Questions and Answers – Security

What about security? How do you know terrorists won't use all of this waste against us?

For spent fuel, as with reactors, the NRC sets security requirements and licensees are responsible for providing the protection. We constantly remain aware of the capabilities of potential adversaries and threats to facilities, material, and activities, and we focus on physically protecting and controlling spent fuel to prevent sabotage, theft, and diversion. Some key features of these protection programs include intrusion detection, assessment of alarms, response to intrusions, and offsite assistance when necessary. Over the last 20 years, there have been no radiation releases that have affected the public. There have also been no known or suspected attempts to sabotage spent fuel casks or storage facilities. The NRC responded to the terrorist attacks on September 11, 2001, by promptly requiring security enhancements for spent fuel storage, both in spent fuel pools and dry casks.

TOP

How are dry storage systems canisters at ISFSIs protected against terrorism such as the September 11, 2001 terrorist attacks using hijacked airplanes?

The best defense against hijacked airplanes is airport security, enforced by the Department of Homeland Security's (DHS) Transportation Safety Administration. DHS, the U.S. military, and the intelligence community are responsible for the defense of the country. The NRC regularly works with these agencies to assess the threat environment, and is always ready to alert its licensees if a specific, credible threat is identified.

Security requirements at NRC-licensed facilities are based on the potential threat level and the potential consequences of an event. The NRC details the security requirements for physical protection of spent fuel storage in 10 CFR Part 73 and 10 CFR Part 72. Further orders also provide additional security measures. Protection from, and responses to, security-related events are addressed in the licensee's NRC-approved Physical Security Plan, which is not publicly available. An independent spent fuel storage installation (ISFSI) licensee must comply with the security requirements which are implemented in their approved Physical Security Plan.

Over the past 20 years, there have been no known or suspected attempts to sabotage, or steal radioactive material from storage casks at ISFSIs, or to directly attack an ISFSI. Nevertheless, the NRC is continually evaluating threats to stay best prepared. Licensees are routinely inspected to ensure they are following their NRC-approved Physical Security Plan. NRC staff have conducted security assessments for ISFSIs using several storage cask designs that were representative of most currently certified designs. The resulting assessments formed the basis for the NRC's conclusion that there was no need for further security measures at ISFSIs beyond those currently required.

For more information, see Frequently Asked Questions About Security Assessments at Nuclear Power Plants.

TOP

Questions and Answers – Emergency Planning

Are potential seismic effects considered in the assessment of canisters for continued operation? –EP

Yes, approved canister designs used at a specific independent spent fuel storage installation (ISFSI) location address the credible seismic hazards of that location. The canisters must maintain containment of the spent fuel under the predicted seismic loads for each location. In addition, the radiation exposure limits, thermal limits, confinement barrier integrity, structural performance, and nuclear criticality safety

must be maintained. These requirements continue throughout the life of the dry storage systems and are maintained and verified by aging management activities and inspections.

TOP

What are the emergency plans for nuclear waste at an ISFSI in the case of mishandling, leaks, natural disasters or acts of terrorisms?

An emergency plan for an independent spent fuel storage installation (ISFSI) is required by 10 CFR 72.32(c). The emergency plan identifies the actions to be taken to address a release and make the consequences less severe, regardless of the event. However, there is no credible accident scenario involving dry cask storage that would result in widespread consequences outside the facility boundary. That's because unlike operating power reactors, dry cask storage systems do not have the thermal or kinetic energy to spread radioactive contamination over a large area in the highly unlikely event a storage canister is breached. Emergency plans for ISFSIs are publicly available in ADAMS. Protection from and responses to security-related events are addressed in a licensee's NRC-approved Physical Security Plan, which are not publicly available.

For more information, see Frequently Asked Questions About Emergency Preparedness and Response.

TOP

What emergency plans are required for spent fuel storage facilities at nuclear power plants undergoing decommissioning or sites that have completed decommissioning?

Decommissioning reactors continue to be subject to the NRC's emergency planning requirements. For some period of time after the licensee ceases reactor operations, offsite emergency planning will be maintained. This period of time depends on when the reactor was last critical as well as site-specific considerations. Offsite emergency planning may be eliminated when the fuel has been removed from the reactor and placed in the spent fuel pool, and sufficient time has elapsed, such that there are no longer any postulated accidents that would result in offsite dose consequences large enough to require offsite emergency planning. There would be no requirement to maintain offsite systems to warn the public. Onsite emergency plans will be required for both the spent fuel pool and the Independent Spent Fuel Storage Installations, but offsite plans will not be required. If, however, an operating plant is located at the same site as the decommissioning plant, the emergency preparedness plans will still be in effect for the operating plant.

Although offsite emergency planning at a decommissioned site may no longer be required, licensees maintain offsite contacts since any emergency declaration requires notification of state and local officials as well as the NRC. In addition, due to the typically reduced staffs at a decommissioning facility they may rely even more on offsite assistance for fire, security, medical or other emergencies. These reduced EP requirements would remain in effect as long as fuel is onsite.

(Note: This general description also applies to emergency planning for specifically licensed ISFSIs; those requirements are spelled out in detail in 10 CFR 72.32.)

