NUCLEAR REGULATORY COMMISSION ISSUANCES

October 1994

U.S. NUCLEAR REGULATORY COMMISSION

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NUCLEAR REGULATORY COMMISSION ISSUANCES

October 1994

This report includes the issuances received during the specified period from the Commission (CLI), the Atomic Safety and Licensing Boards (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM).

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or have any independent legal significance.

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U.S. NUCLEAR REGULATORY COMMISSION

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Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
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B. Paul Cotter, Jr., Chief Administrative Judge, Atomic Safety and Licensing Board Panel

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LICENSING BOARDS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Peter S. Lam
Thomas D. Murphy

In the Matter of

Docket No. IA-94-012
(ASLBP No. 94-697-06-EA)

KELLI J. HINDS
(Order Prohibiting Involvement in
Licensed Activities)

October 3, 1994

MEMORANDUM AND ORDER
(Approving Settlement Agreement and Dismissing Proceeding)

By immediately effective order dated May 23, 1994, the NRC Staff placed conditions on the involvement of Kelli J. Hinds in NRC-licensed activities. *See* 59 Fed. Reg. 28,433 (1994). Shortly thereafter, Ms. Hinds requested that this proceeding be convened to permit her to contest the validity of the Staff's order. *See* 59 Fed. Reg. 31,654 (1994). Now, by joint motion dated September 26, 1994, the parties request that we approve a September 9, 1994 settlement agreement they have provided and dismiss this proceeding without adjudication of any of the legal or factual matters at issue.

Pursuant to section 81 and subsections (b) and (o) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. §§ 2111, 2201(b), 2201(o), and 10 C.F.R. § 2.203, we have reviewed the parties' settlement accord to determine whether approval of the agreement and termination of this proceeding is in the public interest. On the basis of that review, and according due weight to the position of the Staff, we have concluded that both actions are consonant with

the public interest. Accordingly, we grant the parties' joint motion to approve the settlement agreement and dismiss this proceeding.

For the foregoing reasons, it is, this third day of October 1994, ORDERED that

1. The September 26, 1994 joint motion of the parties is *granted* and we *approve* their September 9, 1994 "Settlement Agreement," which is attached to and incorporated by reference in this Memorandum and Order.
2. This proceeding is *dismissed*.*

THE ATOMIC SAFETY AND
LICENSING BOARD

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Peter S. Lam
ADMINISTRATIVE JUDGE

Thomas D. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 3, 1994

*Copies of this Memorandum and Order are being sent this date to counsel for Ms. Hinds by facsimile transmission and to Staff counsel (without the accompanying attachment) by E-mail transmission through the agency's wide area network system.

ATTACHMENT 1

September 9, 1994

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Docket No. IA-94-012
(ASLBP No. 94-697-06-EA)

KELLI J. HINDS
(Order Prohibiting Involvement in
Licensed Activities)

SETTLEMENT AGREEMENT

On May 23, 1994, the NRC Staff (Staff) issued an Order Prohibiting Involvement in Licensed Activities (Effective Immediately) to Kelli J. Hinds. 59 Fed. Reg. 28433 (June 1, 1994) (Order).

On May 27, 1994, Ms. Hinds requested a hearing on the Order. In response to Ms. Hind's hearing request, an Atomic Safety and Licensing Board was established on June 13, 1994. 59 Fed. Reg. 31654.

After discussions between the Staff and Ms. Hinds, both the Staff and Ms. Hinds agree that it is in the public interest to terminate this proceeding without further litigation and without reaching the merits of the underlying Order, subject to the approval of the Atomic Safety and Licensing Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED by and between the NRC Staff and Kelli J. Hinds as follows:

1. The Staff agrees to withdraw Section IV.B.1 of the Order. The Staff further agrees to withdraw in its entirety requirement (1) of the third paragraph of Section III of the Order. Such withdrawals will become effective upon the approval of this Settlement Agreement by the Atomic Safety and Licensing Board.
2. Ms. Hinds agrees to withdraw with prejudice her request for and otherwise waives her right to a hearing in connection with this matter and waives any right to contest or otherwise appeal this Settlement Agreement once approved by

the Atomic Safety and Licensing Board. Such withdrawal will become effective upon approval of this Settlement Agreement by the Atomic Safety and Licensing Board.

3. All other provisions of the Order as issued to Ms. Hinds on May 23, 1994, will remain in effect.

4. The parties acknowledge that execution of this Settlement Agreement does not constitute any admission on the part of Ms. Hinds that she has violated any law or committed any wrongful act.

5. This Settlement Agreement constitutes full settlement with regard to Kelli J. Hinds and the NRC and the NRC agrees not to initiate or pursue any further administrative proceedings against Ms. Hinds arising out of the facts alleged in the Order dated May 23, 1994.

