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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
MISSISSIPPI POWER & LIGHT)	Docket No. 50-416
COMPANY, <u>et al.</u>)	ASLBP No. 84-497-04 LA
)	
(Grand Gulf Nuclear Station,)	
Unit 1))	

LICENSEE'S RESPONSE TO "FIRST ORDER FOLLOWING
PREHEARING CONFERENCE (MODIFYING BRIEFING SCHEDULE)"

Preliminary Statement

On September 23, 1983, the NRC issued Amendment No. 10 to Facility Operating License No. NPF-13 for the Grand Gulf Nuclear Station, Unit 1 ("Grand Gulf"). Stated simply, that amendment permitted Mississippi Power & Light Company ("Licensee") to correct a design deficiency which had the potential to cause water hammer in the RHR system, to redefine operability range of the high pressure core system, and to conduct two NRC-required surveillance tests. These changes ensured the safe operation of the plant. Despite this, Ken Lawrence on behalf of Jacksonians United for Livable Energy Policies ("JULEP") filed a petition to intervene and request for hearing on this amendment.^{1/}

^{1/} Petition to Intervene and Request for Hearing (November 17, 1983). Later, JULEP amended its petition in an
(Footnote Continued)

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In its Order of January 11, 1984, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") designated to preside over this license amendment proceeding permitted JULEP to file a supplement setting forth those contentions it wished to litigate in this proceeding.^{2/} On February 13, 1984, JULEP responded to that Order by filing a supplement listing three contentions.^{3/}

At the prehearing conference, however, JULEP announced that it had not understood the NRC's requirements and requested that the Board consider Paragraphs 6, 7, and 8 of its Amended Petition as Contentions 1, 2, and 3.^{4/} The Board accepted JULEP's proposal and heard discussion on Paragraphs 6, 7, and 8 as specified in the Amended Petition as well as Contentions 1, 2, and 3 as specified in the Supplemental Petition.^{5/}

(Footnote Continued)

attempt to demonstrate its satisfaction of the NRC's standing requirements. Amendment to Request by Jacksonians United for Livable Energy Policies on Behalf of its Members for Adjudicatory Hearing on Amendment No. 10 (December 11, 1983) ("Amended Petition").

2/ Order (Setting First Prehearing Conference) (January 11, 1984) (slip op. at 4).

3/ Jacksonians United for Livable Energy Policies' Request for Hearing and Petition for Leave to Intervene ("Supplemental Petition").

4/ Transcript of Prehearing Conference at 17 (February 29, 1984).

5/ Id.

With regard to Paragraphs 7 and 8, the Board held, and JULEP conceded, that these were moot.^{6/} Because these paragraphs had not previously been analyzed by the Licensee and the NRC Staff for compliance with the NRC's rules governing admissibility of contentions, the Board gave Licensee and the Staff an opportunity to respond in writing to Paragraph 6.^{7/} Subsequently, in an Order dated March 2, 1984, the Board concluded that its assumption that Paragraphs 7 and 8 were moot was perhaps erroneous and requested that the Licensee and the Staff respond to all three paragraphs including any arguments they might wish to raise regarding mootness.^{8/}

Licensee opposes admission of Paragraphs 6, 7, and 8 as contentions in this proceeding because they fail to satisfy the requirements of 10 C.F.R. §2.714 for specificity and basis. Additionally, these paragraphs raise no litigable issues. In particular, with regard to Paragraphs 7 and 8, there is nothing to litigate with regard to the NRC's grant of one-time exceptions to perform tests which have already been performed. Because these tests have been completed and the exceptions expired, Paragraphs 7 and 8 are moot.

^{6/} Tr. 81-84.

^{7/} Tr. 92-94.

^{8/} First Order Following Prehearing Conference (Modifying Briefing Schedule) (March 2, 1984).