TOP

Page Last Reviewed/Updated Tuesday, August 27, 2019

EXHIBIT 29

From: MARK MORGAN <Mark.Morgan@sce.com>
Sent: Friday, March 29, 2019 4:25 PM
To: Brookhart, Lee; Plotter, Jason; Simpson, Eric; Smith, Chris; Wise, John; Davis, Marlone; Katanic, Janine; Howell, Linda; Doug Bauder; ALBERT BATES
Cc: MARK MORGAN
Subject: [External_Sender] Latest products posted to the reading room

All,

SONGS has just posted the following products to the CERTREC Electronic Reading Room for your review:

1. The MPC Visual Assessment Report
2. A revised HI-2188437 to incorporate results of the Visual Assessment Report
3. A change to the 72.212 evaluation to evaluate incidental contact wear for ASME Code Compliance, and
4. An associated 72.48 evaluation.

If files are sorted by "name" in the reading room, they will be grouped together alphabetically under "Post Visual Assessment..."

In addition, Al asked me to pass along the latest version of our statement on Code Compliance, previously transmitted to you on Monday. The response has been updated, and is attached to this email.

Please let me know if you have any questions regarding this.

Thanks,
Mark
(949) 368-6745

NRC Review Question Response Form

Note 1: Complete a separate form for each inspector question.

Note 2: The item tracking number will be generated when the record is entered into the inspection database.

Question Title: Clarification of ASME Section 3 in Licensing Basis

Tracking Number: 11A AR Number: 0319-53473-3 Date Initiated: 03/21/2019

Holtec Support Required: Yes__ or No ___

Question description:

Appendix B Technical Specification 3.3 requires, that the AMSE BPVC, 2007, is the governing Code for the MPC. Additionally, Appendix B Table 3-1 tie the canister and FSAR to the requirements of ASME Section III in many areas.

The original FSAR statement for no scratches mirrored the CoC/TS design basis that no scratches would ensure the code adherence to ASME Section III.

Now under 72.48, a design change is needed to deviate to allow scratches. But instead of using ASME BPVC code criteria to inspect the canister and properly disposition the defects which would maintain conformance to the code, the calculation utilizes Archard's wear equation to bound the condition. I just don't see how that meets CoC.

Now I understand, how SCE has argued, it is not a methodology. I think it is more of CoC and Appendix B change, myself. Essentially, the change is adding an alternative to the code to not have to do inspections and repair these new defects. Alternatives to the code can only be done via license amendment. Or maybe per TS Appendix B 3.3.2.

NB-4131 "Material originally accepted on delivery in which defects exceeding limits of NB-2500 are known or discovered during the process of fabrication or installation is unacceptable. The material may be used provided the condition is corrected in accordance with the requirements of NB-2500

ASME Section III NB-2538, "Elimination of Surface Defects" requires that defects are required to be examined by either magnetic particle or liquid penetrant method to ensure that the defect has been removed or reduced to an imperfection of acceptable size."

Instead of doing that (which I understand is impossible) which would maintain code compliance, the 72.48 deviates using a calculational method to bound the defect. The only "method" that should be used to disposition these defects is some method allowed or described in the BPVC code or the licensee would need an alternative to the code to maintain compliance with the regulatory licensing basis.

NRC Review Question Response Form

Requested Clarification (If needed): None

SONGS / Holtec Response:

NOTE: For clarity, the NRC question (comment) is separated by paragraph and a response to each is provided.

NRC Comment 1

Appendix B Technical Specification 3.3 requires, that the AMSE BPVC, 2007, is the governing Code for the MPC. Additionally, Appendix B Table 3-1 tie the canister and FSAR to the requirements of ASME Section III in many areas.

Response to Comment 1

It is agreed that the ASME BPVC, 2007 is the governing code for the MPC and that C of C Appendix B, "Approved Contents and Design Features," Table 3-1 ties the canister and FSAR to the requirements of Section III in many areas. However, other sections of the code apply as well and the relationship is described below.

Section III is the construction code portion of the ASME B&PV Code. It assumes that the other parts of the Code are also involved as appropriate. ASME Code material specifications are in Section II. They are selected in accordance with Section III. NDE is generally performed in accordance with Section V. Welding is performed in accordance with Section IX. Preservice examinations required by the component specifications to be done by the manufacturer are often performed in accordance with Section XI. Typically, the primary jurisdiction of the Section III construction code ends when a component is stamped. Because the MPC is not actually stamped, Holtec considers jurisdiction of Section III ends when the MPC leaves the manufacturer. Although Appendix B of the C of C is silent on which Section of the ASME Code applies during inservice inspections, use of Section XI, as selected by Holtec, is typical throughout the nuclear industry and is not prohibited by the C of C. Therefore, the ASME Code Section XI has jurisdiction after the MPC leaves the manufacturer.

NRC Comment 2

The original FSAR statement for no scratches mirrored the CoC/TS design basis that no scratches would ensure the code adherence to ASME Section III.

Response to Comment 2

There is no indication in the CoC, its Appendices (Technical Specifications or Approved Contents and Design Features), or NRC SER that the statement in Chapter 9 of the FSAR related to no risk of scratching was considered in the NRC's evaluation of the ASME Code compliance of the MPC.

There is no violation of ASME Section III requirements, nor any cause for repair activities, stemming from minor scratches or wear marks that result from incidental contact between the MPC and the CEC internal features during download operations at site.

