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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

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LBP-97-11  
USNRC

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of

GENERAL PUBLIC UTILITIES  
NUCLEAR CORPORATION

(Oyster Creek Nuclear  
Generating Station)

Docket No. 50-219-OLA

ASLBP No. 96-717-02-OLA

January 31, 1997

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MEMORANDUM AND ORDER

(Ruling on Summary Disposition Motion)

Pending before the Licensing Board is a motion filed by licensee General Public Utilities Nuclear Corporation (GPUN) requesting that summary disposition be entered in its favor on the sole contention at issue in this proceeding. This contention, which is sponsored by pro se intervenors Nuclear Information and Resource Service (NIRS) and the Oyster Creek Nuclear Watch (OCNW), poses a single legal issue that can be summarized as follows:

Whether a technical specification revision for GPUN's Oyster Creek Nuclear Generating Station (OCNGS) permitting a dry shielded canister (DSC) shield plug to be moved over irradiated fuel in a DSC as a prerequisite to sealing and removing the DSC from the OCNGS spent fuel pool for transport to an on-site independent spent fuel storage installation (ISFSI) is foreclosed under the terms of a 1980 NRC staff report, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, NUREG-0612, "Control of Heavy Loads at

Nuclear Power Plants," (July 1980) [hereinafter NUREG-0612], as it embodies the agency's "defense-in-dep'h" risk management precepts.

The NRC staff supports the licensee's motion, while intervenors NIRS and OCNW oppose it.

For the reasons set forth below, we grant the licensee's summary disposition motion, finding that (1) the "heavy load" limitation in OCNGS Technical Specification 5.3.1.B encompasses a shield plug movement over irradiated fuel in a DSC; (2) as it embodies the agency's defense-in-depth philosophy, NUREG-0612 provides guidance rather than requirements regarding the control of heavy loads at nuclear power plants; and (3) nothing in this NUREG-0612 guidance precludes the adoption of the requested OCNGS technical specification change.

#### I. BACKGROUND

As we outlined in our October 25, 1996 ruling admitting intervenors NIRS and OCNW and their legal contention into this proceeding,<sup>1</sup> see LBP-96-23, 44 NRC 143, 147-56 (1996),

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<sup>1</sup> In that memorandum and order, we also concluded that although a third petitioner, the Citizens Awareness Network (CAN), had failed to establish its standing to intervene either as of right or as a matter of discretion, we would permit CAN to participate as an amicus curiae if it wished to do so. See LBP-96-23, 44 NRC at 159-61. We then established a deadline for CAN to advise the Board and the other parties that it wanted to participate as an amicus. See id. at 161 n.13. CAN, however, has neither appealed this ruling to the Commission nor shown any further interest (continued...)

the license amendment at issue here involves a change in OCNGS Technical Specification 5.3.1.B. When this proceeding began in June 1996 and through early November 1996, that provision stated "[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/Citizens Awareness Network (CAN)] (June 26, 1996) unnumbered attach. 2 (OCNCS Technical Specification p. 5.3-1 (Apr. 10, 1995)). On November 7, 1996, pursuant to a staff "no significant hazards consideration" finding,<sup>2</sup> that provision was revised so that it now reads:

- B. 1. Loads greater than the weight of one fuel assembly shall not be moved over stored

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(...continued)

in participating in this proceeding before the Board.

<sup>2</sup> In its initial notice of opportunity for hearing regarding the licensee's amendment request, the staff advised that it proposed to find the change involved "no significant hazards consideration." See 61 Fed. Reg. 20,842, 20,848 (1996). Under Atomic Energy Act (AEA) section 189a(1)(A), (2)(A), 42 U.S.C. § 2239(a)(1)(A), (2)(a), and the implementing regulations in 10 C.F.R. §§ 50.91-.92, upon making such a finding the staff can issue an amendment notwithstanding the pendency of a hearing request challenging the proposed license change. On November 7, 1996, based on its conclusion the GPUN proposed technical specification revision involved "no significant hazards consideration," the staff issued the technical specification amendment effective immediately. See 61 Fed. Reg. 66,702, 66,720 (1996).

irradiated fuel in the spent fuel storage facility, except as noted in 5.3.1.B.2.

2. The shield plug and the 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.

Letter from Ann P. Hodgdon, NRC Staff Counsel, to Licensing Board (Nov. 12, 1996) encl., at encl. 1, attach. at unnumbered p. 2 (OCNGS Technical Specification p. 5.3-1, Amendment No. 187) [hereinafter Amended Technical Specification 5.3.1.B].

GPUN proposed this change to facilitate the off-loading of spent fuel from the OCNGS spent fuel pool into dry cask storage in the OCNGS ISFSI. As we described in some detail in our earlier opinion, see LBP-96-23, 44 NRC at 148-50, while submerged in one corner of the spent fuel pool within the confines of a GPUN-developed cask drop protection system (CDPS) and a sixty-ton onsite transfer cask (TC), the fourteen-ton DSC is loaded with up to fifty-two spent fuel assemblies, each weighing approximately 800 pounds. To close the DSC before removing it and the accompanying TC from the fuel pool in preparation for transport to the OCNGS ISFSI, a four-ton shield plug attached to a crane by a three-ton yoke is moved over the DSC and the fuel assemblies



it contains and then lowered into place atop the DSC. The technical specification amendment at issue in this proceeding explicitly allows the shield plug -- which weighs many times more than a fuel assembly -- to be moved over the fuel assemblies in the DSC while those assemblies and the DSC are in the CDPS in the corner of the spent fuel pool.

In LBP-96-23, 44 NRC at 156-66, we found that in challenging the GPUN technical specification change, in accordance with the requirements of 10 C.F.R. § 2.714(a), (b)(2), NIRS and OCNW had both established their standing to intervene and jointly put forth a single litigable contention concerning that amendment. Their sole contention states:

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. Further, although the intervenors put forth several bases in support of this contention, we determined only one was adequate to support its admission, which we summarized as follows:

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 practical" 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.

LBP-96-23, 44 NRC at 151-52.

In considering the admissibility of the intervenors' contention, we observed that the contention and this supporting basis are premised on the intervenors' assertions that (1) NUREG-0612 provides binding regulatory guidance for implementing the agency's overall defense-in-depth principle in the context of heavy load control; and (2) the then-existing technical specification with its one fuel assembly heavy load limit cannot be changed consistent with

NUREG-0612 because that limit is a vital control necessary for compliance with the defense-in-depth principle underlying NUREG-0612. Although recognizing GPUN and staff assertions that NUREG-0612 is not a regulatory requirements document and declares only that moving heavy loads over or near irradiated fuel should be avoided "to the extent practical," we nonetheless found two factors established a dispute regarding the technical specification change that warranted further inquiry. The first was the apparent adoption of the then-existing GPUN technical specification with its absolute single fuel assembly load limit after the publication of NUREG-0612 with its "to the extent practical" language. The second concerned various statements in licensee and staff documents regarding NUREG-0612 "requirements." See id. at 165-66. We also concluded this contention apparently presented a legal issue so that summary disposition provided the appropriate procedural avenue for seeking to resolve its merits in the first instance. We thus established a schedule for dispositive motions and responses by the parties. See id. at 166-67.