6. This Settlement Agreement serves only to settle the civil matter between Ms. Hinds and the NRC as set forth in IA 94-12. Nothing in this Settlement Agreement shall preclude criminal prosecution arising out of the facts alleged in the Order dated May 23, 1994.

FOR THE NRC STAFF:

FOR KELLI J. HINDS:

Susan S. Chidakel

Kelli J. Hinds

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

James P. Gleason, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of

Docket No. 40-8681-MLA-3
(ASLBP No. 94-693-02-MLA-3)
(Source Materials License
No. SUA-1358)

ENERGY FUELS NUCLEAR, INC.

October 21, 1994

MEMORANDUM AND ORDER
(Petition for Hearing)

INTRODUCTION

The Petitioner, Norman Begay (Begay), opposes the issuance of a license amendment to Energy Fuels Nuclear (EFN) and requests a hearing.¹ The amendment would authorize EFN to dispose at its White Mesa Mill in Blanding, Utah, of 2.6 million cubic yards of uranium mill tailings now stored at a Department of Energy uranium processing site in Monticello, Utah. Although not stated in the filings, it appears the reason for the proposed amendment is that the White Mesa Mill would be accepting tailings produced elsewhere, an act not contemplated under its initial license.² Begay's challenge is to demonstrate that

¹ Request for Hearing (May 14, 1984). NRC Staff (Staff), pursuant to 10 C.F.R. § 2.1213, indicates its intention to participate if a hearing is granted. See Staff Response to Begay Hearing Request at 2 n.3 (June 10, 1994)

² Source Materials License No. SUA-1358. It should be noted also that the Staff states in its first Response that most (of the tailings) are clearly 11(e)(2) (byproduct) materials, although there has been some question as to the classification of the vanadium pile. Staff Response at 3 n.5

the act of disposing of the remote tailings will affect him adversely in a way different from the activities already authorized at the White Mesa Mill. For his efforts, outlined below, the Presiding Officer finds that Begay has alleged such an impact and as a consequence has established threshold standing allowing party status in the proceeding.³

STANDARDS

Under the provisions of 10 C.F.R. § 2.1205, Begay is required to set forth his interest in the proceeding, how his interest would be affected by the issuance of the license amendment, and his “areas of concern” about the licensing activity that is the subject matter of the proceeding.⁴ The Presiding Officer must determine whether Begay’s specified areas of concern are germane to the subject matter of the proceeding and whether he meets the judicial standards for standing. Among other factors, the Presiding Officer must consider the nature of Begay’s right under the Atomic Energy Act to be made a party to the proceeding; the nature and extent of his property, financial, or other interests in the proceeding; and the possible effect of any order that may be entered in the proceeding upon his interests.⁵

AREAS OF CONCERN

In Begay’s hearing requests⁶ and through counsel at an informational conference held on September 22 in Monticello, Utah, he outlines three areas of concern which he alleges are germane to granting EFN the right to import and dispose of 2.6 million cubic yard of tailings: First, that the license amendment will bring “irreparable loss of cultural and archeological resources”; second that, “groundwater and drinking water [will be contaminated by] . . . further development of the White Mesa Mill site”; and finally, that there are “increased risks associated with the transportation of the mill tailings along Highway 191 from Monticello to Blanding.”⁷ These concerns will be addressed *seriatim*.

Archeological and Religious Resources

The Presiding Officer is impressed by the gravity of Begay’s concern for the antiquities, including human remains, that the EFN property and surrounding

³ Both the Licensee and Staff have withdrawn their objections to Begay’s hearing request. See Tr. 33, 36-37.

⁴ 10 C.F.R. § 2.1205(d).

⁵ 10 C.F.R. 2.1205(g).

⁶ Norman Begay Hearing Request dated May 14, 1994, and Supplemental Hearing Request dated July 14, 1994

⁷ Tr. 10-11.

lands may contain. As a member and representative of the Ute Tribe,⁸ Begay has intense cultural, emotional, and religious ties to the area known as White Mesa. It is not lost on the Presiding Officer that the entire area has been determined eligible for inclusion in the National Historic Register and that many of Begay's ancestors are buried in the area. Nor is the Presiding Officer less impressed by the importance to the Ute Tribe, as "host people,"⁹ of the recently documented, ancient Hopi temple located within 3 miles (and within sight) of the White Mesa Mill. Begay adequately expressed that his life is tied to this site and to White Mesa itself by a "spiritual feeling."

As explained at the informational conference, the matter of burials and ancient sites is probably more important to the Ute people than historical monuments would be to others. The Ute people "have a concept of Mother Earth that when their people are buried, they return to the Mother Earth."¹⁰ They have sacred rights and rituals that must be observed whenever a burial is discovered or disturbed in any way.¹¹ It is possible that the sacred rights of the Ute Tribe were violated in the past when ancient Native American habitation sites were surveyed, and in some cases excavated, as part of the development of the White Mesa Mill site. Members of the tribe learned recently of the whereabouts of the human remains and artifacts that were removed as a result of those activities.¹² Begay pleaded to the Presiding Officer, as a representative of the NRC, to "help us out."¹³ But in this respect, we are mandated to follow the Commission's regulations.

