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Washington, DC 20555–0001
(301/415–6844)
NUCLEAR REGULATORY COMMISSION ISSUANCES

August 1996

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 Decisions on 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.

Prepared by the Division of Freedom of Information and Publications Services Office of Administration U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (301/415-6844)
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B. Paul Cotter, Jr., Chief Administrative Judge, Atomic Safety and Licensing Board Panel
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ATOMIC SAFETY AND LICENSING BOARD PANEL

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  

ATOMIC SAFETY AND LICENSING BOARD  

Before Administrative Judges:  

Peter B. Bloch, Chairman  
Dr. James H. Carpenter  
Thomas D. Murphy  

In the Matter of  

GEORGIA POWER COMPANY,  
et al.  
(Vogtle Electric Generating Plant,  
Units 1 and 2)  

Docket Nos. 50-424-OLA-3  
50-425-OLA-3  
(ASLBP No. 93-671-01-OLA-3)  
(Re: License Amendment)  
(Transfer to Southern Nuclear)  

August 18, 1996  

The case was dismissed after the sole intervenor withdrew his petition and contention pursuant to a settlement with Georgia Power Company, et al. The Licensing Board determined that the withdrawal could be permitted after reviewing the effect of the withdrawal on the issues pending in the proceeding. It determined, without reviewing the settlement agreement, that it was in the public interest to accept the withdrawal of the petition and the contention.

RULES OF PRACTICE: SETTLEMENT  

When a party requests to withdraw a petition pursuant to a settlement, it is appropriate for a licensing board to review the settlement to determine whether it is in the public interest. 10 C.F.R. §2.759. When the board has held extensive hearings and has analyzed the record, it may not need to see the settlement
agreement in order to conclude that the withdrawal of the petition is in the public interest.

RULES OF PRACTICE: WITHDRAWAL OF PETITION

Intervenor requested to withdraw his petition. The Licensing Board, knowing that the withdrawal was pursuant to a settlement agreement, reviewed the settlement to determine if it was in the public interest. 10 C.F.R. § 2.759.

The Board had held extensive hearings and had analyzed the record. It was convinced, even without seeing the settlement agreement, that the withdrawal of the petition was in the public interest.

MEMORANDUM AND ORDER
(Motions: Reconsideration, Termination of the Proceeding)

Memorandum

We have before us the question of whether or not to dismiss this case because Allen Mosbaugh has withdrawn his participation as the sole Intervenor based on a settlement between the parties. The unique question we face is whether to permit the withdrawal even though the parties have not shown us the settlement and, consequently, we have not reviewed it in light of 10 C.F.R. § 2.759.¹

I. LEGAL BACKGROUND

A. The Regulation

Some parties have filed settlement agreements with licensing boards pursuant to 10 C.F.R. § 2.759, which states:

§ 2.759 Settlement in initial licensing proceedings.

The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding or the entire proceeding. Therefore, to the extent that it is not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable settlement of contested initial licensing proceedings is encouraged.

¹Georgia Power Company, et al. (Georgia Power) filed a “Motion for Reconsideration of June 28, 1996 Memorandum and Order or in the Alternative for Certification,” July 16, 1996. On August 2, we received (1) Intervenor’s Response, (2) a “Joint Notice of Termination” filed jointly by Georgia Power and Intervenor, and (3) a “Withdrawal of Allen L. Mosbaugh.” Mr. Mosbaugh informs us that he is withdrawing and the parties have asked us to dismiss the case “with prejudice.” The Nuclear Regulatory Commission Staff (Staff) responded on August 6, 1996 (Staff Response).
It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose.

This regulation encourages “fair and reasonable” settlements. If a party withdraws appropriately, there is no further intervention and the case is at an end. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985); *see also Public Service Co. of Colorado* (Fort St. Vrain Independent Spent Fuel Storage Installation), attachment to CLI-91-13, 34 NRC 190 (1990) (withdrawal pursuant to an agreement prior to the admission of a contention or a party).

