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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

COMMISSIONERS:

'97 JAN 29 P1:06

Shirley Ann Jackson, Chairman  
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SERVED JAN 29 1997

In the Matter of )

LOUISIANA ENERGY SERVICES )

(Claiborne Enrichment Center) )

Docket No. 70-3070-ML

CLI-97-2

ORDER

The intervenor, Citizens Against Nuclear Trash (CANT), has filed before the Commission a Motion for Partial Reconsideration of CLI-96-8, 44 NRC 107 (1996). Both the NRC staff and the applicant, Louisiana Energy Services (LES), oppose the intervenor's motion. For the reasons stated in this order, we deny the motion.

In CLI-96-8, the Commission granted in part and denied in part CANT's petition for review of Atomic Safety and Licensing Board Initial Decision LBP-96-7, 43 NRC 142 (1996). The Licensing Board's decision resolved all contentions on emergency planning in favor of LES. The Commission in CLI-96-8 granted review of only one issue raised in CANT's petition for review: whether the Licensing Board erred in directing the NRC staff to clarify the intended role of the applicant's on-site fire brigade. 44 NRC at 108. The Commission went on to hold, based

on the pleadings and record before it, that the emergency plan description of the on-site brigade's size and training meets Commission requirements. 44 NRC at 110.

We deny CANT's motion for partial reconsideration for three independent reasons:

First, motions for reconsideration may not rest on a "new thesis."<sup>1</sup> Both LES and the NRC staff argue that CANT is now raising for the first time before the Commission the issue of the qualifications and training of the offsite fire department, an issue they say that CANT failed to raise in its Petition for Review of LBP-96-7. We agree with the NRC staff and LES. While CANT's petition for review contained references to the offsite fire department (at pp. 2, 5), the petition failed to articulate any explicit challenge to the Board's findings on the department's training and qualifications. A "cursory assertion" is insufficient to raise an issue for appeal. See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 272 (1996).<sup>2</sup>

Secondly, even if CANT had intended in its Petition for Review to raise the offsite fire department question, the

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<sup>1</sup> See, e.g., Central Elec. Coop. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981), quoting Tennessee Valley Authority (Hartville Nuclear Plant, Units 1A, 1 B & 2B), ALAB-418, 6 NRC 1, 2 (1977).

<sup>2</sup> The NRC staff and LES also claim that the motion for reconsideration was filed two days late, a point disputed by CANT. We do not decide this timing issue. Even taking into account all of CANT's arguments in its motion for reconsideration and its reply brief, and assuming arguendo that the motion is timely, we find no reason to grant it.

Commission in CLI-96-8 explicitly denied review of the Licensing Board's decision, "except for a single issue," involving "the intended role and training of the Applicant's on-site fire brigade." 44 NRC at 108. CANT, in requesting reconsideration of CLI-96-8, does not challenge the Commission's findings on the role and training of the on-site fire brigade. CANT instead requests the Commission to review the qualifications and training of the offsite fire department, a subject the Commission did not accept for review. Our rules contemplate petitions for reconsideration of a Commission decision on the merits, not petitions for reconsideration of a Commission decision to decline review of an issue. See 10 C.F.R. § 2.786(e).

Third, CANT's motion for reconsideration simply does not raise any compelling argument calling into question the Licensing Board's findings on the training and qualifications of the offsite fire department. The Board made several findings about the training and qualifications of the offsite fire department. See 43 NRC at 151-52, 158, 159-61, 164-65. It found the information outlined in the LES plan adequate under the "brief description" requirement of NRC rules (10 C.F.R. §§ 40.31(j)(3)(i), 70.22(i)(3)(i)); it properly based its findings on information contained in the record and found in either expert testimony or the LES emergency plan itself.

We are not persuaded by CANT's argument that the Licensing Board was unaware that the offsite fire department would be ultimately responsible for fighting a severe on-site fire at the

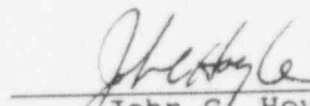
LES facility. The Board assumed from the SAR and the SER that the offsite fire department would be the primary organization responsible for controlling fires at the plant, and that the on-site fire brigade would merely "supplement" but not replace the local fire department. 43 NRC at 161. In referring the on-site brigade issue to the staff, the Board sought merely to confirm that the on-site brigade would not have a bigger fire-fighting role than the Board had found reflected in the SAR and SER, and accordingly to assure that the brigade did not need additional training or members. 43 NRC at 160-61. The Board expressed no concerns about the adequacy of the offsite fire department.

The intervenor's Motion for Partial Reconsideration of CLI-96-8 is denied.

It is so ORDERED.



For the Commission

  
John C. Hoyle  
Secretary of the Commission

Dated at Rockville, Maryland  
this ~~29~~<sup>30</sup> day of January, 1997.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(Claiborne Enrichment Center  
SNM License)

Docket No.(s) 70-3070-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM ORDER (CLI-97-02) 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)70-3070-ML  
COMM ORDER (CLI-97-02)

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Dated at Rockville, Md. this  
29 day of January 1997

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