HI-STORM UMAX FSAR Rev. 4: 9.5.vii states

> *Because the MPC insertion (and withdrawal) occurs in the vertical configuration with ample lateral clearances, there is no risk of scratching or gouging of the MPC's external surface (Confinement Boundary). Thus the ASME Section III Class 1 prohibition against damage to the pressure retaining boundary is maintained.*

The Section III requirements for pressure containing plate materials is that surface defects will be removed (NB-2538). In NCA-9000, *defective material* is defined as material that does not meet specified requirements. Similarly a defect is defined in general as a rejectable flaw and a flaw is defined as an imperfection or unintentional discontinuity that is detectable by visual, surface or volumetric methods (Section XI Glossary, IWA-9000 (1992)).

A scratch, if it occurred during installation, would not be a defect requiring repair per the Code. A scratch is a non-conformance and the engineering disposition concluded that scratches are not rejectable due to potential effects on peak stresses, as explained in HI-2188437. This is because localized scratches or wear marks are only capable of producing peak stresses, which are only objectionable from a fatigue or brittle fracture standpoint. The HI-STORM UMAX and FW FSARs (Table 3.1.10 of both address fatigue and HI-STORM FW FSAR Section 3.4.5 for brittle fracture) explain why neither fatigue nor brittle fracture present any risk to a MPC.

A scratch would not be rejectable due to interference with material testing in NB-2000 since all of these tests would be completed prior to canister delivery.

Therefore, the only remaining cause (without further analysis) of rejection of a scratch located on the exterior of the canister wall generated during installation would be a condition where the amount of localized wall thinning was below an allowable wall thickness based on Section III.

If a scratch during installation occurs, it can, under Section XI jurisdiction, either be dispositioned as a scratch (i.e., since it not a planar flaw) by reverting back (in accordance with IWA-3100 (b)) to the Construction Code, which would be Section III; or, if desired, be dispositioned by Section XI, Table IWB-3514-1, as if it were a planar flaw (which is more conservative than Section III). The information supplied by SCE and Holtec to date is not intended to disposition any indication; but, to provide assurance that any potential scratches will remain well within ASME Code allowable limits. So the SONGS canister scratch could be acceptable down to a minimum allowable wall under Section III. And the Holtec MPC with 0.500 inch wall could, if desired, allow a scratch as if a planar flaw that was up to 10% of nominal wall thickness (an allowed wall of 0.450 inches).

This means that the 0.625 inch nominal wall for a SONGS canister could, using engineering judgment, be reduced without further analysis by 0.175 inches to 0.450 inches, which is an allowable wall based on the licensed 0.500 inch baseline UMAX MPC as discussed in HI-2188437.

A scratch that might be formed during incidental contact of an MPC wall with the divider shell inside the cavity enclosure container during downloading would not result in a rejectable flaw condition, considering the large allowable margin for such localized thinning. This is based on engineering judgment and operational experience. Knowledge of basic wear principles with two soft materials having incidental contact under light lateral loads and many years of operating experience with acceptable canister loading of horizontal canisters inform this judgment. Scratches of a light nature, though somewhat likely, present no risk since the impact is negligible.

NRC Comment 3

Now under 72.48, a design change is needed to deviate to allow scratches. But instead of using ASME BPVC code criteria to inspect the canister and properly disposition the defects which would maintain conformance to the code, the calculation utilizes Archard's wear equation to bound the condition. I just don't see how that meets CoC.

Response to Comment 3

ECO-5021-042 is not a design change. It is a proposed change to clarify the HI-STORM UMAX FSAR. The ECO and supporting 72.48 are explicit in this regard. They further note that they are evaluated as if they were a design change to assure a more comprehensive documented review.

A change is not required to allow scratches since the FSAR statement that there is no risk of damage to the ASME Section III Class 1 pressure retaining boundary that might result from scratching remains valid.

It is not necessary to conclude that the intent of the FSAR was to state that no scratches would occur since incidental contact could occur. More likely the intent was to note that, compared to other designs with much higher contact loads and no clearance, there was negligible risk that shallow scratches in the vertical designs would be rejectable. When SCE and Holtec were asked (after the August 3, 2018 event) to justify this engineering judgment, accepted engineering practices were used for the estimation of scratches as well as laboratory tests and canister inspections. This was not a required calculation for design purposes, but the use of standard engineering explanations, all of which substantiated the initial judgment.

NRC Comment 4

Now I understand, how SCE has argued, it is not a methodology. I think it is more of CoC and Appendix B change, myself. Essentially, the change is adding an alternative to the code to not have to do inspections and repair these new defects. Alternatives to the code can only be done via license amendment. Or maybe per TS Appendix B 3.3.2.

Response to Comment 4

It is not correct to call these slight scratches "defects". By the definition of the ASME code, a defect is a flaw that is rejectable. None of these scratches approach criteria that require removal or repair. That judgment has been substantiated by accepted wear laws, first principles,

laboratory tests, operating experience, and examination of installed loaded canisters that this judgment was and still is valid.

As noted in the Response to Comment 4, questions regarding the judgment arose from various stakeholders following the hang-up of the MPC on August 3, 2018. It was apparently presumed that the lateral loads during passage of the MPC into the cavity enclosure container must be higher than previously considered. After assessing the actual loads and their effect on the surfaces of the canister, the original judgment was validated.

NRC Comment 5

NB-4131 "Material originally accepted on delivery in which defects exceeding limits of NB-2500 are known or discovered during the process of fabrication or installation is unacceptable. The material may be used provided the condition is corrected in accordance with the requirements of NB-2500.

