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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-96-23

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of	Docket No. 50-219-OLA
GENERAL PUBLIC UTILITY NUCLEAR CORPORATION	ASLBP No. 96-717-02-OLA
(Oyster Creek Nuclear Generating Station)	October 25, 1996

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MEMORANDUM AND ORDER
(Ruling on Intervention Petition)

In a Federal Register notice published May 8, 1996, the NRC staff announced (1) a proposed "no significant hazards consideration" finding regarding an April 15, 1996 request by licensee General Public Utility Nuclear Corporation (GPUN) to revise Technical Specification 5.3.1.B for the Oyster Creek Nuclear Generating Station (OCNGS); and (2) an opportunity for a hearing on that GPUN license amendment application. See 61 Fed. Reg. 20,842, 20,842-43, 20,848 (1996). Acting on the latter offering, on June 6, 1996, pro se petitioners Nuclear Information and Resource Service (NIRS), Oyster Creek Nuclear Watch (OCNW), and the Citizens Awareness Network (CAN) filed a timely hearing request and petition to intervene seeking to challenge the proposed technical specification change. In response, both the

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licensee and the staff have challenged the sufficiency of the petitioners' hearing request, asserting they lack standing and have not presented an admissible contention.

For the reasons set forth below, we find (1) petitioners NIRS and OCNW have established their standing as of right; (2) petitioner CAN has failed to establish it is entitled to either standing as of right or discretionary standing, but will be permitted to participate as an amicus curiae; and (3) petitioners NIRS and OCNW have submitted a litigable contention. Accordingly, we grant the intervention petition as it relates to NIRS and OCNW and admit them as parties to this proceeding. In addition, because the admitted contention involves a legal question, we establish a schedule for summary disposition filings to resolve that issue.

I. BACKGROUND

A. Technical Specification 5.3.1.B and the GPUN Spent Fuel Off-Load Program

In its present form, under the headings of "AUXILIARY EQUIPMENT" and "Fuel Storage," OCNGS Technical Specification 5.3.1.B states that "[l]oads greater than [the] weight of one fuel assembly shall not be moved over stored irradiated fuel in the spent fuel storage facility." NRC Staff Response in Opposition to Request for Hearing and Petition to Intervene of [NIRS/OCNW/CAN] (June 26, 1996)

unnumbered attach. 2 (OCNGS Technical Specification page 5.3-1 (Apr. 10, 1995)) [hereinafter Staff Hearing Request Response].[1] The amendment proposed by GPUN would take this provision, make it the first of two subparts, and provide for additional language so that the subparts would read:

> 1. Loads greater than the weight of one fuel assembly shall not be moved over stored irradiated fuel in the spent fuel storage facility, except as noted in 5.3.1.B.2.
>
> 2. The shield plug and associated lifting hardware may be moved over irradiated fuel assemblies that are in a dry shielded canister within the transfer cask in the cask drop protection system.

Id. unnumbered attach. 1 (Letter from Michael B. Roche, Vice President and Director, OCNGS, to NRC Document Control Desk (Apr. 15, 1996) at unnumbered p. 6 (proposed revised OCNGS Technical Specification page 5.3-1)).

In its contemplated "no significant hazards consideration" finding,[2] the staff explains that this

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[1] In the Board's initial prehearing order, to make it easier to locate and reference record documents, we asked that for all filings the participants provide "a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) . . . ." See Board Memorandum and Order (Initial Prehearing Order) (June 18, 1996) at 4 (unpublished) [hereinafter Board Initial Order]. We expect the parties to comply with this requirement for any additional filings in this proceeding.

[2] In accordance with section 189a(1)(A) of the Atomic (continued...)

proposed change is designed to "facilitate the off load of spent fuel to the Oyster Creek Independent Spent Fuel Storage Installation (ISFSI)."[3] 61 Fed. Reg. at 20,848. As described in more detail to the Licensing Board in a background presentation made by the licensee during an August 7, 1996 prehearing conference, see Tr. at 19-37,[4] the amendment request concerns a single step in the licensee's overall plan for moving the spent fuel currently in the OCNGS spent fuel pool into dry cask storage at the facility ISFSI to await ultimate disposal.

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[2](...continued)
Energy Act (AEA) and 10 C.F.R. §§ 50.91-.92, if adopted, the staff's "no significant hazards consideration" finding would permit the staff to issue the GPUN-requested technical specification change while this adjudicatory proceeding is pending. As far as the Board is aware, the staff has not yet made that finding.

[3] As defined in the agency's regulations, an independent spent fuel storage installation, or ISFSI, is "a complex designed and constructed for the interim storage of spent nuclear fuel and other radioactive materials associated with spent fuel storage." 10 C.F.R. § 72.3. Under 10 C.F.R. Part 72, Subpart K, an agency-adopted general license permits a reactor licensee to store spent fuel at a reactor-site ISFSI so long as the licensee uses a cask storage system approved by the agency.

[4] See also Letter from Ann P. Hodgdon, NRC Staff Counsel, to the Licensing Board (Aug. 5, 1996) [hereinafter Hodgdon Letter], unnumbered attach. 1, at 9.1-6 to -9 (OCNGS [Final Safety Analysis Report (FSAR)] Update (Update 7 Dec. 1992)); id. unnumbered attach. 2, encl. 3, at 1-4 to -16 (U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Safety Evaluation Report o[illegible] [Vectra Technologies, Inc.] Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel (Dec. 1994)).

The NUHOMS dry canister storage system to be used at OCNGS has three main components: a fourteen-ton dry shielded canister (DSC); a sixty-ton onsite transfer cask (TC); and a horizontal storage module (HMS).[5] The DSC is a stainless steel cylindrical vessel that can hold up to fifty-two spent fuel assemblies, each of which weighs 800 pounds. The TC, a steel and lead-lined cylinder, holds a DSC as the DSC is being loaded with spent fuel assemblies in the OCNGS spent fuel pool and then transported on a trailer between the reactor building, where the spent fuel pool is located, and an HMS. The HMSs for the OCNGS ISFSI are located just beside the plant in a separate, secured area.

An HMS is a reinforced concrete unit consisting of a base mat, four walls, and a roof. Each of the ten HMSs currently at the OCNGS ISFSI holds a single, loaded DSC. A hydraulic ram pushes a loaded DSC from the TC into an HMS horizontally through an opening in the HMS. Inside the HMS, the DSC sits above the base mat on a steel frame support structure. Once the DSC is inside the HMS, the HMS opening is sealed with a reinforced concrete and steel door. Thereafter, spent fuel decay heat cooling occurs by means of a natural convection air flow system.

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[5] The NUHOMS system is among the agency-approved cask storage systems. See 10 C.F.R. § 72.214 (Certificate No. 1004).

To get the fuel assemblies in the spent fuel pool into a DSC for transfer to an HMS, the licensee first moves an empty DSC into the ground floor of the reactor building and lifts the DSC up the equipment hatch opening approximately 100 feet to the third floor refueling deck. An empty TC is then placed at the foot of the equipment hatch opening on the ground floor. The DSC is lowered back down the equipment hatch opening into the TC, and this combined DSC/TC assembly is raised back up to the refueling deck. The DSC and the annulus between the DSC and the TC then are filled with water, and the DSC/TC assembly is lowered into the spent fuel pool.