In a November 15, 1996 motion, which is accompanied by a statement of material facts not in dispute and the supporting affidavit of GPUN Licensing and Regulatory Affairs Director John C. Fornicola, licensee GPUN seeks summary disposition in its favor on this contention. See

Licensee's Motion for Summary Disposition (Nov. 15, 1996) [hereinafter GPUN Dispositive Motion]; Licensee's Statement of Material Facts as to Which There Is No Genuine Dispute (Nov. 15, 1996) [hereinafter GPUN Material Facts Statement]; Affidavit of John C. Fornicola (Nov. 15, 1996) [hereinafter Fornicola Affidavit]. In a December 6, 1996 response, which includes the supporting affidavits of NRC Senior Project Manager Ronald B. Eaton and NRC Senior Reactor Engineer Harold Walker, the staff agrees that GPUN's summary disposition request should be granted. See NRC Staff Response in Support of Licensee's Motion for Summary Disposition (Dec. 6, 1996) [hereinafter Staff Response]. On the same date, intervenors NIRS and OCNW filed a response opposing GPUN's summary disposition request, albeit without any supporting affidavits. See Petitioner[s] Opposition to GPUN Motion for Summary Disposition (Dec. 6, 1996) [hereinafter NIRS/OCNW Response]. Thereafter, in accordance with the pleading schedule we established, on December 20, 1996, GPUN filed a reply to the intervenors' response. See Licensee's Reply to Petitioners' Opposition to Motion for Summary Disposition (Dec. 20, 1996) [hereinafter GPUN Reply].<sup>3</sup>

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<sup>3</sup> By memorandum issued January 3, 1997, we advised the parties we had decided not to hold an oral argument on GPUN's dispositive motion. See Licensing Board Memorandum (Oral Argument on Dispositive Motion) (Jan. 3, 1997) at 1-2.

## II. ANALYSIS

### A. Standards Governing Summary Disposition

Under Rule 56(c) of the Federal Rules of Civil Procedure, a party is entitled to seek summary judgment in its favor on the merits of any claim for which "there is no genuine issue as to any material fact." The Commission's administrative counterpart to this judicial rule is found in 10 C.F.R. § 2.749(d), which provides in pertinent part:

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

A number of the central procedural requirements governing the summary disposition process were recently summarized as follows:

The party filing the summary disposition motion has the burden of demonstrating the absence of any genuine issue of material fact. In this regard, [10 C.F.R. §] 2.749(a) requires that the moving party include a statement of material facts about which there is no genuine issue to be heard. In contrast, the opposing party must append to its response a statement of material facts about which there exists a genuine issue to be heard. If the responding party does not adequately controvert material facts set forth in the motion, the party faces the possibility that those facts may be deemed admitted. If, however,

the evidence before the Board does not establish the absence of a genuine issue of material fact, then the motion must be denied even if there is no opposing evidence. Nevertheless, a party opposing a motion cannot rely on a simple denial of the movant's material facts, but must set forth specific facts showing there is a genuine issue of material fact.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86, 92-93 (citations omitted), petition for review denied, CLI-96-9, 44 NRC 112 (1996).

B. The Parties Positions

1. GPUN's Arguments

In seeking summary disposition, GPUN declares that the two factors identified by the Board as potential support for the intervenors' position that OCNCS Technical Specification 5.3.1.B cannot be changed in fact provide no justification for that claim. The licensee asserts that while, as the Board observed, NUREG-0612 does indicate that in 1980 OCNCS did not have a technical specification governing the movement of heavy loads over spent fuel, NUREG-0612 was incorrect. According to GPUN, Technical Specification 5.3.1.B was adopted initially in 1977, some three years before NUREG-0612 was issued. See GPUN Dispositive Motion at 19 & n.13; GPUN Material Facts Statement at 1-2. As a result, GPUN concludes that any concern the language of Technical Specification 5.3.1.B prior to its recent amendment was reflective of a

licensee/staff judgment regarding the application of defense-in-depth principles is misplaced.

As to the second concern about the language of various licensee and staff documents referring to NUREG-0612 "requirements," GPUN cites agency authority and language in NUREG-0612 it asserts establishes that a NUREG document, like a staff regulatory guide, merely serves as guidance and cannot prescribe requirements. See GPUN Dispositive Motion at 8; GPUN Material Facts Statement at 1. GPUN further declares that while the staff requested in two staff generic letters that licensees conform to certain NUREG-0612 recommendations, the NUREG-0612 recommendation that licensees adopt a technical specification like OCNCS Technical Specification 5.3.1.B to govern heavy load handling was not among them. See GPUN Dispositive Motion at 9-10; GPUN Material Facts Statement at 1.

In support of its summary disposition request, GPUN also claims that the intervenors' position is legally untenable because Technical Specification 5.3.1.B "only applies to heavy loads moved over stored fuel in the spent fuel storage racks and is no legal impediment to the movement of heavy loads over spent fuel in the CDPS." GPUN Dispositive Motion at 2. According to GPUN, by "wording and intent" Technical Specification 5.3.1.B has always applied only to "stored" spent fuel, which does not include fuel



assemblies placed in the CDPS prior to being removed from the spent fuel pool. Id. at 11. GPUN asserts that it requested the amendment at issue "at the suggestion of the NRC staff and out of an abundance of caution, only to make this meaning more explicit." Id. GPUN argues that various factors support this interpretation including (1) the use of the terms "stored" and "storage" in Technical Specification 5.3.1.B prior to its recent amendment; (2) a purported staff/licensee understanding about this meaning under Technical Specification 5.3.1.B that permitted GPUN in the mid-1980s to place a "heavy load" lid over fuel assemblies while loading and unloading a transportation cask in the CDPS as the cask was being sent to and later returned from a reprocessing facility; (3) a staff interpretation of a similar technical specification at the Palisades Nuclear Plant; (4) language in the Safety Evaluation issued by the staff in support of the November 7, 1996 "no significant hazards consideration" amendment; (5) regulatory history relative to the OCNGS spent fuel pool indicating there was a clear differentiation between the spent fuel pool and the CDPS; and (6) the language of and the interpretation accorded the agency's standard technical specification (Standard Technical Specification 3.9.6.2) regarding heavy load handling at boiling water reactors (BWRs). See id. at 12-22.