Moreover, Licensee believes these paragraphs should properly be treated as late-filed contentions. JULEP has not made the showing necessary to comply with the NRC's rules for late-filed contentions. Thus, the Board should deny admission to Paragraphs 6, 7, and 8 as well as to Contentions 1, 2, and 3 and dismiss the proceeding.

Argument

Paragraph 6

In Paragraph 6, JULEP takes issue with one statement in a nine-page single-spaced Safety Evaluation Report ("SER") which provides the Staff's analysis of the four requested changes described earlier. The statement objected to is in a description of a telephone conversation between the NRC Staff and Mr. E. Fuentes of the State of Mississippi. Specifically, that statement is:

We also discussed that on a best-estimate basis, little or no change in the peak cladding temperature would be expected for this transient with or without HPCS initiation.^{9/}

JULEP states that the phrase "best-estimate basis" indicates "few or no criteria are available."^{10/} Why or how JULEP concluded that "best-estimate" means "few or no criteria" is not explained. Moreover, the phrase "few or no criteria" is not commonly associated with the phrase "best-estimate." In

^{9/} SER at 4.

^{10/} Amended Petition at 2.

fact, at the prehearing conference, Judge Morris suggested that ordinarily "best-estimate" is synonymous with a realistic, as opposed to a conservative, determination.^{11/}

JULEP next asserts that "[a] serious situation could result if this assertion, which may be based on new or insufficient evidence, proves wrong."^{12/} JULEP erroneously seems to understand that the NRC's SER on Amendment No. 10 is based on a best-estimate basis. This is not the case. Rather, the SER is based on conservative evaluation models which satisfy all criteria of 10 C.F.R. §50.46 and Appendix K.

As the Board knows, a "best-estimate" analysis is one which is performed utilizing the most realistic inputs and correlations available and it provides results which are as close to reality as the state-of-the-art allows. The purpose of a best-estimate calculation is to provide the reactor designer and operator with results which are expected to actually occur.

Furthermore, by its own admission, JULEP concedes that it has no idea on what evidence is based the single statement with which it takes issue. JULEP speculates that the evidence may be new or insufficient. Moreover, although JULEP alleges that "a serious situation" could arise, it

^{11/} Tr. 85-86.

^{12/} Amended Petition at 2.

makes no attempt to state what this serious situation might be, presumably because it does not know.

From the total paucity of facts and only speculative conclusions in Paragraph 6, it appears safe to assume that JULEP has no facts. Such foundationless speculation is insufficient to satisfy the requirements of 10 C.F.R. §2.714(b) that a petitioner for a hearing set forth the basis for each contention with reasonable specificity. No basis at all has been set forth here.^{13/}

Paragraph 7

In Paragraph 7, referring to the fact that the NRC ordered Licensee to complete the ADS trip surveillance testing within 12 hours after attaining reactor steam pressure adequate to perform the test, JULEP asserts that there is "no indication and no information that 12 hours is a short enough period to insure safety."^{14/} No basis is provided for JULEP's assertion. JULEP itself is guilty of

^{13/} Duquesne Light Company (Beaver Valley Power Station, Unit 2), Docket No. 50-412, "Report and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. Section 2.751a" (January 27, 1984) (slip op. at 13-15). See also Carolina Power and Light Company (H.B. Robinson Steam Electric Plant, Unit 2), Docket No. 50-261-OLA, "Memorandum and Order (Report on Special Prehearing Conference Held Pursuant to 10 C.F.R. Section 2.751a)" (April 12, 1983) (slip op. at 4); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467-68 (1982).

^{14/} Amended Petition at 2.

providing "no indication and no information" that 12 hours is an unsafe period of time.

Additionally, contrary to JULEP's allegation, the technical specifications provide similar time periods for similar testing of safety relief valve position indication instrumentation.^{15/} Furthermore, prior to the surveillance test at issue in this proceeding, significant testing had already been accomplished to assure that the subject safety relief valves would perform their function. Prior to installation of the valves at Grand Gulf, each safety relief valve was tested with steam to demonstrate its acceptability under code guidelines. Also, prior to entering the startup mode of operation, a surveillance was performed which calibrated and tested the instrumentation required for operability of the relief valve function. This testing provided assurance that all associated instrumentation, including the ADS related instrumentation was operable and ready to perform its safety function. Thus, twelve hours is a reasonable amount of time to conduct the testing in question once proper test conditions have been reached.