To prevent serious damage to the spent fuel pool during this last process, the licensee has developed a cask drop protection system (CDPS). This system, which was permanently installed in the early 1970s, consists of a tapered cylindrical stainless steel structure that has been attached to the sides of one corner of the OCNGS spent fuel pool. This cylinder, which also is filled with water, is intended to guide the DSC/TC assembly and, if necessary, restrain a falling DSC/TC assembly as it is placed into the pool to await the insertion of the fuel assemblies into the DSC. Also, to help provide a cushion, a two and three-quarter-inch thick aluminum alloy base plate is attached to the bottom of each TC. If a DSC/TC assembly

were dropped, this base plate is intended to act as a piston and attenuate any forces generated by water displacement and guide cylinder wall impacts.

The CDPS guide cylinder itself consists of two parts, a lower dashpot cylinder and an upper guide cylinder. The bottom and sides of the lower dashpot cylinder have energy absorption capability to prevent damage to the spent fuel pool bottom and walls from any DSC/TC assembly impacts with the guide cylinder. The upper guide portion of the CDPS guide cylinder has a hinged gate that can be opened to permit fuel assemblies to be loaded into the DSC/TC assembly an it sits in the lower dashpot cylinder, thereby allowing both the DSC/TC assembly and the fuel assemblies to remain under water in the fuel pool during the entire loading process. The CDPS also has a one-inch thick stainless steel top plate cover extending over the guide cylinder, with a hole for inserting the DSC/TC assembly into the guide cylinder that is some ten inches wider than the diameter of a DSC/TC assembly with its base plate attached.

After the DSC is loaded with spent fuel assemblies, the shield plug is set on top of the DSC to close it. The shield plug is a four-ton metallic disc about five and half feet in diameter and eight inches thick. The shield plug is lowered by crane onto the loaded DSC inside the CDPS while attached to a three-ton yoke by four cables connected to

four eyebolts imbedded in the shield plug top. The DSC/TC assembly is then removed from the CDPS by crane and the DSC is sealed on the top with additional protective layers. The water is removed from the DSC/TC assembly, inert gas is inserted, the TC is sealed, and the DSC/TC assembly is taken from the reactor building and transported by trailer to the ISFSI, where the sealed DSC is placed horizontally into an HMS, as described above.

The particular change in Technical Specification 5.3.1.B proposed by GPUN would permit the shield plug -- which weighs considerably more than the single fuel assembly that now defines the load limit permitted to be moved over spent fuel -- to be placed over the spent fuel assemblies in the DSC while the plug is being lowered into place.

B. NIRS/OCNW/CAN Intervention Petition and Contention

In contesting this GPUN license amendment,[6] petitioners NIRS and OCNW asserted in their June 6, 1996 hearing request and intervention petition that they had fulfilled the requirements for both intervention as of right because of the proximity of their members to the facility, while CAN

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[6] A technical specification is a license condition and an licensee request to change that condition constitutes a request to amend the license that creates adjudicatory hearing rights under AEA section 189a. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 91 n.6. 93 (1993).

declared its standing was based on the potential injury its New England-based membership would suffer from any "bad precedent" that might come from this proceeding. All three petitioners argued they met the standards governing discretionary intervention as well. They further declared the "aspects" of the proposed technical specification about which they are concerned are the possibility of (1) a significant increase in accident probabilities; (2) an accident not previously identified in the licensee's Safety Analysis Report for OCNGS; and (3) a significant reduction in operating boiling water reactor (BWR) safety margins. They maintained these concerns are based on (1) NRC Bulletin 96-02, "Movement of Heavy Loads over Spent Fuel, Over Fuel in the Reactor Core, or Over Safety-Related Equipment" (Apr. 11, 1996); (2) NRC Information Notice 96-26, "Recent Problems with Overhead Cranes" (Apr. 30, 1996); (3) a May 8, 1996 NRC Daily Event Report (DER) about a 5000 pound transportation cask that was dropped on the fuel handling floor at Indian Point Unit 2 while being lifted by a crane; and (4) a December 30, 1994 Preliminary Notice of Event or Unusual Occurrence (PNO-II-94-055), regarding the drop of a 350 pound core shroud head bolt over the spent fuel pool at Georgia Power Company's Edwin Hatch Unit 1 that caused a three-inch gash in the fuel pool liner and an accompanying 2000 gallon water

leak that lowered the pool level by two inches. See [NIRS/OCNW/CAN] Request for a Hearing and Petition to Intervene on [GPUN] License Amendment Request for [OCNGS] (June 6, 1996) at unnumbered pp. 2-8 [hereinafter Intervention Petition].

Both the licensee and the staff answered the petitioners' hearing request. Licensee GPUN asserted each petitioner had failed to establish its standing to intervene either as a matter of right or discretion. See GPUN's Answer Opposing Request for Hearing and Petition for Intervention of [NIRS/OCNW/CAN] (June 21, 1996) at 9-18 [hereinafter GPUN Answer]. The staff took the position that while NIRS and OCNW had established that some of their members lived or had activities in proximity to the facility, these petitioners had failed to show those members would suffer any injury as a result of the proposed amendment. The staff also asserted that CAN had failed to establish its standing as of right and that all three petitioners had failed to show they should be afforded discretionary standing. Further, on the matter of the aspects of the proceeding, the staff declared the petitioners' aspects were not related to the subject matter of the proposed amendment, criticizing in particular the relevance of the four documents referenced by the petitioners in support of their hearing request. See Staff

Hearing Request Response at 5-13. The licensee, on the other hand, declared it would address the petitioners' aspects when responding to the petitioners' specific contentions. See GPUN Answer at 18.

Acting pursuant to a Board directive, on July 18, 1996, the petitioners filed a supplemental intervention petition in which they set forth the following contention:

> The GPUN application fails to provide defense-in-depth against the risks of a heavy load drop onto irradiated fuel and fails to satisfy NRC regulatory guidance as provided in NUREG-0612 "Control of Heavy Loads At Nuclear Power Plants" pertaining to defense-in-depth risk management to assure that a heavy load drop does not impact or encroach on irradiated fuel.

Supplemental Petition of [NIRS/OCNW/CAN] (July 18, 1996) at 2. As the bases for this contention, the petitioners made several assertions that can be summarized as follows:

A. Under 10 C.F.R. § 50.36(c)(1), GPUN is legally required to establish and maintain safety limits governing activities potentially affecting fuel rod cladding and fuel pool liner integrity. Technical Specification 5.3.1.B is designed to establish the specified safety limits.

B. As is established by a June 16, 1995 DER (Reportable Event No. 28954) and a February 6, 1987 Licensee Event Report (LER) (LER No. 86-016-01), there are potentially degraded fuel assemblies in the OCNGS spent fuel pool. Because there is no assurance that such assemblies will not be placed in a DSC, the proposed Technical Specification change would introduce an unanalyzed threat in the event of a shield plug drop.