Finally, GPUN asserts that interpreting Technical Specification 5.3.1.B and NUREG-0612 in the manner suggested by the intervenors is untenable because this would lead to an "absurd" result. To read these two items as the intervenors suggest would mean GPUN is precluded from ever placing a shield plug over a loaded DSC while the cask is in the CDPS. This, GPUN declares, would violate numerous agency regulatory requirements that require shielding for spent fuel moved out of a spent fuel pool. GPUN maintains that sanctioning such an untoward result is inconsistent with the NUREG-0612 and its "to the extent practical" language, which in summarizing its recommended defense-in-depth measures declared that licensees should "define safe travel paths through procedures and operator training so that to the extent practical heavy loads avoid being carried over or near irradiated fuel or safe shutdown equipment." Id. at 23 (quoting NUREG-0612, at 5-2). Pointing to the staff's use of the same language in a 1985 generic letter in which the staff recognized the need to handle the reactor vessel head over spent fuel in an open reactor vessel head during refueling, GPUN asserts that without such an interpretation spent fuel can never be removed from the spent fuel pool. Because there is no other alternative, GPUN declares, the only conclusion is that this

"to the extent practical" language sanctions the shield plug movement. See id. at 23-24.

2. The Staff's Response

In its response supporting GPUN's motion, the staff likewise declares that, as with a staff regulatory guide, NUREG-0612 is only a guidance document that does not prescribe requirements. See Staff Response at 6-7. The staff further asserts that any technical specification, including OCNWS Technical Specification 5.3.1.B, can be changed so long as the amended provision provides reasonable assurance of protection of the public health and safety. See id. at 7-8. In addition, addressing the licensee's argument that GPUN really did not need the requested amendment, the staff cites an October 5, 1995 staff-issued amendment for the Rancho Seco Nuclear Power Station similar to that recently granted GPUN and concludes "not only may a licensee move a shield plug over spent fuel despite a Technical Specification like [Technical Specification] 5.3.1.B (prior to the Nov. 7th amendment) (Palisades), it may amend that Technical Specification to clarify that it can move a shield plug over spent fuel in the canister/cask (Rancho Seco)." Id. at 8-9.

3. The Intervenor's Arguments

Intervenors NIRS and OCNW oppose the licensee's summary disposition motion. They declare that the intent of

Technical Specification 5.3.1.B with its prohibition on carrying a load heavier than a single spent fuel assembly over irradiated fuel was to ensure OCNGS operations were within the facility's engineering design basis, which included the offsite dose limitations set forth in 10 C.F.R. Part 100. The subsequent issuance of NUREG-0612, the intervenors claim, was not intended to alter this design basis, but rather to provide guidance for handling loads greater than a single fuel assembly. According to the intervenors, with its "to the extent practical" qualifier, NUREG-0612 specified two permissible options for dealing with these loads: (1) safe load paths that precluded heavy load transportation over irradiated fuel; or (2) use of a single-failure-proof crane. Before it was amended in November 1996, OCNGS Technical Specification 5.3.1.B with its prohibition on moving heavy loads over irradiated fuel satisfied the first option. If, however, GPUN wants to move heavy loads over irradiated fuel, the intervenors argue that the licensee must comply with the second option by installing a single-failure-proof crane. See NIRS/OCNW Response at 6-7.

The intervenors also declare that, notwithstanding the licensee and staff attempts to obscure various references to NUREG-0612 "requirements" by rendering those references interchangeable with the term "guidelines," the provisions

of NUREG-0612 embody the fundamental regulatory mandate of defense in depth that must be complied with. See id. at 8-9. Further, intervenors NIRS and OCNW describe as "legalistic semantics" the GPUN attempt to establish that Technical Specification 5.3.1.B never applied to the movement of the DSC shield plug based on the purported distinction between whether fuel assemblies are in the spent fuel pool for "storage" or for "transport." Id. at 9. They also suggest that the prior cask movement described by GPUN either was an undetected noncompliance or, at best, could be sanctioned under language of the pre-November 1996 technical specification because that movement involved offsite shipments, as opposed to the presently proposed activities that will involve the onsite ISFSI. Finally, the intervenors question why it was necessary to seek this amendment at all if, as GPUN asserts, the mid-1980s transfer of fuel assemblies from the reprocessing facility was in compliance with the prior, unamended language of Technical Specification 5.3.1.B. See id. at 10. NIRS and OCNW conclude that GPUN's motion should be denied.<sup>4</sup>

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<sup>4</sup> In establishing a schedule for summary disposition filings, we noted that the intervenors could, if they wished, seek to establish their need for discovery to respond to the licensee's motion. See LBP-96-23, 44 NRC at 166 n.20. The intervenors' response makes no mention of the need for discovery.

4. GPUN's Reply

In reply,<sup>5</sup> GPUN labels the intervenors' various claims "unpersuasive" because they are based on mere allegations, without supporting affidavits, evidence, or other authority. GPUN Reply at 2. The intervenors' attempt to lend regulatory significance to NUREG-0612 is, according to GPUN, a totally unsupported allegation that contradicts long-standing agency precedent regarding the weight to be given to such documents. GPUN also declares that, in light of this precedent and the staff's uncontroverted confirmation that NUREG-0612 was not intended to impose regulatory strictures, there is no genuine material issue regarding the references to NUREG-0612 "requirements" in various licensee and staff documents. See id. at 3-4.

Further, according to GPUN, both it and the staff have established Technical Specification 5.3.1.B was not adopted in response to NUREG-0612 and, in any event, was never intended to prevent moving a shield plug over a DSC containing spent fuel. In this regard, the licensee classifies as "mere allegation and suspicion" the intervenors' charge that an earlier offsite cask movement was an undetected noncompliance and maintains the

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<sup>5</sup> Under our schedule governing dispositive motion filings, the intervenors were entitled to file a reply to the staff's response to GPUN's motion. See LBP-96-23, 44 NRC at 166. They made no such filing, however.

intervenors' asserted distinction between offsite and onsite transportation is meaningless. Id. at 5-7.

Finally, GPUN argues the intervenors' claim that consistent with NUREG-0612 it must use a single-failure-proof crane to move any heavy load over spent fuel should be rejected. This assertion is deficient, GPUN declares, because it is based on a misreading of NUREG-0612 and is an untimely new basis for the intervenors' contention that they have failed to show meets the late-filing standards of 10 C.F.R. § 2.714(a). See id. at 7-9.

C. Discussion

1. Applicability of Technical Specification 5.3.1.B to DSC Shield Plug Movements

In assessing the various arguments made by GPUN in support of its dispositive motion, we begin with the licensee's assertion the requested amendment is really unnecessary because Technical Specification 5.3.1.B, as it existed prior to the November 1996 "no significant hazards consideration" amendment, already permitted GPUN to place the shield plug over the irradiated fuel in a DSC. As described above, GPUN has put forth a host of explanations as to why this is so, including references to staff and licensee interpretations of that language and staff interpretations of similar language in the agency's standard technical specification and other facility technical specifications relating to movement of heavy loads.