Response to Comment 5

SCE and Holtec agree with this ASME Code requirement. It is appropriately implemented by the fabricator as an attribute of the manufacturing process and its controls. Appropriate documentation is provided to Holtec and SCE certifying compliance with FSAR invoked requirements of the ASME Code.

As previously noted, no defects (i.e., rejectable flaws) were discovered or are anticipated during the process of installation. Therefore no corrections are required per NB-2500.

NRC Comment 6

ASME Section III NB-2538, "Elimination of Surface Defects" requires that defects are required to be examined by either magnetic particle or liquid penetrant method to ensure that the defect has been removed or reduced to an imperfection of acceptable size."

Response to Comment 6

No defects (rejectable flaws) have been identified that have resulted from scratches or are expected to result from scratches due to incidental contact during down-loading. The bounding scratches estimated in response to the various inquiries are theoretical projections not identified flaws.

This is consistent with the judgment in the FSAR, and validated by the means explained above. The requirement of NB-2538 might have removed a scratch during construction if it interfered with the ability to complete the surface or volumetric material examinations of the pressure boundary material.

Once this had been completed and the canister delivered, a similar surface defect occurring during installation would not need to be removed because these material examinations had already been completed.

NRC Review Question Response Form

NRC Comment 7

> Instead of doing that (which I understand is impossible) which would maintain code compliance, the 72.48 deviates using a calculational method to bound the defect. The only "method" that should be used to disposition these defects is some method allowed or described in the BPVC code or the licensee would need an alternative to the code to maintain compliance with the regulatory licensing basis.

Response to Comment 7

> As previously noted no "defects" due to incidental contact are anticipated. The calculational methods are tools to estimate potential scratch depth and are in no way a means to disposition any defect; real or projected.
>
> Neither the identification nor removal of shallow scratches, wear or rub marks due to installation is required to maintain compliance with ASME Section III or the ASME B&PV Code generally.

Assigned Response Team Member: David Rackiewicz

Assigned Independent / Peer Review Team Member: Bob Yale/Ken Wilson

NRC Inspector: Lee Brookhart

Response provided date / time: 3/23/19

EXHIBIT 30

Includes Errata dated June 5, 1981.

NUREG-0490

Final Environmental Statement

related to the operation of
San Onofre Nuclear Generating Station,
Units 2 and 3

Docket Nos. 50-361 and 50-362

Southern California Edison Company
San Diego Gas & Electric Company
The City of Riverside
The City of Anaheim

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

April 1981

Available from

GPO Sales Program
Division of Technical Information and Document Control
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Printed copy price: $8.00

and

National Technical Information Service
Springfield, VA 22161

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

JUN 5 1981

Docket Nos.: 50-361/362

Mr. Robert Dietch
Vice President
Southern California Edison Company
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770

Mr. D. W. Gilman
Senior Vice President, Operations
San Diego Gas & Electric Company
101 Ash Street
Post Office Box 1831
San Diego, California 92112

Gentlemen:

SUBJECT: ISSUANCE OF ERRATA TO FINAL ENVIRONMENTAL STATEMENT (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3)

The Nuclear Regulatory Commission has issued the enclosed errata to the Final Environmental Statement (FES) related to the San Onofre Nuclear Generating Station, Units 2 and 3. Although implicit in the FES, this errata clarifies the staff's consideration of reasonable alternatives to the proposed action. The enclosed discussion should be added to Section 10.1.

Sincerely,

Frank J. Miraglia

Frank J. Miraglia, Acting Chief
Licensing Branch No. 3
Division of Licensing

Enclosure:
Errata (20 copies)

cc: See next page.

ERRATA

FINAL ENVIRONMENTAL STATEMENT

SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3

ALTERNATIVES TO THE PROPOSED ACTION

During the construction permit stage, the staff analyzed alternative sites, plant designs, and methods of power generation, including the alternative of not adding the production capacity. The staff concluded, based on its analysis of these alternatives, as well as on a cost-benefit basis, that additional capacity was needed that a nuclear-fueled plant would be environmentally acceptable, and that SONGS, at a specified site and of a specified design, were acceptable from both economic and environmental perspectives. Since that time, construction of SONGS has been nearly completed and many of the economic and environmental costs associated with the construction of the facility have already been incurred and must be viewed as "sunk costs" in any prospective assessment.

The staff believes that the only reasonable alternative to the proposed action of issuance of operating licenses for SONGS appropriately considered at this stage is denial of the operating licenses for the facility, thereby not permitting the addition of the essentially built generating capacity to the applicant's generating system. Alternatives such as construction of the units at another site, extensive modifications to the facility, or construction of facilities utilizing different energy sources would each require additional construction activity with its accompanying economic and environmental costs. Therefore, unless major safety or environmental concerns resulting from operation of SONGS are revealed that were not evident and considered during the construction permit review, these alternatives are unreasonable as compared to operating the already constructed facility. No such concerns have been identified with respect to operation of SONGS.

The continued need for the capacity to be generated by SONGS is discussed in section 8 of this FES.

Accordingly, the staff concludes that the preferrable alternative is operation of SONGS.