C. The NRC's fundamental regulatory defense-in-depth principle is implemented in NUREG-0612 "Control of Heavy Loads at Nuclear Power Plants," which is the equivalent of a regulatory guide. Because OCNGS does not employ a single failure proof crane for shield plug movement, consistent with NUREG-0612 guidelines as described in enclosure 1 to NRC Generic Letter 85-11 (June 28, 1985), GPUN must rely on analyzed safe load paths and restricted load limits for movement of heavy loads "to assure, to the extent practicable" that heavy loads are not carried over or near irradiated fuel. Although GPUN claims in its safety evaluation regarding the proposed technical specification change that a shield plug drop accident is not credible because of GPUN administrative controls (e.g., rail stops), operator training, and inspections concerning dry-storage related spent fuel movements, this does not adequately address human error or mechanical/electrical failure issues. Rather, the most effective way to avoid such failures is to restrict both human-directed activity and prohibit the movement of heavy loads as is done with current Technical Specification 5.3.1.B. As such, consistent with the agency's NUREG-0612 defense-in-depth guidance, the existing provision cannot be revised as the licensee has requested.

See id. at 2-6.[7]

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[7] In a July 18 reply to the June 1996 GPUN and staff answers to their initial intervention petition, among other things, the petitioners asserted in connection with the GPUN answer that (1) notwithstanding GPUN's assertion that crane capacity exceeds the weight of the shield plug and lifting yoke, because that combined weight is many times the weigh of a fuel assembly -- the limiting weight under the existing technical specification -- a drop on a fully loaded DSC could cause significant damage; (2) given that documents, such as NUREG/CR-4982, "Severe Accidents in Spent Fuel Pools in Support of Generic Safety Issue 82" (July 1987). establish the consequences of an accident involving a breach of the spent fuel pool liner and a rapid cooling water drain down are serious, the reduction in safety margins involved

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In its July 29, 1996 answer to the petitioners'

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in the technical specification change does involve a threat of palpable injury and a risk to public health and safety; (3) a November 27, 1992 report of a substantial safety hazard filed under 10 C.F.R. Part 21, for the Susquehanna Steam Electric Station indicates that fuel pool cooling capability loss from a drain down can cause the failure of other safety-related reactor operations equipment; (4) the increase in human-directed activity and load weight involved in the spent fuel off-load activity constitutes an increase in the risk of human error and mechanical and/or electrical failure of load bearing equipment that jeopardizes the public health and safety; (5) the damage associated with a shield plug drop about which they are concerned is (a) damage to spent fuel in the DSC with the potential for recriticality, and (b) damage to the spent fuel pool liner with potential drain down affecting other fuel in storage racks; and (6) the first line of defense for criticality prevention strategy at the OCNGS spent fuel pool is the human-directed mechanical activity and weight limit restrictions imposed in the current Technical Specification 5.3.1.B. See Petitioners Reply to NRC Staff and [GPUN] Answer Opposing Request for Hearing and Petition for Intervention of [NIRS/OCNW/CAN] (July 18, 1996) at 2-9.

Concerning the staff's answer, the petitioners declared: (1) their reference to NRC Bulletin 96-02, "Movement of Heavy Loads Over Spent Fuel, Over Fuel in the Reactor Core, or Over Safety-Related Equipment," gives appropriate background documentation; (2) their reliance on NRC Information Notice 96-26, "Recent Problems with Overhead Cranes," is appropriate because the increased risks associated with activities over or near irradiated fuel arising from potential crane equipment deterioration or inadequate crane equipment combined with inappropriate licensee activities as outlined in that document are relevant at OCNGS, one of the oldest American operating reactors; (3) their reliance on the Hatch "bolt drop" preliminary notice is appropriate because of their concern about the possibility of a similar fuel pool liner tear associated with a shield plug drop accident, regardless of whether the bolt weighs less than a shield plug; (4) their reliance on the Indian Point 2 DER regarding the drop of a 5000 pound metal transport container on the fuel handling floor is appropriate because it underscores their concern that heavy load accidents can happen. See id. at 9-12.

supplemental petition, GPUN declared both their contention and the bases put forth in support of that contention are too vague and fail to establish a genuine dispute as to a material issue of fact or law. According to GPUN, the petitioners' reliance on NUREG-0612 is misplaced because they fail to recognize that document's admonition to assure heavy loads are not carried over spent fuel "to the extent practical." This qualifier, GPUN asserted, nullifies the petitioners' apparent position that permitting any load heavier than a fuel assembly will violate "defense-in-depth" principles. According to the licensee, the only time the shield plug is over spent fuel is when it is lowered onto the top of the loaded DSC, a step that cannot be avoided if the spent fuel is to be properly shielded as is required by other NRC regulatory requirements. Thus, consistent with NUREG-0612, GPUN has acted to limit the movement of heavy loads over spent fuel "to the extent practical." See GPUN's Answer to Supplemental Petition of [NIRS/OCNW/CAN] (July 29, 1996) at 5-9.

This being the case, the licensee asserted the focus must be on the actions it has taken to assure heavy load lifts satisfy the preventative measures outlined in NUREG-0612, which include the use of safe load travel paths, mechanical stops to prevent crane travel outside the analyzed load paths, and use of detailed operating

procedures and training. According to GPUN, its steps in these areas have not been contested by the petitioners. See id. at 8.

As to the petitioners' concern about the movement of heavy loads over degraded fuel, GPUN declared that the 1987 LER and the 1995 DER relied upon by the petitioners provide no support for their general assertion there are an "undetermined" number of degraded fuel assemblies that may be loaded into the DSC. According to GPUN, the LER and the DER, in fact, establish only that a specific number of fuel elements -- forty-seven -- were damaged as a result of a specific problem with fuel pellet/clad interaction and one was damaged as a result of structural failure during movement. GPUN further stated that damaged fuel assemblies have no relevance to this proceeding because the certificate of compliance issued by the NRC for the NUHOMS storage system precludes damaged or unchanneled fuel assemblies from being loaded into the DSC. See id. at 9-11.

Finally, regarding a possible fuel pool liner breach from a shield plug drop, GPUN asserted this concern does not deserve further scrutiny because the petitioners have not identified the failure mechanism that would make such a drop possible or the scenario under which such a drop would impinge on the fuel pool liner. See id. at 12-15.

In its response to the supplemental petition, the staff maintained the petitioners' contention lacks specificity as to the alleged failures in the GPUN application. The petitioners' reference to 10 C.F.R. § 50.36(c)(1) as it sets "safety limits" is misplaced, according to the staff, because the technical specification in question is a "design feature," not a "safety limit." The staff asserted the appropriate regulatory reference is to section 50.36(c)(4). According to the staff, this provision covers "design features" in technical specifications, which are those features of the facility such as construction materials and geometric arrangements that, if altered or modified, would have a significant effect on safety and are not covered under section 50.36(c)(1)-(3) as they relate to "safety limits" like limiting safety system settings, limiting control settings, limiting conditions for operation, and surveillance requirements. See NRC Staff Response to Petitioners' Supplemental Petition (July 31, 1996) at 7.