As GPUN acknowledges, however, the first interpretational tool is the plain meaning of the language of the provision in question. See GPUN Dispositive Motion at 12 & n.6. In this instance, GPUN asserts, the references in Technical Specification 5.3.1.B to "stored irradiated fuel" in the "the spent fuel storage facility" settle the issue of its meaning. According to GPUN, the CDPS containing the DSC is not a "storage" area nor is irradiated fuel in the assemblies in the DSC "stored."

The problem with this claim, at least insofar as it is asserted to establish a clear and unambiguous meaning, is that it does not account adequately for the physical circumstances regarding spent fuel handling at OCNGS as they have been presented to us. As we noted in our previous determination, see LBP-96-23, 44 NRC at 149, the CDPS is a cylinder physically located within and attached to the walls of one corner of the OCNGS spent fuel pool - i.e., the OCNGS "spent fuel storage facility" - in which irradiated fuel is stored. The CDPS is configured this way so that while spent fuel assemblies are being loaded into a DSC, those assemblies can remain submerged in the water that fills the spent fuel pool and provides shielding and residual heat removal for the stored spent fuel. Given this physical configuration, at least so long as the irradiated fuel remains within the confines of the spent fuel pool, the

distinction between "storage" and "packaging/transfer" upon which GPUN seeks to rely is, in our estimation, too problematic to allow us to conclude the language of Technical Specification 5.3.1.B is "unambiguous" in this regard.

This ambiguity in the language of Technical Specification 5.3.1.B necessarily causes us to look for other clues to its meaning. GPUN asserts, and the staff seemingly agrees, that a number of circumstances support its reading of this technical specification, including GPUN's past practice under this provision and the staff's interpretation of similar provisions. The licensee, however, does not make reference to one interpretational tool that has been found significant in resolving language construction issues — a subsequent enactment that declares the intent of an earlier provision. As the United States Supreme Court has noted, such later enactments generally are to be given "great weight" in resolving a construction problem. See Red Lion Broadcasting v. FCC, 395 U.S. 367, 380-81 (1969); cf. 17A Am. Jur. 2d Contracts § 388, at 415-16 (1991) (when contract terms are ambiguous and parties have made other contracts concerning the same subject matter, those instruments can be examined together to aid in interpretation). The relevance of such a subsequent enactment seems particularly telling here when

the parties who drafted and approved the revision declare it was intended to clarify any ambiguity in the prior version. See GPUN Dispositive Motion at 11; Staff Response at 7.

The language of the recent revision to this technical specification makes it readily apparent the interpretation of its predecessor's meaning now proffered by GPUN is not correct. After stating that heavy loads shall not be moved over stored irradiated fuel in the spent fuel storage facility, amended Technical Specification 5.3.1.B.1 adds the proviso "except as noted in 5.3.1.B.2." Amended Technical Specification 5.3.1.B (emphasis supplied). Amended Technical Specification 5.3.1.B.2 then states that the shield plug may be moved over irradiated fuel in a DSC in the CDPS.

The use of the term "except" in paragraph one of amended Technical Specification 5.3.1.B. to describe the shield plug heavy load activity sanctioned in paragraph two, plainly establishes that, but for its specification as an exception, this activity would be prohibited by paragraph one. Otherwise, there would be no reason to create the exception. As the GPUN technical specification is now worded, therefore, it indicates quite clearly that, without the specified exception, the DSC shield plug activity over irradiated fuel that is the focus of GPUN's amendment request would be a prohibited heavy load activity.

And because the prohibition language in amended paragraph 5.3.1.B.1 is indistinguishable from that in Technical Specification 5.3.1.B prior to that recent revision, the construction rule regarding subsequent enactments counsels that, affording considerable weight to an unambiguous expression of intent by the drafting and enacting parties, we give a parallel construction to these identical provisions.

We must, therefore, reject GPUN's claim it is entitled to summary disposition because the shield plug movement activity in question is not covered under the terms of Technical Specification 5.3.1.B prior to its revision in November 1996.<sup>6</sup>

## 2. The Status and Meaning of NUREG-0612

Having concluded that the technical specification at issue here would, unless amended, preclude the licensee's planned shield plug movement activity, we next consider

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<sup>6</sup> In this connection, we are troubled by the staff's apparent claim that under the language of Technical Specification 5.3.1.B before its recent revision, the licensee was free to treat the movement of the shield plug over the DSC as either covered or not covered by that license requirement. See Staff Response at 8-9. Although we have no quarrel with the general proposition there may be more than one way to comply with a regulatory requirement, see *id.* at 6, as a matter of logic we are hard pressed to understand how a directive that states heavy loads "shall not" be moved over irradiated fuel can be read to both sanction and prohibit the same heavy load movement activity. From an enforcement perspective, such an interpretation renders that "requirement" essentially meaningless.

whether, as the intervenors assert, the amendment proposed by GPUN and adopted by the staff in November 1996 is appropriate in light of NUREG-0612. As we have explained, the intervenors claim Technical Specification 5.3.1.B cannot be amended as GPUN has asked because to do so would violate the precepts of NUREG-0612 as it implements the agency's defense-in-depth approach to regulation.<sup>7</sup>

a. Background on NUREG-0612. In analyzing this assertion, we begin with an overview of NUREG-0612, the central focus of the intervenors' contention before the Board. This 1980 document sets forth the results of a staff attempt to make a systematic examination of the adequacy of then-existing measures for handling of "heavy loads" at nuclear power plants.<sup>8</sup> In its initial summary, the report states:

This report provides 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

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<sup>7</sup> As we noted in our October 1996 issuance, "[t]he '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.'" LBP-96-23, 44 NRC at 162 n.14 (quoting Vermont Yankee Nuclear Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 813 (1974)).

<sup>8</sup> In using the term "heavy load" in this decision, we adopt the definition of that phrase found in NUREG-0612, which classifies a "heavy load" as "any load that weighs more than the combined weight of a single spent fuel assembly and its associated handling tool for the specific plant in question." NUREG-0612, at 1-2.

be taken to assure safe handling of heavy loads. These recommendations include: (1) a program should be initiated to review operating plants against the guidelines developed in [this report]; (2) certain interim measures should be taken for operating plants until completion of this review program; (3) changes to certain Standard Review Plans and Regulatory Guides should be made to incorporate the guidelines in this report; (4) changes to technical specifications should be made after completion of the review; and (5) a task should be initiated to establish guidelines for the control of small loads near spent fuel. The guidelines proposed include definition of safe load paths, use of load handling procedures, training of crane operators, guidelines on slings and special lifting devices, periodic inspection and maintenance for the crane, as well as various alternatives that include: use of a single failure proof handling system, use of mechanical stops or electrical interlocks to keep heavy loads away from fuel or safe shutdown equipment, or analyzing the consequences of postulated heavy load drops to show these are within acceptable limits.