Similarly, while JULEP alleges that 12 hours is an "arbitrary" length of time, no support is provided for JULEP's challenge to that figure. Thus, JULEP's allegations are arbitrary. No bases are provided for either allegation

^{15/} Technical Specification §4.4.2.1.1.

in Paragraph 7. Thus, Paragraph 7 is inadmissible as a contention in this proceeding for failure to comply with 10 C.F.R. §2.714.

Moreover, JULEP raises no litigable issue. JULEP has not alleged that some other period of time would assure safety and it is obviously not competent to assert knowledgeably what a safe time period would be. Rather, it has said it doesn't know if 12 hours is sufficient. There is nothing to litigate here.

Finally, the matter is moot as discussed in detail later.^{16/} Licensee was granted a unique one-time exception, permitting it to delay testing of a particular component until sufficient reactor pressure was reached. Licensee requested this exception because valve operation with no or inadequate steam flow may cause damage to the valve seating surfaces, possibly leading to improper valve operation. Additionally, in order to perform the surveillance test, observation of certain main steam-related parameters is required. These observations are only possible under certain minimum steam pressure conditions. Thus, the exception requested by Licensee allowed it to conduct properly a required surveillance test.^{17/}

^{16/} See notes 29-42 infra and accompanying text.

^{17/} Performance of this test confirmed the significant testing that had already been accomplished to assure
(Footnote Continued)

The test was conducted without incident and, as JULEP admitted at the prehearing conference, no adverse consequences resulted.^{18/} The one-time exception expired on October 3, 1983. As this was a unique one-time event and the exception has now expired, the matter is moot. Nothing remains to be litigated.

Paragraph 8

In Paragraph 8, noting that the NRC ordered Licensee to complete the scram discharge volume surveillance testing within 72 hours of attaining sufficient rod density to conduct the test, JULEP complains, without basis, that 72 hours appears to be an arbitrary figure.^{19/} Contrary to this assertion, the 72 hour time frame allowed for completion of the surveillance test was reasonable.

JULEP further alleges that the SER contains "no indication or information to support the assertion that it is

(Footnote Continued)

that the subject safety relief valves would perform their function.

^{18/} Tr. 82. At the prehearing conference, JULEP also asserted that the public was entitled to a hearing before the test took place (Id.). In the Statement of Considerations accompanying the promulgation of 10 C.F.R. §50.91, the NRC specifically indicated that "neither it nor its Boards will entertain hearing requests on its actions with respect to these comments." 48 Fed. Reg. 14873 (April 6, 1983). In other words, a hearing on the Staff's determination that a requested amendment involves no significant hazards considerations is prohibited.

^{19/} Amended Petition at 2.

sufficiently short to insure safety."^{20/} No basis whatsoever is provided for JULEP's speculation that 72 hours is insufficient to protect safety. Moreover, contrary to its allegations, prior to entering the startup mode, proper functioning of the valves had been assured. Two tests had been conducted which had demonstrated the proper operation of the scram discharge volume vent and drain valves.

Finally, as JULEP conceded at the prehearing conference, the test has been completed without incident.^{21/} The exception expired on October 12, 1983. The matter is moot. JULEP's Paragraph 8 raises no litigable issue.

Late-Filed Contentions

In its Order of January 11, 1984, the Board permitted JULEP to file "a supplement to its amended request for a hearing not later than 15 days prior to the prehearing conference, which shall include a list of specific contentions sought to be litigated in this proceeding."^{22/} That Order provided Licensee and the NRC Staff with an

^{20/} Id.

^{21/} Tr. 82.