The staff also asserted the petitioners' reliance upon NUREG-0612 as providing "regulatory guidance" is misplaced because that document is not a regulation or a staff regulatory guide. The staff further declared the petitioners' reliance on NUREG-0612 as a basis for contending there can be no change in the load limit set in current Technical Specification 5.3.1.B is misdirected

because that NUREG does not prohibit the movement of heavy loads, but deals only with the control of movement of such loads. The staff also responded to the petitioners' alleged concern about degraded fuel by reference to the NJHOMS certificate of compliance that precludes using a DSC to store fuel with known or suspected gross cladding breaches. Finally, the staff declared the licensee's CDPS makes any shield plug drop on the pool liner a matter of speculation. See id. at 8-12.

On August 7, 1996, the Board conducted a prehearing conference during which NIRS, GPUN, and the staff had an opportunity to address further the questions of NIRS standing and the admissibility of the petitioners' joint contention.[8] As part of his presentation, the representative for petitioner NIRS read into the record a statement in support of the petitioners' contention that addressed a number of the GPUN and staff objections. See

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[8] The August 7 prehearing conference was noticed in early July. See Board Order (Scheduling Filing Deadline for Supplemental Intervention Petitions and Responses and for Prehearing Conference) (July 3, 1996) at 2 (unpublished). The Board, however, was informed for the first time at the prehearing conference that the designated representatives of OCNW and CAN would not attend the August 7 proceeding. See Tr. at 7-8; see also Board Memorandum (Forwarding Documents for Docketing and Requesting Settlement Status Report) (Aug. 14, 1996) attachs. 1-2 (unpublished). Acting on the motion of the licensee, the Board ruled that while it would not dismiss OCNW and CAN for their failure to participate in the conference, the NIRS representative would not be permitted to make any presentation on the issue of OCNW's or CAN's standing to intervene. See Tr. at 9-14.

Tr. at 66-76. Among other things, this NIRS statement made reference to three additional documents: an April 30, 1986 staff memorandum on budget cut impacts that is asserted to provide a factual basis for the unpredictable nature of human error; the July 19, 1996 Oyster Creek Performance Review in which the staff finds there have been "avoidable personnel errors" at the facility, particularly in the areas of operations and maintenance; and a July 20, 1995 GPUN reply to a 1995 NRC inspection report (No. 50-219/95-09), in which the licensee concurs in a self-identified technical specification violation involving a failure to follow a requirement to have a licensed senior reactor operator or a senior reactor operator limited to fuel handling supervise core alterations. According to NIRS, these documents show that "the issue of human error provides support for the contention that it is indeed not practical to modify and reduce a current technical specification designed to preclude human error and/or mechanical failure from dropping a heavy load onto irradiated fuel without undermining the Defense-In-Depth Philosophy as established in NUREG-0612." Tr. at 70-71.

During the prehearing conference, NIRS also sought to counter the GPUN and staff responses to the petitioners' supplemental petition. Besides declaring that a shield plug drop accident was a credible event that constituted an

unanalyzed condition, NIRS asserted GPUN has not answered the petitioners concerns about degraded fuel assemblies because it has not to provided information about how the utility plans to screen the fuel for deteriorated bundles or about the consequences for criticality and shielding if such fuel bundles are involved in an heavy load drop accident. NIRS did state the petitioners were willing to concede a spent fuel pool drain down resulting from liner damage from a shield plug drop was an unlikely event, but asserted the GPUN safety evaluation for the requested amendment still was insufficient because it did not adequately address the consequences during a shield plug lift of either a power loss to the crane drive motor or a seismic event. See Tr. at 72-76.

In response to NIRS's expressed concern about the lack of any GPUN analysis of the consequences of a shield plug drop onto the fuel assemblies in a DSC, see Tr. at 82, GPUN made reference to analyses it had made of several "worst case" scenarios relative to a possible shield plug drop. Although maintaining that the possibility of such a drop was incredible, GPUN noted that it had analyzed the potential for recriticality if, by whatever means, all fifty-two fuel assemblies in a DSC were damaged so that all the fuel is crushed together in the worst possible configuration in bottom of the canister, thereby maximizing the potential for

recriticality. GPUN concluded that even under this scenario, the potential of recriticality was very low (0.957). See Tr. at 85-86. In addition, GPUN analyzed the possible radiological consequences that could result from a shield plug drop given the geometrical configuration of the canister opening and the size and shape of the shield plug. GPUN determined that the maximum damage would accrue if the plug landed vertically on the cask mouth, impacting sixteen of the fifty-two fuel bundles in a fully loaded cask, with a resulting potential maximum release of 6.25 millirem at the facility site boundary. See Tr. at 92-94.

These analyses, which had not been given to the petitioners, subsequently became the subject of unsuccessful settlement negotiations. See Petitioners Communication To The Honorable G. Paul Bollwerk, Esq., Dr. Peter Lam, and Dr. Charles Kelber Regarding Settlement with GPUN (Aug. 16, 1996). Ultimately, these analyses came into the petitioners' hands as a result of staff action to obtain them. See Letter from Ernest L. Blake, GPUN Counsel, to the Licensing Board at 1 (Aug. 27, 1996). Thereafter, in a September 9, 1996 pleading, commenting on the analyses, the petitioners asserted that the expressed premise in the recriticality analysis that a drop accident would not damage the TC containing the DSC lacked justification and that the radiological consequences analysis failed to address the

question of occupational doses to facility workers. See Petitioners Status Report To The Honorable G. Paul Bollwerk, III, Dr. Peter Lam, and Dr. Charles Kelber Regarding GPUN Letter of August 23, 1996 (Sept. 9, 1996) at 1-2 [hereinafter Petitioners Status Report].

In a September 11 reply, the licensee asserted the undamaged cask assumption for its nonmechanistic criticality analysis clearly was justified given the four-inch thick steel walls on the cask. As to the petitioners' assertions regarding occupational doses, the licensee labeled these complaints meritless both because they did not account for GPUN's comprehensive worker radiation protection program and because occupational exposures were not any part of the relief the petitioners sought in their contention or the supporting bases. See Letter from Ernest L. Blake, Licensee Counsel, to the Licensing Board at 1-2 (Sept. 11, 1996). The staff likewise criticized the petitioners' filing as an attempt to raise new issues without addressing the "late-filing" factors in 10 C.F.R. § 2.714(a)(1). See NRC Staff Response to Petitioners' Status Report (Sept. 11, 1996) at 2-3.