NUREG-0612, at iii. The report then goes on to provide a generic analysis of the consequences of heavy load drops, including the "potential problem areas" of offsite releases from heavy load drops on spent fuel or safe shutdown equipment and recriticality from fuel reconfiguration; a survey of licensee information on load handling operations at reactor facilities; a review of historical data on crane operations; guidelines that describe alternative approaches for heavy loads control; and a program for implementing the

suggested guidelines at operating facilities, including suggested standard review plan, regulatory guide, and technical specification changes. See id. at v-vi.

As highlighted by the parties in their various filings, several portions of this NUREG document potentially are pertinent to any resolution of the merits of the intervenors' contention. For instance, as we previously noted, in describing the results of its survey on load handling procedures, NUREG-0612 indicates that OCNCS was one of twenty-seven plants without a technical specification prohibiting handling of heavy loads over spent fuel. See id. at 3-8, 3-9 (Table 3.2-1).

Thereafter, in section 5 of the report entitled "GUIDELINES FOR CONTROL OF HEAVY LOADS," addressing the general problem of load drop accidents the report declares that although existing operating facility heavy load handling measures cover certain of the potential problem areas, they nonetheless varied widely and did not adequately address the major causes of load handling accidents. The report identifies these causes as operator errors, rigging failures, lack of adequate inspection, and inadequate procedures. Subsequently, in section 5.1 of the report under the heading "Recommended Guidelines," NUREG-0612 sets forth a series of items designed to upgrade the measures already in effect "[t]o provide adequate measures that



minimize the occurrence of the principal causes of load handling accidents and to provide an adequate level of defense-in-depth for handling heavy loads near spent fuel and safe shutdown systems." Id. at 5-1.

According to the report, the objectives of the alternative approaches it sets forth as guidelines for controlling heavy loads are to assure either (1) an extremely small load drop potential, or (2) for each of the potential problem areas, satisfaction of four "evaluation criteria." These criteria include keeping any damaged spent fuel releases well within 10 C.F.R. Part 100 limits; preventing fuel and storage rack damage from resulting in a configuration that creates an effective multiplication factor ( $k_{eff}$ ) larger than 0.95; keeping reactor vessel or spent fuel pool damage from resulting in water leakage that would uncover the fuel; and limiting damage to redundant or dual safe shutdown path equipment so as not to result in a loss of required safe shutdown functions. See id. at 5-1. NUREG-0612 then goes on to provide:

After reviewing the historical data available on crane operations, identifying the principal causes of load drops, and considering the type and frequency of load handling operations at nuclear power plants, the NRC staff has developed an overall philosophy that provides a defense-in-depth approach for controlling the handling of heavy loads. This philosophy encompasses an intent to prevent as well as mitigate the consequences of postulated accidental

load drops. The following summarizes this defense-in-depth approach:

- (1) Provide sufficient operator training, handling system design, load handling instructions, and equipment inspection to assure reliable operation of the handling system; and
- (2) Define safe load travel paths through procedures and operator training so that to the extent practical heavy loads avoid being carried over or near irradiated fuel or safe shutdown equipment; and
- (3) Provide mechanical stops or electrical interlocks to prevent movement of heavy loads over irradiated fuel or in proximity to equipment associated with redundant shutdown paths.

Certain alternative measures may be taken to compensate for deficiencies in (2) and (3) above, such as the inability to prevent a particular heavy load from being brought over spent fuel (e.g., reactor vessel head). These alternative measures can include: increasing crane reliability by providing dual load paths for certain components, increased safety factors, and increased inspection as discussed in Section 5.1.6 of this report; restricting crane operations in the spent fuel pool area (PWRs) until fuel has decayed so that off-site releases would be sufficiently low if fuel were damaged; or analyzing the effect of postulated load drops to show that consequences are within acceptable limits. Even if one of these alternative measures is selected, (1) and (2) above should still be satisfied to provide maximum practical defense-in-depth.

Thereafter, under the heading of "General," in section 5.1.1 NUREG-0612 describes seven criteria that all plants should satisfy in handling heavy loads that could be brought over or in the proximity of safe shutdown equipment or irradiated fuel in any plant area. These include (1) defining safe load paths to minimize the potential that any dropped heavy load would impact irradiated fuel or safe shutdown equipment; (2) developing procedures, such as premovement inspection criteria, to cover heavy load handling operations over or in the proximity of irradiated fuel or safe shutdown equipment; (3) training crane operators to conduct themselves in accordance with applicable American National Standards Institute (ANSI) standards; (4) ensuring that special lifting devices, such as spent fuel cask yokes and slings, satisfy applicable ANSI guidelines; (5) ensuring that lifting devices that are not specially designed meet applicable ANSI guidelines; (6) inspecting, testing, and maintaining cranes in accordance with ANSI standards; and (7) designing cranes to meet ANSI and Crane Manufacturers Association of America (CMAA) standards.

Finally, relative to reactor buildings for BWR facilities such as OCNGS, in section 5.1.4 NUREG-0612 declares:

To assure that the evaluation criteria of Section 5.1 are satisfied one of the

following should be met in addition to satisfying the general guidelines of Section 5.1.1:

- (1) The reactor building crane, and associated lifting devices used for handling the above heavy loads, should satisfy the single-failure-proof guidelines of Section 5.1.6 of this report.

OR

- (2) The effects of heavy load drops in the reactor building should be analyzed to show that the evaluation criteria of Section 5.1 are satisfied. The loads analyzed should include: shield plugs, drywell head, reactor vessel head; steam dryers and separators; refueling canal plugs and gates; shielded spent fuel shipping casks; vessel inspection platform; and any other heavy loads that may be brought over or near safe shutdown equipment as well as fuel in the reactor vessel or the spent fuel pool. Credit may be taken in this analysis for operation of the Standby Gas Treatment System if facility technical specifications require its operation during periods when the load being analyzed should be handled. The analysis should also conform to the guidelines of Appendix A.

NUREG-0612, at 5-6 to -7. And, as an interim measure to provide reasonable assurance that no spent fuel shipping casks or other heavy loads were handled over the spent fuel pool until the section 5.1 guidelines were finally implemented, NUREG-0612 declares that facility technical specifications "should be upgraded to prohibit handling of heavy loads over the spent fuel pool." Id. at 5-18.

The parties' filings also suggest that two agency generic letters issued in the wake of NUREG-0612 are relevant to our inquiry here. The first, an unnumbered letter dated December 22, 1980, set forth a two-stage process for licensee responses regarding compliance with the recommendations of NUREG-0612.<sup>9</sup> As outlined in the December 1980 letter, in Phase I licensees were to identify their load handling equipment within the scope of NUREG-0612 and describe how their use of that equipment complied with the six general criteria specified in NUREG-0612 section 5.1.1. Thereafter, in Phase II, BWR licensees like GPUN were to provide a second response showing that, consistent with NUREG-0612 section 5.1.4, either single-failure-proof lifting equipment was provided or such equipment was not needed, as demonstrated in a detailed load drop analysis. See GPUN Dispositive Motion, exh. B, encl. 3, at 2-7 (Letter from Darrel G. Eisenhut, Director, Division of Licensing, to All Operating Plant Licensees, Operating License Applicants, and Construction Permit Holders (Dec. 22, 1980)). The generic letter, however, did not request that licensees undertake any technical specification change regarding heavy loads, as had been suggested in NUREG-0612.