As compelling as they may be, there is little the Presiding Officer can do to alleviate Begay's concerns for Native American archeological resources, because those concerns arose from the initial issuance of the source materials license, not from the proposed amendment to that license. Cell 4, the site chosen for the disposal of the DOE tailings, was surveyed for archeological resources prior to the opening of the White Mesa Mill. Those habitation sites considered significant by the State archaeologists were excavated and their artifacts removed, apparently to the State Historical Museum in Salt Lake City. Begay does not allege that there are more resources located under Cell 4. Moreover, Begay, through his counsel, seems to concede that no archeological resources are immediately affected by the importation of the DOE tailings:

⁸ Begay became a member of the White Mesa Ute Tribal Counsel on October 1. Tr. 10.

⁹ The role of the host people would be those occupying the land today who hold it for the benefit of all Native American tribes who occupied it in the past and who left their ancestors buried there or left holy sites. Tr. 13.

¹⁰ Tr. 13.

¹¹ *Id.*

¹² Tr. 14.

¹³ Tr. 28.

If Energy Fuels is allowed to dispose of an additional 2.6 million yards of tailings, it would either fill up one or more, approximately one-and-a-half of the existing tailings ponds. If the market permits and they are able to process the full amount of ore which they are allotted or allowed under their license, they will have to build new tailings in addition to the area that has already been cleared and the areas where ponds have already been established. . . . I think we have to assume that they are going to process and produce as much as they are licensed to produce and if that means additional tailings ponds will be constructed, additional archeological sites will be disturbed or destroyed, that simply we have to assume today.¹⁴

Counsel acknowledges that any disturbance of archeological sites is linked to activities contemplated under the original source materials license and is not directly related to the importation of the DOE tailings.¹⁵

While no one can say whether the construction of the White Mesa Mill would have taken place given more vocal concern on the part of the Ute Tribe at that time,¹⁶ we may not revisit the initial licensing of the plant today. The scope of this hearing request is limited to the future importation and disposal of mill tailings from a remote site, nothing more. Therefore, since that activity will not impact on any archeological or religious resources, in any degree more than they could have under the existing license, Begay's concerns for those resources are not, in this limited context, germane to the subject matter of this proceeding. His allegations, therefore, cannot support an opportunity for hearing in this instance.

Water Resources

Begay stated in his filings and at the informational conference that over the past 8 years his drinking water has become noticeably discolored and odorous.¹⁷ He alleges that mandatory testing of the wells has indicated a steady increase within the past few years in the traces of copper and other minerals.¹⁸

As with the issue of archeological resources, we are constrained to view Begay's concern within the scope of the license amendment, not the EFN source materials license. It is evident that the water pollution complained of started years before the license amendment was contemplated. If it arose from activities at the White Mesa Mill, it arose as a result of activities under the original license — and those issues are not germane to this proceeding. Begay's proper

¹⁴ Tr. 15-16.

¹⁵ Conditions 15 and 16 of Source Materials License No. SUA-1358 specifically require EFN to avoid, where feasible, operations in certain archaeologically sensitive areas and to conduct archeological studies and/or recovery operations in other areas prior to disturbance. Moreover, archeological contractors must meet the approval of the State Historic Preservation Officer and certain standards under NRC oversight. Therefore, while these sites would be disturbed or destroyed, they would not be disregarded and lost.

¹⁶ The President of the Ute Tribal Organization appears to have agreed to the construction of the White Mesa Mill at the time the original EIS was done in 1979. Tr. 35. *See also* Staff Response to Supplement to Request for Hearing Filed by Norman Begay, Attachment at FES A-57.

¹⁷ Tr. 26.

¹⁸ Begay Supplemental Response at 2.

recourse in this instance is not with this Presiding Officer. He may seek a 10 C.F.R. § 2.206 determination from the Director of the NRC, under the agency's simplified procedures, on the issue that the original source material license is in some manner failing to protect the public's health and safety.¹⁹

However, the water resources issue should not be completely ruled out of this proceeding. The Staff has had a public meeting with EFN on groundwater concerns²⁰ and EFN has requested Begay to step forward with information concerning well completion data.²¹ It appears both sides would benefit from such information. It would therefore be prudent for Begay to put forth evidence detailing what specific effects the addition of 2.6 million cubic yards of tailings will have on his groundwater concerns even though it does not serve as a platform upon which to establish standing.