Mr. Robert Dietch
Mr. D. W. Gilman

cc: Charles R. Kocher, Esq.
James A. Beoletto, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
P. O. Box 800
Rosemead, California 91770

Mr. David R. Pigott
Of Orrick, Herrington & Sutcliffe
A Professional Corporation
600 Montgomery Street
San Francisco, California 94111

Mr. George Caravalho
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Rourke & Woodruff
Suite 1020
1055 North Main Street
Santa Ana, California 92701

Lawrence Q. Garcia, Esq.
California Public Utilities Commission
5066 State Building
San Francisco, California 94102

Mr. V. C. Hall
Combustion Engineering, Incorporated
1000 Prospect Hill Road
Windsor, Connecticut 06095

The City of Riverside
3900 Main Street
Riverside, California 92522

The City of Anaheim
204 East Lincoln Avenue
Anaheim, California 92805

cc: Mr. P. Dragolovich
Bechtel Power Corporation
P. O. Box 60860, Terminal Annex
Los Angeles, California 90060

Mr. Mark Medford
Southern California Edison Company
2244 Walnut Grove Avenue
P. O. Box 800
Rosemead, California 91770

Henry Peters
San Diego Gas & Electric Company
P. O. Box 1831
San Diego, California 92112

Ms. Lyn Harris Hicks
Advocate for GUARD
3908 Calle Ariana
San Clemente, California 92672

Richard J. Wharton, Esq.
Wharton & Pogalies
University of San Diego School of Law
Environmental Law Clinic
San Diego, California 92110

Phyllis M. Gallagher, Esq.
Suite 222
1695 West Crescent Avenue
Anaheim, California 92701

Mr. A. S. Carstens
2071 Caminito Circulo Norte
Mt. La Jolla, California 92037

Resident Inspector, San Onofre/NPS
c/o U. S. Nuclear Regulatory Commission
P. O. Box AA
Oceanside, California 92054

cc: Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, Pennsylvania 19149

Mr. Frank H. Arundel
1888 Blackhawk Street
Oceanside, California 22054

Dr. Gordon Thompson
Staff Scientist
Union of Concerned Scientists
1884 Massachusetts Avenue
Cambridge, Massachusetts 02238

San Diego Association of Governments
Suite 524, Security Pacific Plaza
1200 Third Avenue
San Diego, California 92101

Mr. Mark Forster
Los Angeles Times
P. O. Box 85076
San Diego, California 92138

Librarian
Thermal Reactors Safety Group
Brookhaven National Laboratory
Building 130
Upton, Long Island, New York 11973

Ms. Liz Hannon
Atomic Industrial Forum
1016 16th Street, N.W. - Suite 850
Washington, D.C. 20036

Charles E. McClung, Jr., Esq.
Fleming, Anderson, McClung & Finch
23521 Paseo De Valencia - Suite 708A
Laguna Hills, California 92653

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Mr. Peter H. Smith (1)
Advisory Council on Historic Preservation
1522 K Street, NW - Suite 536
Washington, D.C. 20005

cc w/o encl:
Dr. Knox Mellon, Director
Office of Historic Preservation
Department of Parks and Recreation
P. O. Box 2390 - 1220 K Street
Sacramento, California 95811

AGRICULTURE

Mr. Barry Flamm (1)
U.S. Department of Agriculture
Room 412A Administration Building
14th & Independence Avenue, S.W.
Washington, D.C. 20250

Mr. Carl W. Carlson (1)
Assistant Administrator
Soil, Water and Air Sciences
Agricultural Research Service
Room 330-A
U.S. Department of Agriculture
Washington, D.C. 20250

Mr. Joseph R. Binder (1)
Rural Electrification Administration
Room 2859 South Agriculture Building
Washington, D.C. 20250

Mr. Melvin E. Cotner, Director (1)
Natural Resources and Economics Division
Room 412C-GHI
U.S. Department of Agriculture
Washington, D.C. 20250

Forest Service (Field Office)

U.S. Department of Agriculture (1)
Forest Service - California Region
630 Sansome Street
San Francisco, California 94111

AGRICULTURE (Continued)

Soil Conservation Service (State Office)

U.S. Department of Agriculture (1)
Soil Conservation Service
2828 Chiles Road
Davis, California 95616

ARMY ENGINEERING DISTRICT

U.S. Army Engineering District, (4)
Los Angeles
P. O. Box 2711
Los Angeles, California 90053

COMMERCE

Mr. Bruce Barrett (10)
U.S. Department of Commerce
Room 3425 Commerce Building
Washington, D.C. 20230

Chief, Environmental Assessment
Division (3) (O-3-3)
National Marine Fisheries Service
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Mr. Robert Ochinero, Director (1)
National Oceanographic Data Center
Environmental Data Service -D7 - Rm 428
2001 Wisconsin Avenue, N.W., Page Bldg. #1
Washington, D.C. 20235

ENERGY

Mr. Robert Stern (5)
U.S. Department of Energy
Room 4G064
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Number in parentheses indicates number of copies.