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<sup>9</sup> On February 3, 1981, the staff's December 22 letter was supplemented by Generic Letter 81-07, which provided missing pages for one of the enclosures.

The other correspondence of potential import is Generic Letter 85-11, dated June 26, 1985, in which the staff described its resolution of Phase II. See id., exh. D (Letter from Hugh L. Thompson, Jr., Director, Division of Licensing, to All Licensees for Operating Reactors (June 26, 1985)). In an enclosure to this letter, the staff stated that, based on its comprehensive review of licensee Phase I responses, licensee satisfaction of the Phase I guidelines had assured that the potential for a load drop accident was extremely small. Thus, the staff found that Phase I guidelines were "adequately providing the intended level of protection against load drop accidents." Id., encl. 1, at 3.

In this generic letter, the staff also noted that although all licensees had provided a Phase II submittal, because the staff considered Phase II an enhancement of Phase I, it had decided to conduct a pilot program review of a limited number of plants to aid in deciding whether to undertake an equally extensive review of all Phase II submittals. According to the staff, based on its pilot program review of twelve operating reactor sites as well as its review of five operating license applicants, it had concluded most risk associated with carrying heavy loads involved possible damage to spent fuel rather than safe shutdown systems. The staff further declared that, as a

result of licensee Phase I activities, the handling of heavy loads over spent fuel had been limited to the extent practical but, where necessary, was being performed in conformance with Phase I guidelines. See id. at 3-4.

There remained, however the question of whether under Phase II licensees wishing to handle heavy loads over spent fuel would have to either install costly single-failure-proof cranes or perform costly detailed load drop analyses. The staff concluded that with Phase I implementation improvements and based on its review of individual licensee Phase II submittals, it did not perceive a significant enough benefit in requiring costly conversion to single-failure-proof cranes or find any outstanding plant specific concerns. Thus, the staff declared Phase II was considered complete without further staff or licensee action. See id. at 4-6.

b. Status of NUREG-0612. With this background in mind, we turn to the question of the status of NUREG-0612 as it impacts on the requested GPUN technical specification change. The intervenors have asserted the provisions of NUREG-0612 effectively bar the requested revision. Although both the licensee and the staff vigorously oppose this notion, as we observed in accepting the intervenors' legal contention framing their NUREG-0612-based challenge to GPUN's license amendment, there are any number of instances



in licensee and staff documents in which the terms "NUREG-0612" and "requirement" are linked. If NUREG-0612 did indeed establish "requirements," its provisions seemingly would be on a par with legally binding directives such as a statute, regulation, license condition, or order and so might, depending on its terms preclude adoption of a requested technical specification change.

As both the licensee and the staff point out, however, the Commission previously has declared that a staff report bearing the NUREG designation, such as NUREG-0612, does not fall into this category. See The Curators of the University of Missouri, CLI-95-1, 41 NRC 71, 98 (1995). Instead, at best, "it serves as guidance, setting forth but one method for meeting the applicable regulatory requirements . . . . In other words, that document 'is treated simply as evidence of a legitimate means for complying with regulatory requirements.'" Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986) (quoting Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), aff'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983)). Certainly, nothing in NUREG-0612 itself suggests the provisions of that document should have any other standing. See, e.g., NUREG-0612, at iii, 1-4 (NUREG-0612 provides the staff's "recommendations" and "guidelines" for

actions that should be taken to assure safe handling of heavy loads). See also Staff Response, attach. 2, at 4 (NUREG-0612 was intended to provide guidance and acceptance criteria, not regulatory requirements) (Affidavit of Harold Walker in Support of the NRC Staff's Response In Support of the Licensee's Motion for Summary Disposition (Dec. 6, 1996) at 4); id., exh. 2, at 2 (NRC positions communicated to licensees in NUREG reports are not binding requirement unless formally issued as regulations or included in order or as part of a permit or license) (NRC Management Directive Handbook 3.7, at 8 (rev. Feb. 9, 1995)).

With this Commission explanation of the status of NUREG documents generally as well as NUREG-0612's own description of the scope of its provisions, the question becomes whether anything on the record before us establishes that report's terms should be given a different status. As we have pointed out, there are various licensee and staff references to NUREG-0612 "requirements." Nonetheless, when viewed against the Commission's clear declaration about the status of NUREG documents, we can only conclude these otherwise unexplained references do not accurately reflect the status of that document and its provisions. That they suggest an apparent misunderstanding of this document's status is unfortunate, but in this instance these misstatements do not change the fundamental nature of this NUREG document or its

provisions. NUREG-0612 does not itself contain "requirements," but rather staff "guidance" on assuring safe handling of heavy loads.<sup>10</sup>

c. Meaning of NUREG-0612. Ultimately, however, whether the provisions of NUREG-0612 are found to constitute guidance or requirements, if GPUN's amendment does not violate that document's dictates, then, as least as the issue before us has been framed by the intervenors, summary disposition should be entered in favor of GPUN. In accepting the intervenors' contention as litigable, the factor the Board found significant in this regard was the apparent timing of the adoption of Technical Specification 5.3.1.B as reflected in NUREG-0612.

The seeming adoption of this technical specification after the publication of NUREG-0612 suggested that the heavy

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<sup>10</sup> As we have observed above, in several generic letters the staff both "requested" that licensees take various actions to conform with the recommendations on handling heavy loads outlined in NUREG-0612 and "required" that licensees provide a report detailing their efforts in this regard. In contrast to the reporting component in these generic letters, which seemingly would constitute a "requirement," see 10 C.F.R. §§ 2.204, 50.54(f), the generic letters' compliance requests did not constitute "requirements" in the absence of some additional regulatory directive such as an order or a regulation mandating compliance. Cf. 60 Fed. Reg. 34,381, 34,392 (1995) (agency expects licensees to adhere to commitments resulting from administrative actions such as confirmatory action letters and will issue appropriate orders to ensure commitments are met), reprinted in U.S. Nuclear Regulatory Commission, Office of Enforcement, NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" at 14 (July 1995).

load movement prohibition it contained might, as the intervenors have maintained, reflect the staff's ultimate judgment about how GPUN should conform with the provisions of NUREG-0612. It is apparent, however, that as GPUN has asserted (without contradiction from the intervenors or the staff), the information in NUREG-0612 regarding the OCNCS technical specification was incorrect. In fact, Technical Specification 5.3.1.B was adopted in 1977, some three years before NUREG-0612 was published. See GPUN Dispositive Motion at 19 & n.13; Fornicola Affidavit at 3. Thus, the timing of this technical specification's adoption provides no support for the intervenors' assertion the technical specification's language prohibiting the movement of heavy loads over stored spent fuel was intended to reflect a NUREG-0612-dictated irrevocable prohibition for OCNCS.<sup>11</sup>

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<sup>11</sup> To be sure, a technical specification that is not subject to revision would not be the norm. By providing in section 187 of the Atomic Energy Act that agency-issued licenses are "subject to amendment," 42 U.S.C. § 2237; see also, e.g., 10 C.F.R. § 50.90, the Congress contemplated that any license provision could be changed, at least so long as the revision sought was not inimical to the public health and safety or the common defense and security. Consequently, in the absence of language in the license (or some other regulatory requirement) that makes manifest a license provision's immutability, the question in a license amendment proceeding generally is whether the requested change is consistent with applicable agency regulatory strictures and any suitable guidance.