II. ANALYSIS

A. Petitioners' Standing

1. Standing as of Right

As is generally the case with intervention petitions, our consideration of the petitioners' hearing request begins with the question of their standing as of right. To have standing to participate as of right in a proceeding regarding an agency licensing action, a petitioner must demonstrate that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. In addition, when, as here, an organization such as NIRS, or OCNW, or CAN seeks to intervene on behalf of its members, see Intervention Petition at unnumbered p. 2, that entity must show it has an individual member who can fulfill all the necessary elements and who has authorized the organization to represent his or her interests. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

In this instance, petitioners NIRS and OCNW seek to establish their standing as of right under a different theory from that used by petitioner CAN. NIRS and OCNW assert several of their members live, work, or engage in

recreational activities sufficiently close to OCNGS to provide standing as of right. In contrast, CAN declares that although its members reside many hundreds of miles from OCNGS, the concerns of CAN members about the possible movement of large loads over the spent fuel pools of the Yankee Nuclear Power Station in northwestern Massachusetts and, in particular, the Vermont Yankee Nuclear Power Station in southern Vermont are sufficient to provide CAN with standing. We address these theories separately.

a. NIRS/OCNW Standing. Petitioners NIRS and OCNW have supplied an affidavit from one individual who is a member of both organizations. He asserts he lives within the OCNGS ingestion pathway zone, which generally is within a fifty-mile radius of a facility; that his work for OCNW, including trips to the OCNW post office box, frequently takes him within the OCNGS plume exposure emergency planning zone (EPZ), which generally is within a ten-mile radius of a facility; that his work for the local Izaak Walton League chapter, including work on conservation projects within one mile of the facility, frequently takes him within the EPZ; and that he engages in recreational activities on a bay within the EPZ.[9] OCNW also relies on three other

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[9] See Intervention Petition unnumbered attach. 1 (affidavit of William deCamp, Jr.). Although the respective 10-mile and 50-mile radius designations set forth in the agency's generic emergency planning guidance are often

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affidavits: one from a member who lives in a housing development wherein the facility emergency plan causes residents to drive toward the plant, which is within one-half mile; and two from individuals who, while declaring they live within the EPZ, fail to state they are OCNW members.[10] Petitioners NIRS and OCNW maintain that this information, along with these affiants' assertions that a heavy load drop onto the irradiated fuel would result in offsite releases of radioactivity and that they are concerned about the health and safety consequences of such an accident involving the fuel transfer canisters, establish the requisite injury-in-fact to provide each organization with representational standing. See Intervention Petition at 2-3.

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[9](...continued)
utilized to describe a facility's plume exposure EPZ and ingestion pathway zone, the actual shape of these emergency planning areas depends on the characteristics of the particular site. See U.S. Nuclear Regulatory Commission/Federal Emergency Management Agency, NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," at 11 (rev. 1 Nov. 1980). None of the participants has provided us with a description of the actual parameters of the OCNGS ingestion pathway zone or plume exposure EPZ. For present purposes, therefore, we assume the generic radius designations are applicable.

[10] See Letter from Jean Burnett to Secretary of the Commission attach. (June 5, 1996); Letter from Shirley R. Schmidt to Secretary of the Commission attach. (June 5, 1996) [hereinafter Schmidt Letter]; Letter from Maria Szczech to Secretary of the Commission attach. (June 7, 1996) [hereinafter Szczech Letter].

Both the licensee and the staff declare that any agency precedent regarding a "proximity" presumption for standing in licensing cases in which there is a "clear potential for offsite consequences" is inapplicable in the context of this narrow license amendment dealing with load handling. Instead, they assert the petitioners must make a showing there is some distinct and palpable injury that has or will arise from the particular amendment at issue. NIRS and OCNW have failed to do this, both GPUN and the staff state, because with the procedural and mechanical protections GPUN will utilize in moving and lowering the shield plug over the spent fuel in the DSC, the petitioners have not shown there is a credible accident sequence that would result in a shield plug drop or that such a sequence will have offsite consequences. See GPUN Answer at 11-15; Staff Hearing Request Response at 7-8.

In making a standing determination, we are to "construe the petition in favor of the petitioner." Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). Bearing this directive in mind, we conclude there is sufficient information on the record before us to establish a reasonable basis for the assertion of petitioners NIRS and OCNW that a shield plug drop accident can occur and that such an accident can have offsite radiological consequences

that may impact the Atomic Energy Act-protected health and safety interests of their members.

Petitioners NIRS and OCNW have provided a number of documents regarding load drop accidents at nuclear facilities. See, e.g., Intervention Petition unnumbered attach. 8 (NRC Information Notice 96-26 (Apr. 30, 1996); id. unnumbered attach. 9 (Headquarters Daily Report (May 8, 1996)); id. unnumbered attach. 10 (NRC Preliminary Notification of Event or Occurrence PNO-II-94-055 (Dec. 30, 1994)). These documents indicate that, for a variety of reasons including mechanical failure and human error, nuclear facility load drop accidents do happen that result in damage, sometimes substantial, to facility equipment. Given this information, we are unable to conclude that the possibility of a shield plug drop accident is so inherently "incredible" or "irrational" that it provides no reasonable basis upon which the petitioners can establish their standing to challenge the requested amendment.

As for the consequences of such an accident, while again asserting it is based on a very low probability event, the licensee has done an analysis of a "worst case" shield plug drop that indicates there could be some off-site consequences to such an occurrence, albeit in a range well below the public exposure limits established in 10 C.F.R. Part 100. Relative to a threshold standing determination,

however, even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury-in-fact. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 70, aff'd, CLI-96-7, 43 NRC 235, 246-48 (1996). In this instance, we consider the postulated exposures are sufficient to support the petitioners' standing claims.

Finally, based on the information supplied by two of their affiants, we find NIRS and OCNW have established there are reasonable grounds to conclude these radiological offsite consequences could impact organization members, thereby provide standing for NIRS and OCNW. Of the two individuals who are NIRS and/or OCNW members,[11] the one, who is an OCNW member, lives within one-half mile of the facility, while the other, who is a member of both OCNW and NIRS, has organization-related and recreational activities that regularly bring him within the facility's ten-mile EPZ, sometimes as close as a mile (or less) from the facility. We find this showing of residence and regular activities

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[11] Because the other two individuals have failed to indicate they are members of either organization, see Schmidt Letter attach.; Szczech Letter attach., their proximity to the facility cannot be used by NIRS or OCNW as a basis for representational standing. See Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 530-31 (representational standing not present when individual relied on for standing is not organization member, but only representative of another organization), aff'd, CLI-91-13, 34 NRC 185 (1991).

near the facility, in conjunction with the evidence of possible offsite consequences from a shield plug drop accident, sufficient to provide these individual members, and therefore the organizations that represent them, with standing to contest GPUN's proposed technical specification change.[12]

b. CAN Standing. While OCNW and NIRS ground their standing as of right on the traditional "proximity" theory, CAN uses a more unconventional approach. As was noted above, CAN's standing assertion is rooted in its concern the precedent that may be set in this proceeding could impact its ability to contest similar amendment requests made by utilities operating nuclear power plants in the Massachusetts/Vermont area that is CAN's operational base. The affidavit from CAN's member makes it clear that her residence and activities are in that New England area, which is some 200 miles from the Oyster Creek facility.

CAN's "bad precedent" argument previously has been rejected as a basis for standing as of right. In Ohio Edison Co. (Perry Nuclear Power Plant, Unit 1), LBP-91-38,

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[12] Because we have before us specific evidence of possible offsite consequences in the vicinity of the facility from a shield plug drop incident, we need not reach the issue of whether any general presumption regarding possible consequences and proximity to the facility is appropriate. Compare Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

34 NRC 229, 248-49 (1991), aff'd as to another ruling, CLI-92-12, 36 NRC 47 (1992), petition for review dismissed, City of Cleveland v. NRC, 68 F.3d 1361 (D.C. Cir. 1995), the Licensing Board found an almost identical assertion was the sort of "generalized grievance" that was "too academic" to provide standing as of right. We agree with that analysis, and adopt it here to reject CAN's argument regarding its standing as of right.