Transportation Issue

Begay alleges that the residents of the White Mesa community share their primary access road, Highway 191, with the White Mesa Mill.²² Because of the high volume of heavy-equipment traffic expected to be generated by the movement of the tailings from Monticello (approximately 27 miles north of the mill), Begay states that his safety, and that of his family, will be threatened. In the Final Environmental Statement prepared for the issuance of the original source material license, transportation issues involving the White Mesa Mill were addressed. Heavy-truck traffic was estimated at approximately 68 round trips daily between area mines and buying stations serving the mill.²³ As the FES notes, this traffic would have been disbursed over several roads leading to the buying stations.

The FES estimates the impact of shipments of ore from the buying stations to the mill. Based on the lifetime milling capacity for the mill, it was estimated that it would take 30-ton-capacity ore trucks over 22,500 trips per year to deliver the ore to the mill. The FES further estimates that this amount of truck traffic would produce accidents involving trucks at the rate of 7.6 per year.²⁴

At this point, we know little of the manner in which the Monticello tailings will be shipped to the White Mesa Mill. Counsel for Begay made an uncontested

¹⁹ In this respect, any of the injuries Mr. Begay alleges from the activities of the White Mesa Mill that his counsel claims were not given due consideration by the NRC in its original licensing action could form the basis for a 10 C.F.R. § 2.206 petition, including those issues arising in a religious context.

²⁰ Staff electronic memorandum, Turk to Pierce, August 9, 1994.

²¹ Tr. 33-34.

²² Request for Hearing at 2.

²³ NUREG-0556, Final Environmental Statement Related to Operation of White Mesa Uranium Project (May 1979) at 4.8.5.

²⁴ *Id.* at 5.3.2.

statement at the informational conference that trucks carrying tailings would be "coming or going, empty or full, every three minutes."²⁵ Moreover, he stated that this transportation scenario might take place 24 hours a day over an uncertain time period.²⁶ What we do know is that if all 2.6 million cubic yards of tailings were moved in 30-ton trucks, as assumed in the FES, it would take approximately 86,666 round-trips between Monticello and the White Mesa Mill.²⁷ The FES based its analysis of transportation impacts on 22,667 round-trips per year.²⁸

As stated before, the proposed license amendment must be viewed in light of activities already contemplated for the White Mesa Mill under its source materials license. If in fact there will only be 22,667 or fewer heavy-vehicle trips to the Mill each year, activities already contemplated under the Mill's license, Mr. Begay has shown nothing upon which to build a claim of injury. But this issue takes on a different light when viewed in terms of EFN's capability to move the Mill to full-capacity operation if the market for uranium picks up. In that light, the movement of tailings from Monticello could take place simultaneously with full-scale uranium production. In fact, any round-trips added to the highway would be beyond the assumptions used in the FES to calculate the impacts of heavy-equipment traffic under the source materials license. In this respect, Mr. Begay's concern clearly evolves as a possible consequence of the proposed amendment and not the existing source materials license. This is enough to bring the issue within the scope of this hearing and make it germane to the subject matter of the proceeding.

STANDING

In order to participate in this proceeding, Begay is required by 10 C.F.R. § 2.1205(d) to demonstrate that he also meets the judicial concepts of standing. He must show that the intended licensing action will cause injury in fact to an interest that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act.²⁹ Further, Begay must establish (a) that he personally has suffered or will suffer a distinct and palpable harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding.³⁰

²⁵ Tr. 21-22.

²⁶ *Id.*

²⁷ This assumes one cubic yard of tailings to equal one ton which could prove to be a conservative estimate.

²⁸ FES at 5.3.2.

²⁹ See *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993).

³⁰ See *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993).

Since Begay has made no concrete demonstration that his archeological and groundwater concerns are germane to the license amendment, we need not address further those concerns in their relation to standing.

Begay and his family live in the White Mesa Native American community within 5 miles of the White Mesa Mill. Begay says he and his family use the road running past the entrance to White Mesa Mill every day to reach Blanding. Begay alleges that his and his family's safety will be placed at risk due to increased heavy-vehicle traffic on the highway and the resulting higher rates of traffic accidents. As has been postulated above, truck trips may be increased under the license amendment.

Highway 191 from Blanding to the White Mesa Mill site narrows from a four-lane, service-oriented road, to a two-lane road as it leaves the Blanding commercial district and heads toward the mill site. Begay states that the road is often covered by snow and ice in the winter months and trucks to the mill could easily run off the road.³¹

Begay has alleged a potential injury to the health and safety of his person and his family that is both concrete and particularized and the potential injury would be a direct result of the licensing decision at issue in this proceeding. Begay has, therefore, established the requisite showing to be allowed standing to participate in a hearing concerning the EFN license amendment.

