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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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In the Matter of

Louisiana Energy Services, L.P.

(Claiborne Enrichment Center)

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) Docket No. 70-3070-ML
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NRC STAFF'S ANSWER OPPOSING
INTERVENOR'S MOTION FOR PARTIAL RECONSIDERATION OF CLI-96-8

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October 29, 1996

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INTRODUCTION

On October 17, 1996, Intervenor Citizens Against Nuclear Trash (CANT) filed a motion,¹ pursuant to 10 C.F.R. § 2.771, for reconsideration of part of the Commission's October 2, 1996 Order, granting in part and denying in part CANT's petition for review of LBP-96-7.² Specifically, CANT seeks reconsideration of that part of CLI-96-8 which rules that Louisiana Energy Services, L.P. (LES) has sufficiently clarified the relationship between the onsite fire brigade and the offsite fire department in responding to an emergency at the Claiborne Enrichment Center (CEC). Motion at 1-2, 9. The staff of the Nuclear Regulatory Commission

¹ "Citizens Against Nuclear Trash's Motion for Partial Reconsideration of CLI-96-08," dated October 17, 1996 (Motion).

² CANT sought review of certain Licensing Board rulings in *Louisiana Energy Services, L.P. (Claiborne Enrichment Center)*, LBP-96-7, 43 NRC 142 (1996), concerning Contention H which challenged the adequacy of Louisiana Energy Services, L.P.'s (LES's) emergency plan for the Claiborne Enrichment Center (CEC). In *Louisiana Energy Services, L.P. (Claiborne Enrichment Center)*, CLI-96-8, 44 NRC ____ (October 2, 1996), the Commission denied the petition for review of LBP-96-7, except for a single issue concerning post-hearing resolution of the role of the on-site fire brigade. CLI-96-8, slip op. at 1-2.

(Staff) hereby files its answer opposing CANT's Motion.³ CANT's Motion should be denied as it fails to offer new information to suggest that the result reached in CLI-96-8 was incorrect. Moreover, as discussed below, the Motion is untimely.

BACKGROUND

On January 31, 1991, LES filed an application for a license to construct and operate the CEC, a uranium enrichment facility to be constructed near Homer, Louisiana. On May 23, 1991, an Atomic Safety and Licensing Board was established to preside over the proceeding; and on June 20, 1991, a petition for leave to intervene was filed by CANT.⁴ By Memorandum and Order of December 19, 1991, the Licensing Board admitted CANT as a party to the proceeding. On April 26, 1996, the Licensing Board issued a partial initial decision in which it concluded that the CEC Emergency Plan and the CEC Fundamental Nuclear Material Control (FNMC) Plan comply with the Commission's applicable regulations and that CANT's Contentions H, L, and M could not be sustained. LBP-96-7, 43 NRC at 176. Although it found that CANT's Contention H could not be sustained regarding the CEC Emergency Plan and found the plan in compliance with the Commission's regulations, the Licensing Board directed that LES correct any ambiguity introduced by the testimony of its witness regarding the onsite responsibility of

³ Although the Staff recognizes that it may not be necessary to respond (*Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station), ALAB-166, 6 AEC 1148, 1150, n.7 (1973), accord, *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), 19 NRC 981, 983, n.6 (1984)), the Staff offers its answer to the Motion.

⁴ In addition, on June 27, 1991, the State of Louisiana, Department of Environmental Quality (DEQ), filed a request for leave to participate as an interested state agency under the provisions of 10 C.F.R. § 2.715(c); that request was granted by the Licensing Board's Memorandum and Order of July 16, 1991, at 6-7. No contentions were filed by the Louisiana DEQ.

offsite fire departments and that the Staff supplement the SER, if necessary, to reflect the correct role of the onsite fire brigade. LBP-96-7, 43 NRC at 161.

On May 16, 1996, CANT filed a petition, pursuant to 10 C.F.R. § 2.786(b), seeking review of certain rulings concerning Contention H in LBP-96-7.⁵ On October 2, 1996, the Commission granted in part and denied in part CANT's petition for review of LBP-96-7. CLI-96-8, slip op. at 6. CANT now seeks reconsideration of that part of CLI-96-8 which ruled that LES has sufficiently clarified the relationship between the onsite fire brigade and the offsite fire department in responding to an emergency at the CEC. Motion at 1-2, 9.

DISCUSSION

A. Standards for Commission Reconsideration

In CLI-96-8, the Commission referred to 10 C.F.R. § 2.771 in noting that CANT could call to the Commission's attention any "record evidence" the Commission may have overlooked in resolving CANT's Petition for Review. CLI-96-8, slip op. at 6, n.2. The Commission's regulations in § 2.771 provide that a petition for reconsideration must be filed "within ten (10) days of the date after the date of the decision." 10 C.F.R. § 2.771(a); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-88-3, 28 NRC 1, 2 (1988). The petition for reconsideration must state specifically "the respects in which the final decision is claimed to be erroneous, the grounds of the petition, and the relief sought." 10 C.F.R. § 2.771(b).

A movant seeking reconsideration of a final decision must do so on the basis of an elaboration upon, or refinement of, arguments previously advanced, generally on the basis of

⁵ "Intervenor's Petition for Review of LBP-96-7," dated May 16, 1996 (Petition for Review). CANT did not seek review of the Licensing Board's rulings associated with Contentions L and M which concerned the adequacy of the applicant's FNMC Plan for detecting and preventing the unlawful production of enriched uranium at the CEC.

information not previously available. *See Central Electric Power Cooperative, Inc.* (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981); *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-418, 6 NRC 1, 2 (1977). A reconsideration request is not an occasion for advancing an entirely new thesis. *Id.* Nor are petitions for reconsideration the occasion for simply reiterating arguments previously proffered and rejected. *See Shoreham*, CLI-88-3, 28 NRC at 2, 4.