^{22/} Order (setting first Prehearing Conference) (January 11, 1984) (slip op. at 4). Essentially, the Board gave JULEP an opportunity to file a supplement to its petitions for a hearing. The Board ordered that, if JULEP availed itself of this opportunity, then its supplement must contain a list of the contentions which JULEP wished to litigate. In other words, the Board implicitly acknowledged that JULEP's two prior filings did not contain contentions.

opportunity to respond to the contentions set forth in any supplemental petition that might be filed or to the Amended Petition.^{23/}

On February 13, 1984, JULEP filed its Supplemental Petition.^{24/} This document stated:

The contentions which Jacksonians United for Livable Energy Policies seeks to have admitted in this proceeding, to be considered at first [sic] prehearing conference set for February 29, 1984, are as follows. . . .

Supplemental Petition at 1. Despite its clear statement that the contentions it wished to litigate were contained in this Supplemental Petition, at the prehearing conference JULEP requested that the Board consider Paragraphs 6, 7, and 8 in its Amended Petition as contentions.^{25/}

In effect, this action amounts to the submission of late-filed contentions because it appears that JULEP now realizes, after reading the Licensee's and Staff's responses to its Supplemental Petition,^{26/} that the contentions it

^{23/} Id. In other words, if JULEP did not specify contentions in a supplement, then Licensee and Staff were to interpret the Amended Petition as if it set forth contentions.

^{24/} Supplement to Jacksonians United for Livable Energy Policies' request for Hearing and Petition for Leave to Intervene (February 13, 1984).

^{25/} Tr. 17.

^{26/} Licensee's Answer to Amended Petition to Intervene and Request for Hearing by Jacksoninas United for Livable
(Footnote Continued)

raised in its Supplemental Petition are outside the scope of this license amendment hearing. Because its admission to a proceeding is dependent upon its submission of at least one good contention and because it appears that JULEP now realizes that the contentions submitted in its Supplemental Petition are inadmissible, Licensee believes that these paragraphs should be treated as late-filed contentions. JULEP's motion at the prehearing conference amounts to at least its third attempt at submitting contentions.

Section 2.714(a)(1) of the NRC's rules states:

Nontimely filings will not be entertained absent a determination by the... board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(Footnote Continued)

Energy Policies (December 22, 1983); NRC Staff Response to Amended Request by JULEP for Adjudicatory Hearing on Amendment No. 10 (January 3, 1984).

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Applying these criteria to the instant case, admission of Paragraphs 6, 7, and 8 should be denied.

JULEP has not shown good cause for its late request that three paragraphs be treated as contentions. Rather, it has merely asserted that it did not understand the NRC's rules. Misunderstanding the NRC's rules does not constitute good cause. With regard to the second criteria, JULEP's interest in the proceeding is very limited. The changes granted by Amendment No. 10 have all ensured the safe operation of the plant; thus, JULEP cannot be heard to complain of injury to itself. Instead, JULEP's interest in the proceeding is merely that it does not understand the technical reasons underlying the Licensee's request for and the NRC's authorization of changes to the technical specifications. A hearing is not the appropriate means of protecting such an interest.

With regard to the third criteria, it appears reasonably clear from the prehearing conference that JULEP's participation in a hearing may not reasonably be expected to assist in developing a sound record.^{27/} Despite efforts by the Board to adduce meaningful positions, JULEP

^{27/} Tr. 36, 38, 39, 43, 53, 55, 70-71, 77, 82-84, 90, and 92.

demonstrated no understanding of the technical specification changes at issue as evidenced particularly by its conversations with Judge Morris.^{28/} The contentions set forth in its Supplemental Petition also demonstrate its lack of understanding of the issues involved. It is unrealistic to expect that JULEP could assist in developing a sound record on these issues.

In this case, the fourth criteria does not appear to apply as there will be no hearing if JULEP's contentions and paragraphs are rejected as inadmissible. Finally, with regard to the fifth criteria, it is clear that JULEP's participation in a hearing will broaden the issues because, in the absence of JULEP's request, there will be no hearing.