2. Discretionary Standing

CAN also claims that if we find it lacks standing as of right, it nonetheless should be granted discretionary standing under the governing factors the Commission first established in the Pebble Springs proceeding. As outlined in that decision, the factors we must consider are:

(a) Weighing in favor of allowing intervention --
  (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
  (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
  (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention --
  (4) The availability of other means whereby petitioner's interest will be protected.

(5) The extent to which the petitioners' interest will be represented by existing parties.
(6) The extent to which petitioners' participation will inappropriately broaden or delay the proceeding.

Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 616 (1976).

As the Commission has made clear, see id. at 617, the primary consideration concerning discretionary intervention is the first factor -- assistance in developing a sound record. In Perry, LBP-91-38, 34 NRC at 250, the Licensing Board found this factor strongly supported discretionary intervention because the party in question, having previously litigated related issues before the Commission and in federal court, was well-versed in the legal and factual issues involved in that proceeding. We cannot say the same for petitioner CAN here. Appearing in this proceeding pro se and apparently without the assistance of any technical experts, CAN has not demonstrated any special experience or expertise it will bring to this proceeding in terms of developing a sound record. We thus conclude this important factor fails to support CAN's discretionary intervention.

Concerning factors two and three, like the Perry case, see id., we find these weigh in favor of discretionary

intervention. Although insufficient to establish "injury-in-fact," CAN's interest in stopping the proposed license amendment likewise is within the "zone of interests" relevant to this proceeding. At the same time, while too speculative to support standing as of right, its concerns about prejudice to its interest are not totally untoward in that the issue before us, as we explain below, is a legal matter that, depending on the breadth of any Commission rulings, could have implications for any future "heavy load lifting" proceedings.

Also as in Perry, see id., factors four and five to a degree weigh against CAN discretionary intervention. Based on the record before us, it seems apparent the interest of OCNW and NIRS, who already have been found to have standing, is very much like that of CAN, albeit more concrete. Up to this point, NIRS (and to a lesser degree OCNW) nas defended those interests vigorously. Regarding the availability of other means to protect that interest, it may well be, depending on the rulings in this case, that CAN would have some opportunity to contest a similar amendment request relative to Yankee Rowe or Vermont Yankee. As with Perry, however, these negative considerations are counterbalanced by the fact that, as we outline below, the issue before us appears to be one of law, so that additional CAN

participation is not likely to broaden or delay the proceeding significantly. See id. at 250-51.

Considering all these factors, particularly CAN's lack of any specific showing about how its participation can reasonably be expected to assist in developing a sound record, we conclude that the balance does not weigh in favor of permitting CAN to become a discretionary intervenor. As such, we deny its intervention request in toto. Nonetheless, in light of CAN's apparent concern over this matter, we provide CAN with an opportunity, if CAN wishes to use it, to appear as amicus curiae and file a pleading providing the Board with its views on the legal issue we admit for litigation in this proceeding, as detailed below. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 (1987).[13]

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[13] As the Appeal Board noted in Seabrook, 25 NRC at 150, the agency's rules of practice explicitly permit amicus curiae participation only in the context of appellate proceedings. As the Appeal Board also observed, however, this likely reflects the fact that requests for such participation do not often arise in the context of Licensing Board hearings -- in which factual questions generally predominate -- because an amicus customarily does not present witnesses or cross-examine other parties' witnesses. This happenstance, the Appeal Board concluded, "does not perforce preclude the granting of leave in appropriate circumstances to file briefs or memoranda amicus curiae (or to present oral argument) on issues of law or fact that still remain for Licensing Board consideration." Id.

In the context of this proceeding, in which (as we conclude below) a legal issue predominates, consistent with this Appeal Board guidance we find permitting CAN to file an

(continued...)

B. Petitioners' Contention

Having determined which of the petitioners has standing to be a party to this adjudication, we next turn to the issue of what, if any, issues there are for litigation. Certainly, the question of the admissibility of a petitioner's proffered contentions is of equal import "because contentions play a vital role in agency licensing adjudications by framing the issues for consideration." Yankee Atomic Electric Company (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 21 (1996).

In this instance, as was described above, the petitioners have put forth one contention with several bases. Both the licensee and the staff have challenged the contention as lacking the necessary specificity under 10 C.F.R. § 2.714(b)(2) as well as failing to have a supporting basis that, as is required by section 2.174(b)(2)(ii) and

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[13](...continued)
amicus pleading addressing that issue is entirely appropriate. If we later conclude this case requires an evidentiary hearing, we can then reassess the scope and means of CAN's participation.

So that the Board and the other parties will know its status, on or before Friday, November 8, 1996, CAN should file a pleading indicating whether it intends to participate as an amicus curiae. In deciding whether to participate as an amicus, CAN may wish to consider to what degree its participation in this proceeding may make it the target of issue preclusion claims (i.e., res judicata or collateral estoppel) if a similar technical specification change is requested at one of the New England facilities about which it is concerned. See Perry, LBP-91-38, 34 NRC at 251 n.68.

Commission precedent, see Yankee Rowe, CLI-96-7, 43 NRC at 248-49, contains information sufficient "to show that a genuine dispute exists with the applicant on a material issue of fact or law."

On the question of specificity, the assertion of the licensee and the staff that the petitioners' contention, in and of itself, lacks the requisite specificity has some merit. Nonetheless, and particularly in the context of dealing with pro se petitioners, a finding regarding a contention's specificity should include consideration of the contention's bases. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) (both contention and stated bases should be considered when question arises regarding admissibility of contention).

As we have summarized them above, however, Bases A and B arguably provide little help in this regard. Because the focus of that contention, as it was crafted by the petitioners, is on the agency's "defense-in-depth" principle as embodied in NUREG-0612,[14] the relationship between those

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[14] NUREG-0612 is a 1980 document that was intended to provide "the results of the NRC staff's review of the handling of heavy loads and includes the NRC staff's recommendations on actions that should be taken to assure safe handling of heavy loads." U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants," at iii (July 1980). In setting forth guidelines

(continued...)

two bases and the contention is not readily apparent.[15] When the language of the contention is considered in conjunction with Basis C, however, the requisite specificity clearly is present.

Looking then to the question of the adequacy of the bases put forth in support of their contention, even if we consider Bases A and B as having an appropriate relationship to the petitioners' stated contention, we find them

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[14](...continued)
for handling heavy loads, NUREG-0612 clearly does so in the context of carrying out the regulatory philosophy of "defense-in-depth." See id. at 5-1 to -2. The "defense-in-depth" principle is the agency policy under which regulated entities are required to safeguard the public health and safety "through multiple intermeshing and overlapping protections." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 813 (1974).