ORDERED

1. The request for a hearing by Norman Begay on Energy Fuels Nuclear's application for a license amendment is granted.
2. Within 30 days, pursuant to 10 C.F.R. § 2.1231, the NRC Staff will furnish a hearing file to the Presiding Officer and parties in this proceeding.
3. Within 10 days of service of this Order, the other parties may appeal the Presiding Officer's decision.

It is so ORDERED.

James P. Gleason, Presiding Officer
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 21, 1994

³¹ Begay's concern also relates to the fact that his daughter rides a school bus from the White Mesa community to Blanding each school day. Tr. 22.

**Directors'
Decisions
Under
10 CFR 2.206**

DIRECTORS' DECISIONS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

William T. Russell, Director

In the Matter of

Docket Nos. 50-325
50-324

CAROLINA POWER AND LIGHT
COMPANY, *et al.*
(Brunswick Steam Electric Plant,
Units 1 and 2)

October 19, 1994

The Director of the Office of Nuclear Reactor Regulation granted in part and denied in part a Petition dated October 14, 1994, submitted by the National Whistleblower Center (NWC), the Coastal Alliance for a Safe Environment, and Charles A. Webb (Petitioners) requesting that the Nuclear Regulatory Commission take action with regard to the Brunswick Steam Electric Plant (Brunswick), Units 1 and 2, of the Carolina Power & Light Company (Licensee). The Petition requested that: the NRC Staff enter into a confidentiality agreement with NWC to facilitate the release of additional information; the NRC immediately require the Licensee to state whether it has, in fact, known about cracks in the reactor shroud since at least 1984; the NRC's Office of Investigations (OI) determine whether Licensee management engaged in criminal wrongdoing, commencing in 1984, when Licensee management initially failed to report the existence of cracks in the core shroud to the NRC; and immediate suspension of the operating license for Brunswick pending the criminal investigation. The Petitioners alleged that the Licensee had falsely asserted to the NRC that cracks in the reactor shroud had been recently discovered, but that, in fact, the Licensee had discovered the cracks 9 years earlier and the Licensee's management instructed the engineers who detected the cracks to prepare paperwork that would ensure that no report would be made to the NRC; the unwillingness to report a significant safety problem to the NRC demonstrates that the Licensee does not have the character or integrity to operate a nuclear facility; and the Licensee is willing to

take unreasonable risks with the public health and safety. After evaluation of the Petition and an OI investigation, the Director concluded that Petitioners failed to raise a substantial health or safety concern regarding either the presence of core shroud cracks or the Licensee's knowledge of and reporting of core shroud cracking at the Brunswick facility.

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

On October 14, 1993, the National Whistleblower Center (NWC), the Coastal Alliance for a Safe Environment (CASE), and Charles A. Webb (Petitioners) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) requesting that action be taken regarding the Brunswick Steam Electric Plant (Brunswick), Units 1 and 2, of the Carolina Power & Light Company (CP&L or the Licensee). The Petition requested that (1) the NRC Staff enter into a confidentiality agreement with NWC to facilitate the release of additional information; (2) the NRC immediately require the Licensee to state whether it has, in fact, known about cracks in the reactor core shroud since at least 1984; and (3) the NRC's Office of Investigations (OI) determine whether CP&L management engaged in criminal wrongdoing, commencing in 1984, when CP&L initially failed to report the existence of cracks in the core shroud to the NRC. The Petitioners also requested an immediate suspension of the operating license for Brunswick pending the criminal investigation.

The Petitioners based their requests on allegations that (1) the Licensee falsely asserted to the NRC and to the public that cracks in the reactor shroud had just recently been discovered, but that, in fact, the Licensee had discovered the cracks 9 years earlier and the Licensee's management instructed the engineers who detected the cracks to prepare paperwork that would ensure that no report would be made to the NRC; (2) this unwillingness to report a significant safety problem to the NRC demonstrates that the Licensee does not have the character or integrity to operate a nuclear facility; and (3) the Licensee is willing to take unreasonable risks with the public health and safety.

By letter dated November 15, 1993, Dr. Thomas E. Murley, then Director of the Office of Nuclear Reactor Regulation (NRR), informed the Petitioners that the Petition was being evaluated in accordance with Title 10 of the *Code of Federal Regulations*, section 2.206 (10 C.F.R. § 2.206). Further, the letter stated that (1) the NRC would review the request for the NRC to immediately require the Licensee to state whether it knew of cracks in the Unit 1 shroud since 1984 and would take any action that the NRC may deem appropriate; (2)

a formal decision would be issued within a reasonable time; and (3) the request to suspend operation of the Brunswick plant pending criminal investigation was denied.

My Decision in this matter follows.