Board Question on Mootness

At the prehearing conference, the Board discussed the mootness of JULEP's Paragraphs 7 and 8.^{29/} JULEP conceded that, because the test had been conducted safely and without incident, it could not now allege that the time periods provided for completion of the tests were too short to ensure safety.^{30/} In its Order of March 2, 1984, the Board requested that the Licensee and Staff respond to this

^{28/} Tr. 46-49, 55-61, 77-78, and 85-86.

^{29/} Tr. 81-84.

^{30/} Tr. 82.

question of mootness in light of Sholly v. NRC, Public Law 97-415, and the NRC's implementing regulations.^{31/}

Section 12(b) of Public Law 97-415 authorized the NRC to issue an immediately effective amendment to a power reactor license upon a determination that the amendment involves no significant hazards consideration, even if there is a pending request for a hearing on the amendment before the NRC.^{32/} The NRC's regulations implementing this legislation took effect on May 6, 1983.^{33/} In the Statement of Considerations accompanying those regulations, the NRC specifically noted that "[t]his new system would change only the Commission's noticing practices; it would not alter the Commission's hearing practices."^{34/} Thus, this legislation and its implementing rules in no way affect the principle of mootness which applies generally in NRC licensing proceedings.

In Sholly v. NRC,^{35/} the court stated that "[c]ases arising from agency action, no less than cases involving

^{31/} First Order following Prehearing Conference (Modifying Briefing Schedule) (March 2, 1984) (slip op. at 2).

^{32/} 48 Fed. Reg. 14873 (April 6, 1983).

^{33/} Id.

^{34/} Id.

^{35/} 651 F.2d 780 (1980), rehearing den., 651 F.2d 792 (1980), and vacated 103 S. Ct. 1170, 75 L.Ed.2d 423 (1983).

only private parties, are subject to the mootness doctrine."^{36/} The court noted, however, an exception to the mootness doctrine. Technically moot cases are justiciable if they involve short term orders, capable of repetition, yet evading review.^{37/} In order to invoke this exception, the petitioner must not only show that the challenged action is too short in duration to be fully litigated prior to its cessation, but also that there is a reasonable expectation that the same party would be subjected to the same action again.^{38/}

Applying this law to the facts of that case, the Court tacitly acknowledged that the purge of the reactor building atmosphere was moot.^{39/} Instead, the issue that the Court considered justiciable was not the venting of the krypton, but rather the policy question of whether the NRC would continue to issue immediately effective license amendments without holding a prior hearing.^{40/} This latter issue has, of course, been resolved by Public Law 97-415. Thus, the exception applied in Sholly v. NRC does not apply to this

^{36/} Id. at 785.

^{37/} Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U.S. 498, 515 (1911).

^{38/} Weinstein v. Bradford, 423 U.S. 147, 149 (1975).

^{39/} 651 F.2d at 785.

^{40/} Id.

proceeding. JULEP cannot allege that it will be subjected again to the actions authorized by Amendment No. 10. Accordingly, Sholly V. NRC does not affect the general principle of mootness which applies in NRC proceeding.

In this case, the NRC authorized two one-time exceptions to conduct two surveillance tests within specified periods of time. The concern asserted by JULEP is that the periods of time authorized for conduct of the test are insufficiently brief to ensure safety. This concern, that safety may be jeopardized, is now moot. The tests were conducted. The safe operation of the plant during conduct of these tests has been demonstrated. Moreover, because these tests have been completed, they have no continuing effect other than the fact that they demonstrated Licensee's compliance with NRC requirements. Thus, the issue of a different time period is moot.