As is apparent from a reading of Technical Specification 5.3.1.B, nothing on the face of that provision suggests there is any basis for finding it an irrevocable  
(continued...)

This leaves only the provisions of NUREG-0612 as the supporting source for the intervenors' assertion that OCNCS Technical Specification 5.3.1.B cannot be revised to permit hauling heavy loads such as the DSC shield plug over spent fuel, including the fuel inside a DSC within the CDPS in the spent fuel pool.<sup>12</sup> The problem for the intervenors is that the NUREG-0612 guidance in fact contemplates there are instances when, with the proper safeguards, heavy loads can be hauled over spent fuel.

As we noted above, NUREG-0612 recommends that, consistent with the agency's defense-in-depth approach, in handling heavy loads operator training, load handling

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(...continued)

license condition. The same is true for the other regulatory requirements that the staff has identified as potentially pertinent to GPUN's requested technical specification change. See Staff Response, attach. 2, at 4-5. These include General Design Criterion (GDC) 2, which establishes design bases for protection against natural phenomena such as earthquakes; GDC 4, which concerns design bases for environmental and dynamic effects such as missiles; GDC 5, which sets forth design bases for shared structures, systems, and components that are important to safety; and GDC 61, which establishes design criteria for fuel storage and handling. See 10 C.F.R. Part 50, App. A, § I, Criteria 2, 4, and 5, § VI, Criterion 61.

<sup>12</sup> In responding to the licensee's summary disposition motion, the intervenors have made no claims regarding the applicability of Regulatory Guides 1.13 and 1.29, which concern the design basis for spent fuel storage facilities and seismic design classification, respectively. See Staff Response, attach. 2, exhs. 3 and 4 (U.S. Nuclear Regulatory Commission, Office of Standards Development, Regulatory Guide 1.13, Spent Fuel Storage Facility Design Basis (rev. 1 Dec. 1975) (for comment); id. Regulatory Guide 1.29, Seismic Design Classification (rev. 3 Sept. 1978)).

instructions, and equipment inspections be provided sufficient to assure reliable handling system operation; safe load paths be defined through procedures and operator training so that "to the extent practical" heavy loads are not carried over or near spent fuel; and mechanical stops and electrical interlocks be provided to prevent movement of heavy loads over irradiated fuel. NUREG-0612, at 5-2 (emphasis supplied). NUREG-0612 then goes on to declare that if there are deficiencies concerning these measures "such as an inability to prevent a particular heavy load from being brought over spent fuel," alternative measures may be utilized, such as increasing crane reliability or analyzing postulated load drop effects to show that any consequences are within acceptable limits, so long as those measures in combination with the above-specified defense-in-depth measures, will provide the "maximum practical defense-in-depth." *Id.* (emphasis supplied).

With its repeated emphasis on "practicality," the upshot of this guidance is not that heavy loads can never be moved over irradiated fuel. Rather, NUREG-0612 seeks to ensure that through the use of a combination of preventative measures — including crane operator training, systems and equipment upgrades and inspections, load handling instructions and procedures, and load movement planning that sets practical limits on spent fuel exposure to heavy



loads — the risks inherent in hauling large loads over spent fuel are reduced to permissible levels. NUREG-0612 clearly recognizes it sometimes is necessary to move heavy loads over spent fuel, as is the case with the DSC shield plug, but that such action should be taken only after the risks involved have been confined at acceptable levels through the implementation of appropriate safeguards.

In contesting GPUN's summary disposition motion, with one exception the intervenors have not sought to challenge the adequacy of GPUN's implementation of the various preventative measures (such as ensuring that crane operators are adequately trained and load handling procedures are developed) that NUREG-0612 suggests should be put in place to ameliorate the risks inherent in heavy load hauling. This single exception is their argument that, consistent with NUREG-0612, GPUN can move the shield plug only by installing and using a "single-failure-proof" crane, which GPUN does not have.<sup>13</sup>

As we described in the background discussion above, the staff once contemplated that for BWR facilities like OCNGS to comply with the guidance in NUREG-0612, besides providing the various preventative measures discussed above, a

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<sup>13</sup> Although GPUN has challenged this claim as a late-filed basis for the intervenors' contention that they have not attempted to show meets the criteria for late-filed submissions, we consider this assertion within the confines of the intervenors' admitted legal contention and basis.



licensee would have to show (1) the reactor building crane and associated lifting devices met the single-failure-proof guidelines,<sup>14</sup> or (2) the effects of any remaining potential heavy load drops events in the reactor building, including those involving shield plugs, would satisfy the evaluation criteria in NUREG-0612 section 5.1, including its specification that any releases fall within 10 C.F.R. Part 100 limits and any fuel reconfiguration not exceed an effective multiplication factor of 0.95. Indeed, as it was outlined in the staff's December 1980 generic letter, this was to be the second phase of the staff's NUREG-0612 guidance implementation program.

It also is apparent, however, that the staff later determined, based on its assessment of the Phase I implementation activities of licensees such as GPUN and a pilot program review of a selection of the submittals provided by all licensees addressing the Phase II criteria, that this Phase II activity was not necessary. Describing the results of Phase I in Generic Letter 85-11, the staff declared:

Our review has indicated that satisfaction of the Phase I guidelines assures that the potential for a load drop is extremely small. We have noted

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<sup>14</sup> As described in NUREG-0612, a "single-failure-proof" crane must have certain active components meeting improved redundancy or duality evaluation criteria that render the crane highly reliable. See NUREG-0612, at 5-7.

improvements in heavy load handling procedures and training and crane and handling tool inspection and testing. These changes have been geared to limiting the handling of heavy loads over safety-related equipment and spent fuel to the extent practical, but where this can not be avoided, to accomplishing it with the operational and other features of the program implemented in Phase I. We therefore conclude that the guidelines of Phase I are adequately providing the intended level of protection against load drop accidents.