B. CANT'S Motion for Reconsideration Is Untimely.

The Commission's regulations provide that a petition for reconsideration of a final decision may be filed by a party within ten (10) days "*after the date of the decision.*" 10 C.F.R. § 2.771(a) (emphasis added). This regulation is different from other regulations in 10 C.F.R. Part 2, which provide for filing within a specified number of days after *service* of a decision or motion.⁶ CANT filed its Motion 15 days after the issuance of CLI-96-8 and has proffered no

⁶ *See e.g.* 10 C.F.R. § 2.786(b)(1) (provides for filing of a petition for review 15 days after service of an initial decision); 10 C.F.R. § 2.730(c) (provides for filing of an answer to a motion 10 days after service of a written motion). When the computation of time within which a person is required to do something runs from the service of a notice or other paper upon him or her, 10 C.F.R. § 2.710 prescribes the method for computing the time. Section 2.710 by its terms is limited to cases where the time to file runs from *service* of the decision of a notice or other paper.

showing of good cause for its lateness.⁷ The Commission, if it so chooses, could deny the motion for this reason alone.⁸

C. CANT Has Not Shown Grounds Meriting Reconsideration.

First, CANT argues that the new information submitted by LES in its answer to CANT's Petition for Review demonstrates that LES relies on the local fire department as a "surrogate" for the CEC fire brigade without "specifying the qualifications or training" of the local fire department.⁹ Motion at 1-2, 5-6. While acknowledging that the Commission has found that the CEC emergency plan does in fact satisfy NRC requirements, CANT argues that "[t]he Commission erred in failing to apply the Reg. Guide [Regulatory Guide 3.67] to the adequacy" of the offsite fire department. Motion at 5-7. Putting aside the fact that regulatory guides are not regulations, this argument must fail in that it is simply a reiteration of the same argument, that regulatory guides prescribe requirements, which CANT made before the Commission in its

⁷ CLI-96-8 issued on October 2, 1996. Any petition for reconsideration of CLI-96-8, would have been due for filing on October 12, 1996, except that October 12 was a Saturday and Monday, October 14 was a legal holiday. That being the case, the filing date was extended to Tuesday, October 15, 1996, pursuant to 10 C.F.R. § 2.710. Intervenor's Motion for Reconsideration, was filed October 17, 1996, 2 days out of time.

⁸ See *Shoreham*, CLI-88-3, 28 NRC at 2, in which the Commission held that a motion for reconsideration was untimely having been filed 19 days after the "issuance" of a Commission decision rather than "the 10 days provided by 10 C.F.R. § 2.771(a), with no showing of good cause for its lateness."

⁹ CANT is mistaken in asserting that this is new information. As the Commission determined in CLI-96-8, LES's answer "clarified any ambiguity in the intended role and training of the on-site fire brigade." CLI-96-8, slip op. at 4. LES's answer showed that the safety analysis report for the CEC (SAR) "accurately describes the respective roles of the onsite fire brigade and the local fire department in the event of a fire at the CEC." *Id.* Thus, the information in the SAR regarding the fire brigade and the fire department, which the Licensing Board had before it at the hearing, was correct and has not been modified by new information provided by LES.

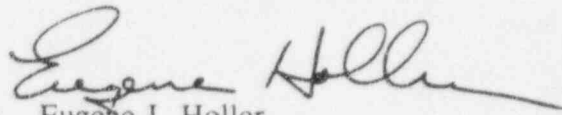
Petition for Review and which the Commission rejected in CLI-96-8. CLI-96-8, slip op. at 1, n1. Reiteration of arguments made before and rejected by the Commission do not warrant reconsideration. *See Shoreham*, CLI-88-3, 28 NRC at 2, 4.

Second, CANT raises the argument that the Licensing Board "failed to address the qualifications and training" of the offsite fire department to perform its onsite functions. Motion at 7. CANT first raised this argument in its proposed findings before the Licensing Board, which found against CANT. LBP-96-7, 43 NRC at 49-50. CANT, however, did not contest the Licensing Board's finding in its Petition for Review. The Commission has held that motions to reconsider "should be associated with requests for re-evaluation of an order in light of an elaboration upon, or refinement of, arguments previously advanced." *Summer*, CLI-81-26, 14 NRC at 790, *citing Tennessee Valley Authority*, ALAB-418, 6 NRC at 2. Motions for reconsideration are not the occasion for advancing arguments not contested on appeal. *See Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-467, 7 NRC 459, 462 (1978). Thus, CANT cannot raise for the first time in a motion for reconsideration a matter which it did not raise in its Petition for Review.

CONCLUSION

As demonstrated above, CANT's motion for reconsideration should be denied as untimely or, in the alternative, because it fails to offer new information to suggest that the result reached in CLI-96-8 was incorrect.

Respectfully submitted,



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Richard G. Bachmann
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Dated at Rockville, Maryland
this 29th day of October 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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LOUISIANA ENERGY SERVICES, L.P.)

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Docket No. 70-3070-ML

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I hereby certify that copies of "NRC STAFF'S ANSWER OPPOSING INTERVENOR'S MOTION FOR PARTIAL RECONSIDERATION OF CLI-96-8" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 29th day of October, 1996:

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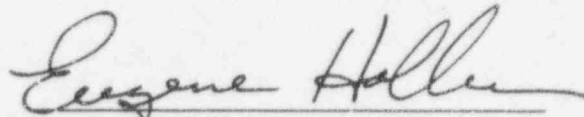
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