**B. Commission and Appeal Board Precedent**

There is no decision by the Appeal Board or by the Commission that squarely decides whether or not a board should review a settlement for its fairness. This lack of clear authority is illustrated in the following table:

<table>
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<tr>
<th>Case</th>
<th>Analysis</th>
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<tbody>
<tr>
<td><em>Public Service Co. of Colorado</em> (Fort St. Vrain Independent Spent Fuel Storage Installation), attachment to CLI-91-13, 34 NRC 190 (1990)</td>
<td>The Commission permitted the State of Colorado to withdraw its Petition for Leave to Intervene pursuant to an agreement with the Public Service Commission. The Commission studied the agreement, which was filed with it. It said in its opinion that the agreement resolved the State’s concerns regarding the PSC application.</td>
</tr>
<tr>
<td><em>Houston Lighting and Power Co.</em> (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985)</td>
<td>There is no indication in this opinion concerning the effect of a settlement, as the only action before the Commission was the withdrawal of a party from the proceeding. The Appeal Board said that when the one intervenor withdraws from an operating license proceeding, then the proceeding is at an end.</td>
</tr>
<tr>
<td><em>Consumers Power Co.</em> (Palisades Plant), ALAB-70, 5 AEC 280, 288 (1972)</td>
<td>The settlement agreement was made an exhibit in the record. The Appeal Board did not analyze the agreement in its opinion but stated that a Board has jurisdiction only over contested issues.</td>
</tr>
</tbody>
</table>
Because the Federal Rules of Civil Procedure are considered to be suggestive with respect to NRC procedures, particularly where there is no clear precedent, we reviewed those rules. Rule 23(e) requires a court to approve a settlement in a class action case. This is consistent with other sections of the same rule, requiring courts to protect the members of a class. In NRC proceedings, intervenors represent themselves and do not meet class action requirements. Intervenors also represent public interests, which is the principal reason for providing a public forum for intervention; but there is no direct applicability of Rule 23(e) to the NRC context.

The applicable NRC regulation, 10 C.F.R. §2.759, is primarily forward looking, encouraging the parties and the Board to seek a reasonable settlement. Despite the qualifying adjectives, the regulation does not state that the Board should approve a settlement. If that obligation rests on the Board, it is implied from the regulation rather than stated. The Commission’s guidance to us about our role in negotiations, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981), is suggestive in this context. The guidance states:

The parties should be encouraged to negotiate at all times prior to and during the hearing to resolve contentions, settle procedural disputes, and better define issues. Negotiations should be monitored by the board through written reports, prehearing conferences, and telephone conferences, but the boards should not become directly involved in the negotiations themselves.

There are two inferences from this guidance. First, we are not to be involved in the process of negotiation, presumably to prevent us from obtaining nonrecord information by participating in the ongoing negotiations. Second, we are supposed to “monitor” that process, presumably to ensure that the effect of negotiations on the proceeding is in some way acceptable to the Board.

Another regulation of arguable relevance is 10 C.F.R. §2.1241. That section provides for the review of settlements in Subpart L or informal proceedings. It states:

The fair and reasonable settlement of proceedings subject to this subpart is encouraged. A settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding.

That section, which undoubtedly was intended to be at least as informal as section 2.759, requires a review if a settlement is “to be binding in the proceeding.” That section does not give explicit directions to us about how to treat a voluntary withdrawal from a proceeding pursuant to a settlement.
C. Licensing Board Cases

Generally, settlement agreements have been filed with licensing boards and considered by them. For example, in *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-89-24, 30 NRC 152 (1989), the parties completed a settlement agreement in this operating license case and presented the agreement to the Board, which reviewed the settlement agreement and reached the following conclusions: The agreement's provisions are not inconsistent with the statutes and regulations under which the NRC functions, and the agreement is not "contrary to regulation." The Board stated that:

In accordance with the Commission's longstanding policy of encouraging fair and reasonable settlements of contested initial licensing issues, the Licensing Board accepts the settlement agreement.

30 NRC at 153. It appears that the Board in *Limerick* used words found in 10 C.F.R. § 2.759, which it assumed to apply to the review of settlements. *See also Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-31, 30 NRC 320 (1989). In that proceeding, conducted pursuant to 10 C.F.R. Part 2, Subpart L, the parties concluded a settlement agreement pursuant to which the only active intervenor withdrew. The Presiding Officer approved the withdrawal of the party after first accepting the stipulation that was a part of the agreement. The Presiding Officer found that the "terms [of the stipulation] are not inconsistent with NRC regulations and represent a fair settlement for the parties." *See* 10 C.F.R. § 2.1241, which requires a settlement to be approved "in order to be binding in the proceeding."