ENERGY (Continued)

Federal Energy Regulatory Commission

Dr. Jack M. Heinemann (1)
Federal Energy Regulatory Commission
Room 3347
825 North Capitol Street, N.E.
Washington, D.C. 20460

Mr. Norton Savage (5)
Power Supply Planning Branch, Rm. 4110F
U.S. Department of Energy
2000 M Street, N.W.
Washington, D.C. 20461

*ENVIRONMENTAL PROTECTION AGENGY

Mr. Tom Sheckells (10)
U.S. Environmental Protection Agency
Room 2119 Mall
401 M Street, S.W.
Washington, D.C. 20460

FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION

Mr. John Scheibel (1)
Federal Emergency Management Administration
1725 I Street, N.W. - 8th Floor
Washington, D.C. 20036

HEALTH AND HUMAN SERVICES

Mr. Charles Custard (2)
U.S. Department of Health and Human Services
Room 537F Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Health Physics Advisory Office. (1)
Food & Drug Administration
Bureau of Radiological Health (HSX-1)
U.S. Department of Health and Human Services
5600 Fishers Lane
Rockville, Maryland 20837

HOUSING AND URBAN DEVELOPMENT

Mr. Richard H. Broun, Director (2)
Office of Environmental Quality
U.S. Department of Housing and Urban Development
Room 7276 HUD Building
451 Seventh Street, S.W.
Washington, D.C. 20410

HUD Region

Ms. Emma D. McFarlin (2)
U.S. Department of Housing and Urban Development
Federal Building & U.S. Courthouse
Post Office Box 36003
San Francisco, California 94102

INTERIOR

Mr. Bruce Blanchard, Director (18)
Office of Environmental Project Review
U.S. Department of the Interior, Rm.42
18th and C Streets, N.W.
Washington, D.C. 20240

RIVER BASIN COMMISSION (1-1-1)

N/A

TRANSPORTATION

Mr. Joseph Canny (1)
Office of the Assistant Secretary for Policy and International Affairs
U.S. Department of Transportation
400 7th Street, S.W. - Room 9422
Washington, D.C. 20590

Capt. Wm. R. Riedel (1)
Water Resources Coordinator
W/S 73 U.S.C.G. - Room 1112
U.S. Department of Transportation
2100 Second Street, S.W.
Washington, D.C. 20590

*See page 4 also

TRANSPORTATION (Continued)

Mr. Lee Santman, Director (1)
ATTN: Mr. Joe Nalevanko
Materials Transportation Bureau
2100 Second Street, S.W.
Washington, D.C. 20590

DOT Regional Office

Secretarial Representative (1)
U.S. Department of Transportation
Suite 610
2 Embarcadero Center
San Francisco, California 94111

LOCAL OFFICIAL(S)

Chairman (1)
Board of Supervisors of San Diego County
San Diego, California 92412

Mayor, City of San Clemente (1)
San Clemente, California 92672

STATE OFFICIALS

California Department of Health
ATTN: Chief, Environmental Radiation
Control Unit
Radiologic Health Section
714 P Street, Room 498
Sacramento, California 95814

Energy Resources Conservation and
Development Commission
ATTN: Librarian
1111 Howe Avenue
Sacramento, California 95825

CLEARINGHOUSES

State Clearinghouse

Office of the Governor (10)
Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814

Regional/Metropolitan

San Diego County Comprehensive Planning
Organization (1)
Security Pacific Plaza
1200 Third Avenue
San Diego, California 92101

OFFICIALS OF ADJOINING STATES (1-1-1)

N/A

ENVIRONMENTAL PROTECTION AGENCY

NRC Liaison, Office of Environmental Review (1)
U. S. Environmental Protection Agency
Room 2119 M, A-104
401 M Street, S.W.
Washington, D.C. 20460

Director, Criteria and Standards Division (1)
Office of Radiation Programs (ANR-460)
U. S. Environmental Protection Agency
Washington, D. C. 20460

EPA REGIONAL OFFICE

Environmental Impact Coordinator (5)
U.S. Environmental Protection Agency
215 Fremont Street
San Francisco, California 94111

Director, Las Vegas Radiation Operations (1)
U. S. Environmental Protection Agency
P. O. Box 15027
Las Vegas, Nevada 89114

Director, Eastern Environmental Radiation Facility (1)
U. S. Environmental Protection Agency
P. O. Box 3009
Montgomery, Alabama 36109

Chief, Federal Coordination Branch (1)
(AW-471)
Office of Noise Abatement and Control
U. S. Environmental Protection Agency
Room 1116, Crystal Mall #2
Arlington, Virginia 20460

Chief, Environmental Impact Review Section/MRB (MD-14) (1)
U. S. Environmental Protection Agency
Research Triangle Park, N. C. 27711

Mr. Jerry Stegman (1)
Bureau of Sport Fisheries & Wildlife
Division of River Basin Studies
Department of Interior - Room 2543A
18th & C Streets, N.W.
Washington, D.C. 20240

Mr. R. Kahler Martinson (1)
1692 Lloyd 500 Building
Portland, Oregon 97232

Mr. S. I. Auerbach (1)
Oak Ridge National Laboratory
P. O. Box X
Oak Ridge, Tennessee 37830

Mr. J. R. Buchanan (2)
Assistant Director
NSIC
Oak Ridge National Laboratory
P. O. Box Y
Oak Ridge, Tennessee 37830

Dr. Philip F. Gustafson, Manager (4)
Environmental Statement Project
Argonne National Laboratory
9700 South Cass Ave., Bldg. 11
Argonne, Illinois 60439

Dr. H. E. Zittell (27)
Environmental Statement Project
Oak Ridge National Laboratory
P. O. Box X
Oak Ridge, Tennessee 37830

Dr. R. F. Foster, Associate Manager (4)
Battelle Memorial Institute
Pacific Northwest Laboratory
P. O. Box 999
Richland, Washington 99352

Professor H. Paul Friesema (1)
Associate Professor of Political Science
and Urban Affairs
Northwestern University
College of Arts and Sciences
Evanston, Illinois 60201

Professor Geoffrey G. Eichholz (1)
Professor of Nuclear Engineering
Georgia Institute of Technology
Atlanta, Georgia 30332