II. BACKGROUND

As a result of the Petitioners' allegations, the NRC Office of Investigations (OI) commenced an investigation into the possibility of misconduct by the Licensee in connection with the reporting of core shroud cracks at the Brunswick facility. On November 23, 1993, OI staff interviewed Mr. R. Shackleford, who had signed the Petition on behalf of the Coastal Alliance for a Safe Environment. Mr. Shackleford stated that he had first become aware of the core shroud cracking issue approximately 1 week before the Petition was filed with the NRC and that he had no personal knowledge regarding the allegations made in the Petition. Mr. Shackleford stated, however, that Mr. Charles Webb and another individual, whose name was known only to Mr. Webb and the National Whistleblower Center, had personal knowledge of the matters alleged in the Petition. Mr. Shackleford also stated that he personally knew of three other individuals who might have some first-hand knowledge of concerns with welds, although not specifically related to the core shroud matters expressed in the Petition. However, he declined to identify them because the individuals were not willing to come forward. At the request of OI staff, Mr. Shackleford agreed to contact these three individuals to determine the extent and nature of their knowledge concerning the core shroud issue and to advise OI of what he had learned. To date, Mr. Shackleford has not responded to this request or provided this information to OI. Furthermore, between January and March 1994, the OI staff attempted to contact Mr. Kohn, who signed the Petition on behalf of both the National Whistleblower Center and Mr. Charles Webb, in order to arrange an interview with Mr. Webb. To date, Mr. Kohn has not responded to three telephone messages or to a March 3, 1994 registered letter requesting his cooperation. The U.S. Post Office provided a return receipt for this registered letter indicating its proper delivery to the National Whistleblower Center.

In order to investigate whether there was wrongdoing on the part of the Licensee's management associated with the allegedly deliberate failure to report core shroud cracks as early as 1984, OI sought facts pertinent to the alleged discovery of cracks and the alleged coverup. The Petitioners' representatives, however, never responded to the OI requests for (1) the identity of individuals whom the Petitioners stated had personal knowledge of the matters alleged in the Petition and (2) assistance in contacting Mr. Webb and the other individuals.

OI concluded that it was unable to proceed with its investigation. Therefore, on April 26, 1994, OI closed its investigation.

Although OI terminated its investigation into the alleged wrongdoing, the NRC Staff independently evaluated the core shroud cracking issue at the Brunswick facility and the Licensee's corrective actions.

III. DISCUSSION

In July 1993, the Licensee notified the NRC that cracks had been found in the core shroud of Brunswick Unit 1. The Licensee discovered the cracks through its in-vessel visual inspection of the core shroud during the unit's 1993 refueling outage. The inspection was performed in response to the recommendations contained in General Electric Company (GE) Rapid Information Communication Service Information Letter (RICSIL) 054, "Core Support Shroud Crack Indications," dated October 3, 1990 (GE is the manufacturer for the reactor used at Brunswick). In this RICSIL, GE advised the owners of boiling-water reactors (BWRs) that cracks had been discovered in the core shroud of a foreign-owned GE BWR and recommended visual inspection of the core shroud seam welds at accessible surfaces inside and outside the shroud. Although the RICSIL discussed the occurrence of cracks in the shroud at elevations surrounding the reactor core, the Licensee had elected to inspect additional shroud areas. The Licensee inspected the accessible core shroud welds between the top guide support plate and the core support plate.

The Licensee's 1993 in-vessel visual inspection of the Brunswick Unit 1 core shroud revealed a circumferential crack at horizontal weld H-3, which joins the top guide support ring to the lower shroud and other shorter axial and circumferential cracks around the horizontal welds, H-2, H-4, and H-5. On the basis of the information submitted by CP&L concerning its inspection findings at Brunswick, the Institute for Nuclear Power Operations, an industry association, issued Significant Event Notice SEN-103, "Circumferential Cracking of a Boiling Water Reactor Core Shroud," on September 13, 1993. The NRC also informed licensees of these conditions through the issuance of NRC Information Notice 93-79, "Core Shroud Cracking at Beltline Region Welds in Boiling Water Reactors," on September 30, 1993. Further, GE issued Service Information Letter (SIL) 572, "Core Shroud Cracks," that discussed factors that could contribute to core shroud cracking and recommended specific visual inspection methodology as developed by CP&L during the Brunswick inspections. This SIL was revised on October 4, 1993, to, in part, inform BWR owners about a recommended plant service time after which shroud inspections need to be performed.

Because cracks were seen in the Brunswick Unit 1 shroud during the 1993 outage and in-vessel examination, the Licensee reexamined the video tapes of a previous in-vessel visual inspection of the Unit 2 core shroud conducted during its 1991 refueling outage. After computer enhancement of the video images, the Licensee, on July 10, 1993, located three small (approximately 1-inch-long) indications at the outside diameter of the H-2 weld. The Licensee prepared an evaluation of these cracks and concluded that the cracks did not impair the structural integrity of the shroud.