[15] As we have outlined it above, Basis A asserts that consistent with 10 C.F.R. § 50.36(c)(1), activities potentially affecting fuel rod cladding and fuel pool liner integrity are subject to safety limits and that the existing technical specification is designed to establish the specified safety limits by prohibiting the movement of any load greater than the weight of one fuel assembly over or near irradiated fuel. On its face, this basis appears to provide no support or otherwise bear a relationship to the petitioners' contention. The same is true of Basis B. To whatever the degree the purported problem with degraded fuel might support a challenge to the licensee's amendment request, it bears no apparent relationship to the NUREG-0612 "defense-in-depth" concern that is the focus of the contention.

As such, it is arguable that if Bases A and B merit any consideration, it is only as separate contentions. Nevertheless, for the reasons set forth below, whether as separate contentions or as bases for the petitioners' stated contention, we find these concerns inadequate to provide an admissible issue.

inadequate to provide an admissible contention. Basis A suffers from two flaws. First, it is footed in the misapprehension that Technical Specification 5.3.1.B is a "safety limit" as that term is defined in 10 C.F.R. § 50.36(c)(1). As both the licensee and the staff correctly point out, this technical specification is in fact a "design feature" under section 50.36(c)(4). Even more telling, however, is the fact that, whether Technical Specification 5.3.1.B is a "safety limit" or a "design feature," nothing we are aware of in connection with section 50.36 precludes a change in the provisions of such a technical specification if the licensee can make the appropriate showing. As such, that regulation, and so Basis A, is irrelevant to the petitioners' contention that the requested change somehow violates NRC "defense-in-depth" principles.

As we have noted above, to establish their Basis B concern as an appropriate foundation for the admission of their contention, the petitioners rely on certain licensee documents they declare show there are at least forty-seven fuel assemblies in the OCNGS fuel pool with cladding failure. This is significant, they argue, because a shield plug drop accident involving a DSC containing such degraded fuel elements is unanalyzed in terms of possible recriticality. Further, they discount the representations

of the licensee and the staff that loading such degraded fuel assemblies into a DSC would violate the generic certificate of compliance under which GPUN is permitted to use the NUHOMS storage system on the basis they have not been provided with documentation explaining how the licensee will screen irradiated fuel assemblies for defects. See Tr. at 74-75.

Even assuming the mere declaration that a particular concern is "unanalyzed" is sufficient to provide a basis for a contention, but see Yankee Rowe, LBP-96-2, 43 NRC at 75-76 (contention must not only allege decommissioning plan content deficiency, but show that purported deficiency has health and safety significance for decommissioning process), it is apparent from the materials before us that the petitioners' recriticality concern has indeed been analyzed. The licensee's recriticality study, which assumes all the fuel from a fully-loaded DSC is crushed together, clearly envelopes this concern. Therefore, relative to any purported lack of an analysis, there is no material factual dispute that warrants further inquiry.[16]

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[16] In their September 9 filing, the petitioners acknowledge the results of the licensee's recriticality analysis "appear technically correct," but then declare they have a new concern regarding the statement in the analysis that the impact of a shield plug drop would not be sufficient to breach the rigid structural material of the TC. Petitioners Status Report at 1-2. As the staff correctly pointed out, if the petitioners want to raise new

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Concerning the purported lack of documentation explaining the licensee's fuel assembly screening process, as the licensee and the staff noted, the certificate of compliance governing the use of the NUHOMS dry storage system makes it clear that only those fuel assemblies that are "intact" with "no known or suspected gross cladding breaches" are eligible for storage in a DSC. Hodgdon Letter unnumbered attach. 2, encl. 2, at A-10 (U.S. Nuclear Regulatory Commission, Certificate of Compliance for Dry Cask Fuel Storage Casks, Certificate No. 1004 (Jan. 23, 1995) (Table 1-1b))[hereinafter Certificate of Compliance No. 1004]; see id. at A-5 (Section 1.2.1 Fuel Specification Limit/Specification). Moreover, the certificate of compliance provides that these fuel specifications "must be met by every individual fuel assembly to be stored" in NUHOMS casks, id. at A-10 n.(1); see id. at A-5 (Section 1.2.1 Fuel Specification Applicability); that it must be "verified and documented" that each fuel assembly to be loaded into a DSC meets these specifications, id. at A-5 (Section 1.2.1 Fuel Specification Action); and that immediately before insertion of a spent fuel assembly into a

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[16](...continued)
concerns like this (or their additional claim about worker exposures), they must address the late-filing standards in 10 C.F.R. § 2.714(a). Because they have made no attempt address these standards, we need give no further consideration to their added concerns.

DSC, "the identity of each fuel assembly shall be independently verified and documented," id. at A-6 (Section 1.2.1 Fuel Specification Surveillance)

These requirements, which are conditions of the certificate of compliance, see id. at A-1 (Section 1.0 Introduction) make it apparent that in order to meet these regulatory specifications established pursuant to 10 C.F.R. §§ 72.212, 72.236(a) to govern the use of the NUHOMS cask system, GPUN must not load degraded fuel assemblies into a DSC. Because clear regulatory constraints mandate GPUN must not load such spent fuel, to gain the admission of a contention founded on the premise GPUN will not follow these requirements, the petitioners much make some particularized demonstration that there is a reasonable basis to believe GPUN would act contrary to their explicit terms. Having failed to make such a showing,[17] the petitioners' degraded

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[17] As we noted previously, see supra p. 18, at the August 7 prehearing conference petitioner NIRS provided several additional OCNGS-related documents describing (1) a November 1994 self-identified and corrected technical specification violation in which a reactor core alteration was made without the required supervision of an appropriate senior reactor operator, and (2) a July 1996 staff performance review in which GPUN is criticized for the continued occurrence of "avoidable" operation and maintenance "personnel errors." Although these documents suggest that the licensee's operation is not error free, they do not provide information that is sufficiently specific to establish the need for further inquiry on the factual question of the licensee's ability properly to screen fuel assemblies as it is required to do under the NUHOMS certificate of compliance.

fuel assembly concern is inadequate to establish a material factual dispute that warrants further inquiry.[18]

In considering Basis C, we reach a different result. As our summary of that basis indicates, and as was explained to us during the oral argument, with this concern the petitioners seek to establish the "single fuel assembly" weight limitation in existing Technical Specification 5.3.1.B reflects an agency judgment about the particular measures that are necessary for compliance with the purported regulatory guidance in NUREG-0612 as it is asserted to implement the "defense-in-depth" principle. According to the petitioners, this weight limitation is a vital control meant to remove the potential that human error or any mechanical/electrical failure could cause damage to irradiated fuel.[19] See Tr. at 68. Because of the

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[18] Although not directly related to Basis B (or apparently either of the other proffered bases), likewise insufficient to provide grounds for an admissible contention are the NIRS-expressed concerns about possible problems with load drop during crane power loss and seismic events. See supra p. 19. As the licensee indicated, the former claim is based on a poorly drafted sentence in the GPUN safety evaluation regarding the proposed technical specification change that fails to make it clear that an installed protective device in fact addresses the problem of power loss, while the latter does not account for the fact that the crane involved is seismically qualified. See Tr. at 87-88. The petitioners' present showing regarding these matters fails to establish the requisite material factual issue in dispute that warrants further inquiry.