Manager, Engineering and Economic
Analysis (1)
Hanford Engineering Development Laboratory
Westinghouse Hanford Company
Box 1970
Richland, Washington 99352

Mr. J. Golden, W-54 (2)
The MITRE Corporation
Westgate Research Park
McLean, Virginia 22101

Butzel & Kass
45 Rockefeller Center
New York, New York 10022

Myron Cherry, Esquire
Cherry, Flynn & Kanter
One IBM Plaza, Suite 4501
Chicago, Illinois 60611

Congressional Research Service
Environmental Policy Division
Library of Congress
Washington, D. C. 20540

The Conservation Foundation
Director of Conservation Services
1717 Massachusetts Avenue, NW
Washington, DC 20036

Mr. James F. Davis
57 Block Boulevard
Massapequa Park, New York 11762

Mr. Larry L. Dunham
Rivers Project
Conservation - Fisheries
Box 164
Aledo, Illinois 62131

Mr. Paul D. Ebert
12136 Nile Road
Naches, Washington 98937

Ecology Consultants, Inc.
ATTN: Dr. Stephen G. Martin
Vice President
P. O. Box 2105
Fort Collins, Colorado 80522

Environmental Action, Inc.
1346 Connecticut Avenue, NW
Washington, DC 20036

Environmental Defense Fund
1525 18th Street, NW
Washington, DC 20036

Enviro-Sciences, Inc.
ATTN: Mr. Harold Radiloff
Vice President
281 Grand Street
New York, New York 10002

Envirosphere
ATTN: Mr. R. Michael Hartman
145 Technology Park/Atlanta
Norcross, Georgia 30092

Envirosphere
ATTN: Mr. Ed Kuo
19 Rector Street - Room 347
New York, New York 10006

Friends of the Earth
ATTN: Mr. Andrew Baldwin
124 Spear Street
San Francisco, California 94105

Jacksonville Electric Authority
ATTN: Mr. R. C. Keuther
Associate Managing Director
220 East Bay Street
Jacksonville, Florida 32202

National Audubon Society
1511 K Street, NW
Washington, DC 20540

National Audubon Society
Central Midwest Regional Office
990 Aullwood Road
Dayton, Ohio 45414

National Wildlife Federation
1412 - 16th Street, NW
Washington, DC 20016

New Directions
Legislative Section
305 Massachusetts Avenue, NE
Washington, DC 20002

New England Coalition on Nuclear
Pollution, Inc.
Box 637
Brattleboro, Vermont 05301

NUS Corporation
ATTN: Mr. T. Ritter
14011 Ventura Boulevard, Suite 306
Sherman Oaks, California 91423

Radiation Management Corporation
ATTN: Librarian
University City Science Center
3508 Market Street
Philadelphia, Pennsylvania 19104

Resources for the Future
1755 Massachusetts Avenue, NW
Washington, DC 20036

Mr. James Rubens
147 South Main Street
White River Junction, Vermont 05001

Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust
Lompoc, California 93436

Diana P. Sidebotham
Hill and Dale Farms
RFD #2, Box 223
Putney, Vermont 05346

Sierra Club
330 Pennsylvania Avenue
Washington, DC 20003

Stone & Webster Engineering Corp.
ATTN: Lindeke S. Trumbly, Librarian
Technical Information Center
P. O. Box 5406
Denver, Colorado 80217

Tennessee Conservation League
ATTN: Mr. Anthony J. Campbell
Executive Director
1720 West End Avenue, Suite 600
Nashville, Tennessee 37203

Tennessee Environmental Council
ATTN: Ms. Ruth H. Neff
Executive Director
The Tennessee Botanical Gardens
and Fine Arts Center, Inc.
Nashville, Tennessee 37203

Union of Concerned Scientists
1208 Massachusetts Avenue
Cambridge, Massachusetts 02138

Citizens for a Better Environment
Suite 2610
59 E. Can Buren
Chicago, Illinois 60605

NUREG-0490

Final Environmental Statement

related to the operation of
San Onofre Nuclear Generating Station,
Units 2 and 3

Docket Nos. 50-361 and 50-362

Southern California Edison Company
San Diego Gas & Electric Company
The City of Riverside
The City of Anaheim

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

April 1981

SUMMARY AND CONCLUSIONS

This Environmental Statement was prepared by the U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (hereinafter referred to as the staff).

1. The action is administrative.

2. The proposed action is the issuance of Operating Licenses jointly to the Southern California Edison Company (SCE) and the San Diego Gas and Electric Company (SDG&E) for the startup and operation of Units 2 and 3 of the San Onofre Nuclear Generating Station, adjacent to San Onofre Unit 1, located on the Pacific coast in the State of California, County of San Diego (Docket Nos. 50-361 and 50-362).

   The City of Anaheim, California, and the City of Riverside, California, have recently been added as co-holders of the Construction Permits for San Onofre 2 and 3, and will soon request to be included as applicants for Operating Licenses. The four groups are co-owners of the facility, and are referred to herein as the applicant.

   Both units will employ pressurized water reactors to produce up to 3410 thermal megawatts (MWt) each. Steam turbine-generators will use this heat to provide a net power output of up to 1106 electrical megawatts (MWe) each. The exhaust steam will be cooled by once-through flow of water pumped from the Pacific Ocean and returned to it through a diffuser-type system.