During a meeting on October 22, 1993, with the Licensee to discuss the Brunswick Unit 1 inspection results, the draft crack evaluation methodology and acceptance criteria, and the proposed core shroud modification, the NRC asked the Licensee to submit the crack acceptance criteria and the core shroud modification design to the NRC for review. In a letter dated November 18, 1993, the Licensee submitted this information to the NRC. The NRC Staff reviewed the design and supporting analysis and concluded in an NRC safety evaluation dated January 14, 1994, that the proposed modification of the Unit 1 core shroud provides adequate structural integrity in the location of the H-2 and H-3 welds for the remaining life of the unit. The NRC Staff also concluded that, based on the structural integrity analyses, the flaws associated with the H-1, H-4, H-5, and H-6 welds would not adversely impact the structural integrity of the shroud during the next operating cycle. The NRC Staff will be reviewing the results of the Licensee's future shroud inspections and evaluations to verify that adequate structural integrity is maintained.

Prior to beginning the 1994 Brunswick Unit 2 refueling outage, the Licensee preliminarily decided to install the same modification on the Unit 2 core shroud that was used on Unit 1. The Licensee also performed in-vessel inspections of the core shroud welds and evaluated the observed flaws to the same acceptance criteria that were used on Brunswick Unit 1. The Licensee observed that the cracking at Brunswick Unit 2 was similar to that seen on Unit 1. On the basis of these in-vessel inspections, the Licensee made its final decision to install the modification at the H-2 and H-3 weld location. Since the degree of cracking of the H-1, H-4, H-5, and H-6 welds was within the acceptance criteria and since the modification was installed at the H-2 and H-3 weld location, the NRC Staff concludes that the structural integrity of the Brunswick Unit 2 core shroud is acceptable for the next operating cycle.

During the Licensee's 1993 in-vessel visual inspections of the Brunswick Unit 1 core shroud, the NRC conducted periodic inspections to review the Licensee's conformance to acceptable inspection and installation practices. The NRC Staff and its consultant from Pacific Northwest Laboratories also reviewed the process qualification and the performance of the ultrasonic testing used by the Licensee and GE to characterize the observed crack depths. The NRC documented its assessment of these activities in NRC Inspection Report Nos. 50-325, 324/93-

34, dated September 14, 1993; 50-325, 324/93-43, dated October 20, 1993; and 50-325, 324/93-51, dated November 18, 1993. The NRC also reviewed and inspected the qualification and mockup testing for the core shroud modification used to repair the shroud at the H-2 and H-3 welds. Although some problems related to bolt preloading and quality assurance documentation were observed and corrected, the NRC generally found the activities to be satisfactory, as documented in NRC Inspection Report No. 50-325, 324/93-58, dated January 14, 1994. When the Licensee inspected the shroud and installed the modification at Brunswick Unit 2, the NRC similarly assessed these activities and documented the results in NRC Inspection Report Nos. 50-325, 324/94-08, dated May 13, 1994; and 50-325, 324/94-10, dated May 16, 1994. On the basis of these inspections, the NRC found that the inspection and installation techniques were satisfactorily qualified and performed. Many of the process techniques, such as precleaning and lighting placement, identified by the Licensee to enhance the video image quality and success in observing potential cracks, were incorporated into recommendations provided by GE to other BWR owners.

As stated above, the NRC Staff issued NRC Information Notice 93-79 alerting other BWR owners of the shroud cracking at Brunswick and noting that GE had issued Revision 1 to RICSIL 054 on July 21, 1993, to update the information on the cracks and to provide revised interim recommendations for performance of visual examinations. On July 25, 1994, the NRC issued Generic Letter 94-03, "Intergranular Stress Corrosion Cracking of Core Shrouds in Boiling Water Reactors," to request that BWR owners (1) inspect the core shrouds no later than the next scheduled refueling outage, and perform an appropriate evaluation and/or repair based on the results of the inspection; (2) perform a safety analysis supporting continued operation of the facility until inspections are conducted; and (3) provide the NRC with the results of the core shroud inspections and the safety analysis. The NRC Staff is monitoring the results of the inspections and evaluating the designs for proposed shroud modifications. On August 24, 1994, CP&L submitted the requested information in response to Generic Letter 94-03. The NRC Staff's preliminary review of that response did not reveal information not already known to the Staff.