[19] As we have noted, see supra p. 18, the petitioners have submitted several documents they assert establish there

(continued...)

importance of this limitation, the petitioners assert, this technical specification cannot be changed.

The licensee and the staff have countered with arguments suggesting that the petitioners' interpretation of the significance and meaning of NUREG-0612 is misplaced. We find, however, that several factors provide sufficient reason to conclude Basis C is sufficient to establish a material disputed issue of law that should be considered further.

The CDPS apparently has been in place for some time, see supra p. 6, indicating that the licensee (and the staff) had some notion GPUN at some point could be in a position to place an object heavier than a fuel assembly over fuel assemblies being packaged for removal and storage. Nonetheless, the existing technical specification with its specific "fuel assembly" weight limitation seemingly was adopted for OCNGS after NUREG-0612 was issued with its "to the extent practicable" language. See U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation,

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[19](...continued)
is a significant problem with human error at OCNGS. They do so, however, not in an attempt to support a claim that such human error raises questions about the adequacy of GPUN's load handling training and procedures, but rather as support for their general assertion that it is "not practical" to change the existing technical specification without undermining the defense-in-depth principle embodied in NUREG-0652. See Tr. at 70-71.

NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants," at 3-9 (Table 3.2-1), 5-2 (July 1980). Further, while the staff and GPUN have asserted that NUREG-0612 is simply "guidance" that contains no regulatory mandate, as we pointed out during the prehearing conference, there are any number of references to NUREG-0612 "requirements" in the licensee and agency documents provided to us. See Tr. at 99-101; see also, e.g., Certificate of Compliance No. 1004, at 2 ("The [NUHOMS] TC is designed and fabricated as a lifting device to meet NUREG-0612 and ANSI N14.6 requirements.").

This, we conclude, raises a legitimate question about the regulatory significance of that document and its "to the extent practical" language. When combined with the petitioners' challenge to the exact meaning of the NUREG-0612 "to the extent practicable" terminology as it relates to the requested technical specification change, we find there is sufficient information to pose a matter of legal interpretation that merits further scrutiny. As such, we admit the petitioners' contention as it is supported (and explicated) by Basis C.

III. SCHEDULE

Section 2.714(b) of title 10 of the Code of Federal Regulations declares that a contention, such as the

petitioners', that poses a legal question "must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or the presiding officer." Notwithstanding the licensee's suggestion that admission of the petitioners' contention should be followed by discovery, see Tr. at 116, from all appearances the legal issue the petitioners have framed is one that could be resolved on summary disposition without discovery.[20] Because the ultimate burden on this issue rests with GPUN, see 10 C.F.R. § 2.732, we establish the following schedule for further filings:[21]

GPUN Summary Disposition Motion[22]	Friday, November 15, 1996
Staff/Petitioners/Amicus Curiae Responses to GPUN Summary Disposition Motion and/or Petitioners Cross-Motion for Summary Disposition	Friday, December 6, 1996

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[20] Consistent with existing agency practice, in responding to any GPUN (or staff) summary disposition motion, petitioners NIRS and OCNW can assert, with any appropriate supporting affidavits, that they need discovery to answer that dispositive motion. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 152 (1992).

[21] The Board will advise the parties at a later date if it intends to hold an oral argument regarding their summary disposition filings.

[22] If the staff wishes, it may file a dispositive motion on this date as well. If the staff does so, the petitioner and amicus curiae responses should encompass both the GPUN and staff dispositive motions and the staff is permitted to file a reply to any such responses in accordance with the schedule.

GPUN Reply to Petitioners/Amicus Curiae Responses and/or Petitioners Cross-Motion for Summary Disposition, and Petitioners Reply to Staff Response	Friday, December 20, 1996

For all further pleadings in this proceeding, in addition to serving conforming paper copies on all parties, the amicus curiae (if CAN chooses to participate in this role), the Board members, and the Office of the Secretary, a courtesy copy of each filing shall be sent to all other parties, the amicus curiae, the Board members, and the Office of the Secretary by facsimile transmission, E-mail transmission, or other means that will ensure receipt by 4:30 p.m. Eastern Time on the date of filing.

Substantive summary disposition-related pleadings other than those authorized in the schedule above are not permitted without preapproval of the Board. Board preapproval must be sought in writing at least twenty-four hours before filing the pleading. The preapproval request must indicate whether the other parties to the proceeding oppose or support the request.[23]

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[23] Our previous directives concerning the timing and content of motions for extension of time remain applicable. See Board Initial Order at 4.

IV. Conclusion

Petitioners NIRS and OCNW have shown that (1) at least one of their members who has authorized NIRS or OCNW to represent his or her interests live, work, or engages in recreational activities near OCNGS; and (2) there is some reasonable basis to believe that, as a consequence of a shield plug drop incident, those individuals proximity to the facility can result in injury to their health and safety interests as those interests are protected by the Atomic Energy Act. Petitioners NIRS and OCNW thus have established their standing as of right to be parties to this proceeding. In contrast, the interest of petitioner CAN and its proffered member (who lives well away from OCNGS) in avoiding adverse precedent from this case is too generalized and academic to provide CAN with standing as of right. Further, CAN has failed to demonstrate it is entitled to discretionary standing. Therefore, CAN's intervention request is denied, although it can (if it wishes) participate in the initial summary disposition stage of this proceeding as an amicus curiae.

We also conclude that the petitioners' joint contention, as supported by Basis C as summarized above, see supra p. 1, is sufficient under 10 C.F.R. § 2.714(b)(2)(iii) to establish a genuine material issue of law. As such, we

admit their contention and establish a schedule for further litigation on its merits.

For the foregoing reasons, it is this twenty-fifth day of October 1996, ORDERED, that:

1. Relative to the contention set forth in their July 18, 1996 supplemental intervention petition, as that contention is supported by Basis C as summarized above, the June 6, 1996 hearing request and petition to intervene of petitioners NIRS, OCNW, and CAN is granted as to NIRS and OCNW and is denied as to CAN.

2. Litigation on this contention will commence immediately in conformance with the schedule and procedures specified in section III above.

3. In accordance with the terms specified in sections II and III above, CAN is granted permission to participate as an amicus curiae relative to the contention admitted in this proceeding.

4. In accordance with the provisions of 10 C.F.R. § 2.714a(a), as it rules upon an intervention petition, this

memorandum and order may be appealed to the Commission within ten days after it is served.

THE ATOMIC SAFETY
AND LICENSING BOARD[24]

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Charles N. Kelber
ADMINISTRATIVE JUDGE

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 25, 1996

[24] Copies of this memorandum and order have been sent this date to counsel for GPU and the representatives for NIRS and CAN by facsimile transmission; to the representative for OCNW by Internet E-mail transmission; and to staff counsel by E-Mail transmission through the agency's wide area network.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

GENERAL PUBLIC UTILITY NUCLEAR CORPORATION
(Oyster Creek Nuclear Generating Station)

Docket No.(s) 50-219-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O RULING ON INTERVENTION have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)50-219-OLA
LB M&O RULING ON INTERVENTION

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Dated at Rockville, Md. this
25 day of October 1996

Emile L. Julian
Office of the Secretary of the Commission