3. The information in this statement represents the second assessment by the staff of the environmental impacts associated with the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969 and 10 CFR Part 51 of the Commission's Regulations. After receipt of an application (1970) to construct this plant, the staff carried out a review of impacts that would occur during the construction and operation of this plant. This evaluation was issued as a Final Environmental Statement in March 1973. As a result of this environmental review, a staff safety review, an evaluation by the Advisory Committee on Reactor Safeguards, and a public hearing in San Diego, California during January 16-24, 1973 and May 14-22, 1973, and in San Clemente, California, during March 13-15, 1973, the U.S. Atomic Energy Commission (AEC) [now Nuclear Regulatory Commission (NRC)] issued permits in October 1973 for the construction of Units 2 and 3. As of December 1980, Unit 2 was approximately 97% complete and Unit 3 was approximately 68% complete. The applicant has applied for licenses to operate the nuclear units and has submitted the required safety and environmental reports to support this application (March 1977). The staff has reviewed the activities associated with the proposed operation of these units and their potential impacts, both beneficial and adverse, are summarized as follows:

   a. Cooling water heated to about 11°C (20°F) above inlet temperature will be discharged from each unit to the Pacific Ocean at a rate of about 53 m^3/s (846,000 gpm) (Sect. 3.2.2). The heated water may result in the destruction of at least a portion of the San Onofre Kelp Bed during the summer months. However, the long-term thermal impacts are not likely to be severe (Sect. 5.4.2.1) and violations of the state thermal standards are unlikely (Sect. 5.3.1).

   b. An impact on aquatic resources may occur in the cooling water intake structure through entrainment of plankton and impingement of fish. These losses are not expected to have a significant impact on the overall biotic populations in the area.

   c. Chemical effluents from Units 2 and 3 should cause only minimal impact in the area of the discharge, and no significant impact on the aquatic biota in the Pacific Ocean (Sect. 5.4.2.2).

   d. The program for operation and maintenance of transmission lines has been designed to reduce environmental impact. Existing transmission lines and towers will be used where possible. About 7.2 ha (17.8 acres) will be occupied by new towers, access roads, and switchyards (Sect. 2.2.2).

   e. About 16 ha (40 acres) of coastal land which could otherwise have been used primarily for recreation or maintained as wildlife habitat will be occupied by Units 2 and 3 (Sect. 2.2.2).

f. The removal of approximately 1.4 km (0.85 mile) of beach from unrestricted public use, as required by the Construction Permit, is a significant cost of operation.

g. No detectable impacts are anticipated from releases of radioactive materials as a consequence of normal operation (Sect. 5.5.1.6).

h. The risk associated with accidental radiation exposure is very low (Sect. 7).

i. Nothing of known local historic or archaeological interest will be disturbed on the plant site by the operation of Units 2 and 3. A survey along the transmission right-of-way evaluated 41 archaeological sites; of these 23 will be nominated for inclusion in the National Register of Historic Places (Sect. 5.2).

4. The following Federal and State agencies were asked to comment on the Draft Environmental Statement:

- Department of Agriculture
- Department of the Army (Corps of Engineers)
- Department of Commerce
- Department of Energy
- Department of the Interior
- Department of Health, Education and Welfare
- Department of Housing and Urban Development
- Department of Transportation
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Advisory Council on Historic Preservation
- California Department of Health (Water Pollution Control Commission, Air Pollution Control Commission, Occupational Health Office)
- California Department of Natural Resources
- California Department of Parks and Recreation

Comments on the Draft Environmental Statement were received from the following:

- Department of Agriculture, Economics, Statistics, and Cooperatives Service
- Department of Agriculture, Science and Education Administration
- Department of Agriculture, Soil Conservation Service
- Department of the Army, Corps of Engineers
- Department of Commerce
- Department of Energy, Federal Energy Regulatory Commission
- Department of Health, Education and Welfare
- Department of Housing and Urban Development
- Department of the Interior
- Environmental Protection Agency
- Mr. Marvin I. Lewis
- Rourke and Woodruff Law Offices
- Richard J. Wharton
- Union of Concerned Scientists
- Southern California Edison Company
- Frank H. Grundel
- San Diego Association of Governments

Copies of these comments are appended to this Final Environmental Statement as Appendix A. The staff has considered these comments, and the responses are located in Section 11.

5. This Final Environmental Statement was made available to the public, to the Environmental Protection Agency, and to other specified agencies in April 1981.

6. On the basis of the analysis and evaluation set forth in this statement, and after weighing the environmental, economic, technical and other benefits against environmental costs and after considering available alternatives at the construction stage, it is concluded that the action called for under NEPA and 10 CFR Part 51 is the issuance of operating licenses for Units 2 and 3 of the San Onofre Nuclear Generating Station subject to the following conditions for the protection of the environment:

   (A) License Conditions
   Before engaging in activities that may result in a significant adverse environmental impact that was not evaluated or that is significantly greater than evaluated in this Environmental Statement, the licensee shall provide written notification of such activities to the Office of Nuclear Reactor Regulation and receive written approval from that office before proceeding with such activities.

   (B) Significant Environmental Technical Specification Requirements

      (1) If, during the operating life of the Station, effects or evidence of potential irreversible damage are detected, the licensee will provide to the staff an analysis of the problem and a proposed course of action to alleviate the problem.

      (2) The licensee will carry out the operational environmental monitoring programs outlined in Section 6.

CONTENTS

LIST OF FIGURES

LIST OF TABLES