By letter dated November 24, 1993, CP&L forwarded to the NRC a report entitled "Brunswick Nuclear Plant Review Team Potential Shroud Cracking in 1984." On the basis of its independent investigation conducted in response to the allegations in the Petition, the CP&L report states that no shroud cracks had been observed in either Unit 1 or Unit 2 shrouds between 1983 and 1985, or at any other time before 1993. The Licensee also states that it found no evidence of a "coverup" or "papering over" of cracks in the core shroud of Unit 1 or Unit 2 at any time, either by concealment of an as-found condition or by failure to report an as-found condition to the NRC. In partial support of its conclusions, the Licensee also states that, between 1983 and 1985, GE conducted in-vessel

inspections at Brunswick and any attempt to conceal core shroud cracks would have required GE's participation. Furthermore, there was no NRC requirement during that period to inspect the core shrouds, and no inspections were planned or performed. Additionally, the Licensee states that there was no requirement to report core shroud cracks to the NRC until the Brunswick Unit 1 core shroud cracks were found in July 1993. The Licensee explains that the videographic records of the in-vessel visual inspection of the Brunswick Unit 2 shroud taken during the 1991 refueling outage did not reveal any cracking at the time of the inspection. When the videographic tapes were subsequently computer-enhanced in 1993 after cracks were discovered in the Unit 1 shroud, the Licensee observed three short crack-like indications in the H-2 weld of the Unit 2 shroud.

The Licensee is correct in stating that there was no basis to conduct inspections of the core shroud preceding the issuance of the GE RICSIL in 1990. A review of NRC inspection records between 1983 and 1985 did not indicate that any core shroud inspections were conducted by the Licensee, nor did any licensee report core shroud cracking. Considering the equipment staging, the necessary plant conditions, and the procedural aspects of performing in-vessel visual inspections with a remotely operated camera, it is unlikely that the NRC resident inspectors would have failed to notice these activities, if they had occurred at Brunswick. Therefore, on the basis of the above, the NRC has found no evidence to support a conclusion that the Licensee had knowledge of cracking in the Brunswick Units 1 and 2 core shrouds in the 1984 time frame, or at any time prior to 1993. Additionally, the 1993 discovery of the core shroud cracking in Brunswick Units 1 and 2 was promptly communicated to the NRC Staff. Because the core shroud cracking at Brunswick in this case did not constitute an emergency, significantly compromise plant safety, result in the plant being severely degraded, prevent fulfillment of safety functions, or constitute a substantial safety hazard, no report was required by 10 C.F.R. § 21.21, 50.72, or 50.73.

The NRC has been unable to meet the Petitioners' request that the NRC Staff enter into a confidentiality agreement with NWC to facilitate the release of additional information because the Petitioners have not provided access to their sources. The NRC was unable to obtain the full cooperation of the Petitioners in identifying those persons who might have had first-hand knowledge and in arranging interviews with them. The NRC had inadequate information to evaluate any need to grant confidentiality. The Licensee's voluntary submittal on November 24, 1993, of the report entitled "Brunswick Nuclear Plant Review Team Potential Shroud Cracking in 1984," which stated that no shroud cracks had been observed in either Unit 1 or Unit 2 between 1983 and 1985, or at any other time before 1993, mooted the Petitioners' request that the NRC immediately require the Licensee to state whether it has, in fact, known about cracks in the reactor core shroud since at least 1984. In response to the Petitioners' request

that the NRC's Office of Investigations determine whether CP&L management engaged in criminal wrongdoing concerning reporting the existence of cracks in the core shroud to the NRC, the NRC OI commenced an investigation regarding this allegation. Since there is no evidence to suggest that the Licensee had any reason to inspect the core shroud before 1990 or that the Licensee in fact inspected the core shrouds before 1991, since the Licensee reported that cracking when it was found in 1993, and since the Petitioners provided no evidence to support their allegations, there is no need to conduct additional evaluations. If the Petitioners decide to make knowledgeable individuals or additional information available to the NRC Staff, the NRC Staff will evaluate the information obtained and further pursue the matter, as appropriate.

In view of the above, the Petitioners have failed to raise a substantial health or safety concern regarding either the presence of core shroud cracks or the Licensee's knowledge of and reporting of core shroud cracking at the Brunswick facility.

IV. CONCLUSION

The Petitioners' request for an investigation into the alleged misconduct regarding the Licensee's reporting of core shroud cracking to the NRC was granted. The Petitioners' request for confidentiality of their sources was incapable of being fulfilled because the Petitioners failed to provide access to those sources. The Petitioners' request that the NRC require the Licensee to immediately state when it knew of core shroud cracking at the Brunswick facility became moot when the Licensee submitted the "Brunswick Nuclear Plant Report of Technical Review Team Potential Shroud Cracking in 1984." In view of the foregoing actions in response to the Petitioners' request and the NRC's review of the Licensee's actions in response to the core shroud cracking issue, no substantial health and safety issue remains that would warrant institution of further proceedings. See *Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 176 (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). This standard has been applied to determine if any action is warranted in response to the Petition.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 C.F.R. § 2.206(c). The Decision will become the final action of the Commission 25 days after issuance

unless the Commission, on its own motion, institutes a review of the Decision in that time.

FOR THE NUCLEAR
REGULATORY COMMISSION

William T. Russell, Director
Office of Nuclear Reactor
Regulation

Dated at Rockville, Maryland,
this 19th day of October 1994.