GPUN Dispositive Motion, exh. D., encl. 1, at 2-3 (emphasis supplied). At the same time, based on its Phase II pilot program review, the staff found that with the Phase I improvements, there was no cost/benefit justification for requiring licensees to perform costly detailed load analyses or install costly single-failure-proof cranes. The staff concluded:

[W]e believe the Phase I implementation has provided sufficient protection such that the risk associated with potential heavy load drops is acceptably small. We further conclude that the objective identified in Section 5.1 of NUREG-0612 for providing "maximum practical defense in depth" is satisfied by the Phase I compliance, and that the Phase II analyses did not indicate the need to require further generic action at this time. This conclusion has been confirmed by the results obtained from the Phase II pilot program and additional Phase II reviews, which identified no residual heavy loads handling concerns of sufficient significance to demand further generic action. All plants have examined their load handling practices against the

recommendations of Phase II and submitted the Phase II report. In this way, the utilities were required to identify any unexpected problems to the staff.

Id. at 5-6. Thus, without installing a single-failure-proof crane, reactor licensees, including GPUN, were found by the staff to have complied with the guidance in NUREG-0612 as it was intended to implement the agency's defense-in-depth principle.

The intervenors have presented nothing that calls into question the efficacy of the staff's June 1985 generic determination not to impose single-failure-proof crane installation on GPUN (or any other licensee) as a condition for compliance with the guidance it set forth in NUREG-0612.<sup>15</sup> Nor have the intervenors presented anything that would lead us to conclude relative to the technical specification at issue here that a different result is required in order to comply with the staff's NUREG-0612 guidance as set forth in that document or the subsequent generic letters describing how that guidance was to be

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<sup>15</sup> Although it might be asserted the staff's decision, as reflected in Generic Letter 85-11, not to mandate single-failure-proof crane installation for GPUN simply reflects a staff recognition of the then-existing prohibition on heavy load handling found in Technical Specification 5.3.1.B, this does not account for the fact there apparently were numerous other facilities without such a technical specification that were not required to adopt such a license condition or to implement the initial NUREG-0612 guidance regarding single-failure-proof crane installation.

implemented.<sup>16</sup> In the context of this case, therefore, we find nothing in NUREG-0612 (whether or not it is considered a regulatory requirement) that would, as a matter of law,

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<sup>16</sup> As outlined above, under the terms of the staff's December 1980 generic letter, in the absence of a single-failure-proof crane GPUN would have been required to provide an analysis showing that any heavy load drop accident involving the spent fuel in the DSC/CDPS would satisfy the evaluation criteria in section 5.1 of NUREG-0612, including showings that any resulting releases would not violate 10 C.F.R. Part 100 limits and that any ensuing fuel reconfiguration would not result in an effective multiplication factor exceeding 0.95. As the staff recently has made clear, however, the closeout of Phase II under Generic Letter 85-11 did not relieve licensees of the responsibility to evaluate any planned new heavy load activities under their existing technical specifications to ensure those activities do not involve an unreviewed safety question that would warrant a license amendment. See Hearing Petition unnumbered attach. 6, at 5-6 (based on staff audit of GPUN submission claiming no unreviewed safety issues in proposal to haul loaded DSC/TC over safety-related equipment while OCNGS is operating, staff advises licensees of responsibility to evaluate heavy load activities and requires report discussing need for any technical specification changes to address planned heavy load activities) (U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (NRR), 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)).

Subsequent to the deadline for filing contentions, GPUN made available to the staff and the intervenors several "worst case" analyses that appear to address the NUREG-0612 evaluation criteria. See LBP-96-23, 44 NRC at 155-56; see also GPUN Dispositive Motion, exh. A., encl. 2, at 3-5 (U.S. Nuclear Regulatory Commission, NRR, Safety Evaluation of [NRR] Related to Amendment No. 167 to Facility Operating License No. DPR-16 [GPUN] and Jersey Central Power & Light Company [OCNGS] Docket No. 50-219 (Nov. 7, 1996)). The intervenors have not made any attempt to contest the validity of those analyses in conformance with the standards governing late-filed contentions and bases. See LBP-96-23, 44 NRC at 163 n.16.

preclude the adoption of GPUN's requested technical specification revision.

### III. CONCLUSION

Contrary to the assertions of GPUN and the staff, we find that, prior to its recent amendment pursuant to the staff's November 1996 "no significant hazards consideration" determination, OCNGS Technical Specification 5.3.1.B did apply to the movement of heavy loads over irradiated fuel in a DSC within the spent fuel pool CDPS. We also find, however, that GPUN has established there is no genuine issue as to any material fact and it is entitled to a judgment as a matter of law on its claim that, contrary to the intervenors' contention, nothing in the guidance in NUREG-0612 precludes the grant of the technical specification revision GPUN has sought.

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For the foregoing reasons, it is this thirty-first day of January 1997, ORDERED that:

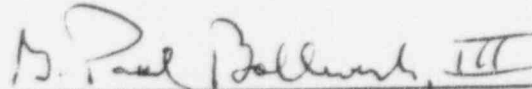
1. The November 15, 1996 motion for summary disposition of GPUN is granted and, for the reasons given in this memorandum and order, a decision regarding the merits of the intervenors' admitted legal contention is rendered in favor of GPUN.

2. Pursuant to 10 C.F.R. § 2.760, this decision will become the final decision of the Commission forty days from the date of its issuance (i.e., on Wednesday, March 12, 1997), unless a petition for review is filed in accordance with section 2.786, or the Commission directs otherwise.

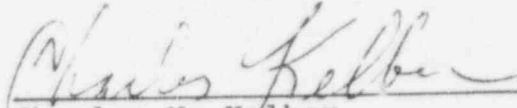
3. As the determination rendered herein terminates this proceeding before the Licensing Board, pursuant to 10 C.F.R. § 2.786(b)(1), within fifteen days after service of this memorandum and order a party may file a petition for review with the Commission on the grounds specified in section 2.786(b)(4). The filing of a petition for review is mandatory in order for a party to have exhausted its administrative remedies before seeking judicial review. Within ten days after service of a petition for review, any party to this proceeding may file an answer supporting or opposing Commission review. The petition for review and any

answers shall conform to the requirements of  
section 2.786(b)(2)-(3).

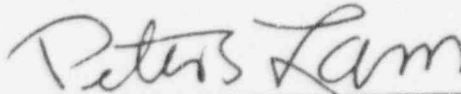
THE ATOMIC SAFETY  
AND LICENSING BOARD



G. Paul Bollwerk, III, Chairman  
ADMINISTRATIVE JUDGE



Charles N. Kelber  
ADMINISTRATIVE JUDGE



Peter S. Lam  
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 31, 1997



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 (LBP-97-1) DTD 1/31/97 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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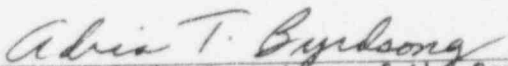
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Dated at Rockville, Md. this  
31 day of January 1997

  
Office of the Secretary of the Commission