Analogously, in the Clinch River proceeding, the Commission held that its denial of the Intervenor's request mooted their arguments supporting the request.^{41/} Similarly, in the Comanche Peak proceeding, the Commission held that the Licensing Board's decision not to seek the identities of the Staff's witnesses mooted the Staff's appeal

^{41/} U.S. Department of Energy (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 419 (1982).

seeking to protect those identities.^{42/} JULEP's speculation with regard to the effect on safety of the length of time authorized by the NRC for conduct of two surveillance tests is moot.^{43/}

Board Question on Appendix K

At the prehearing conference, Judge Morris asked if the calculation which predicted a 422°F temperature rise was calculated according to the prescriptions of Appendix K to Part 50.^{44/} He further asked if Appendix K specified criteria for 8X8 pin fuel elements.^{45/} The calculation in question was performed using highly conservative

42/ Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445 and 50-446, "Order" (November 29, 1983) at 2.

43/ See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-83-3, 17 NRC 72, 74 (1983); Consolidated Edison Company of New York, Inc. (Indian Point, Unit No. 2), CLI-81-7, 13 NRC 448, 449 (1981); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-8, 11 NRC 433, 435 (1980); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), ALAB-697, 16 NRC 1265, 1273 (1982); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), ALAB-658, 14 NRC 981, 982 (1981); Portland General Electric Company (Trojan Nuclear Plant), ALAB-627, 13 NRC 20, 23 (1981); Public Service Company on New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1659 (1982); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), Docket No. 50-272-OLA, "Order Granting Intervention Petition" (November 17, 1983) (slip op. at 5).

44/ Tr. 87.

45/ Tr. 88.

NRC-approved ECCS evaluation models which satisfy all the criteria of 10 C.F.R. §50.46 and Appendix K.^{46/} Additionally, specific Grand Gulf input variables, which either specifically or conservatively represent the system design parameters and performance characteristics, were used to perform this calculation. The peak cladding temperature ("PCT") resulting from the reanalysis was 1322°F (422°F higher than that calculated in the original analysis for that specific break case). The new calculated PCT is not only substantially below the 2200°F licensing limit allowed in 10 C.F.R. §50.46, but is also substantially below the maximum PCT calculated for the Grand Gulf design basis accident (large recirculation line break).

With regard to Judge Morris's second question, as noted at the prehearing conference, Licensee's reanalysis applied the Appendix K calculational method to the Grand Gulf 8X8 fuel assembly array.^{47/} Appendix K itself uses a 7X7 array.

Conclusion

In sum, Paragraphs 6, 7, and 8 should not be accepted as contentions in this proceeding. None of them meets the basis and specificity requirements of 10 C.F.R. §2.714.

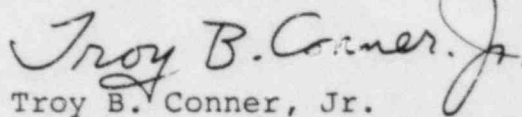
^{46/} This calculation resulted from a reanalysis of the Grand Gulf steamline break inside the drywell which assumed that the high drywell pressure initiation feature was defeated and that HPCS initiates on low reactor vessel water level (Level 2) only.

^{47/} Tr. 92.

Additionally, these paragraphs raise no litigable issues. Moreover, Paragraphs 7 and 8 are moot. Additionally, JULEP has not made the showing necessary to comply with the NRC's rules for late-filed contentions. Accordingly, the Board should deny admission to Paragraphs 6, 7, and 8 as well as to Contentions 1, 2, and 3 and dismiss the proceeding.

Respectfully Submitted,

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March 16, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
MISSISSIPPI POWER & LIGHT)	Docket Nos. 50-416
COMPANY, <u>et al.</u>)	50-417
)	
(Grand Gulf Nuclear Station,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to 'First Order Following Prehearing Conference (Modifying Briefing Schedule,'" dated March 16, 1984 in the captioned proceeding have been served upon the following by deposit in the United States mail this 16th day of February, 1984:

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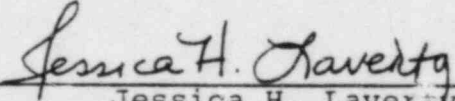
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