Other cases decided by licensing boards generally support review of settlements, as may be seen from studying the following table:

<table>
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<tr>
<th>Case</th>
<th>Analysis</th>
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<tr>
<td><em>Baltimore Gas and Electric Co.</em> (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-73-15, 6 AEC 375, 377 (1973)</td>
<td>The Board considered the settlement agreement, commented that it met the party's basic concern as presented to the Board, and accepted the request to terminate the proceeding. Accordingly, the proceeding was dismissed.</td>
</tr>
<tr>
<td><em>Pacific Gas and Electric Co.</em> (Humboldt Bay Power Plant, Unit 3), LBP-88-4, 27 NRC 236, 238 (1988)</td>
<td>The Board &quot;approved the stipulation&quot; and dismissed the proceeding.</td>
</tr>
</tbody>
</table>

**Tennessee Valley Authority** (Browns Ferry Nuclear Plant, Units 1, 2, and 3), LBP-73-43, 6 AEC 1062, 1063 (1973)

**General Public Utilities Nuclear Corp.** (Three Mile Island Nuclear Station, Unit 2), LBP-92-29, 36 NRC 225 (1992)

**Sacramento Municipal Utility District** (Rancho Seco Nuclear Generating Station), LBP-94-23, 40 NRC 81 (1994)

Upon submission of an extensive settlement agreement, which the Board reviewed and published, this operating license case was dismissed without explanation of the standard applied in accepting the agreement.

A motion to dismiss was filed with the Board accompanied by a Notice of Withdrawal of Intervention, a Settlement Agreement and a Brief in Support of the motion to dismiss. In dismissing the case, the Board did not discuss whether or not the settlement was fair and reasonable. It dismissed because there was "no intervenor and no issues in controversy remaining." It is possible to infer that the Board, which had seen the agreement, either had no problems with it or that it did not think it had a role in reviewing the agreement.

Prior to the admission of a party, the petitioners entered into a joint agreement with the applicant to dismiss the action. The Board did not receive or review the agreement. The Board dismissed the proceeding without seeing the agreement, but it refused to dismiss the action with prejudice because it had not seen the agreement and the basis for dismissing with prejudice was not established.

A Board terminated a proceeding based on a "notice of withdrawal with prejudice." The Board did not inquire about whether the withdrawal was based on a settlement. Presumably, the failure to inquire means that the Board did not consider the possible existence of an agreement to be relevant to its action.
The stage at which the withdrawal occurs may be relevant. The entire proceeding in this case is over. A public record, consisting of procedural motions, orders, written and oral testimony, and evidentiary exhibits, was developed and is available for public scrutiny. The Board has a draft decision that is almost ready for publication. Now, having engaged the public decision-making apparatus, the parties come to the Board announcing a settlement but not willing to reveal that settlement to the public and not wanting the Board to issue its opinion. It can be argued that it is not in the public interest that our analysis of the public record should be withheld from the parties and the public, even though the parties have settled the issues between them.

II. CONCLUSION

The parties would have us dismiss this case automatically because the Intervenor has withdrawn and because they do not think the Commission's Rules of Practice require a review of the settlement. See, for example, Staff Response at 1, 6-7. If there were a withdrawal that was not produced by a settlement, we might agree with this position. We note that the regulations are less clear about reviewing settlements in operating license and amendment cases than they are in enforcement cases, where the public interest is clearer. 10 C.F.R. §2.203. Nevertheless, when a withdrawal is a result of a settlement, it is appropriate for the Board to protect the public interest.

We are convinced that there is a strong public policy in favor of settlements reflected in 10 C.F.R. §2.759. Settlements are encouraged, even at a late stage of a proceeding. A settlement averts further costs that could be incurred by the parties and the NRC if appeals are filed, as they usually are. Furthermore, a settlement permits the parties to fashion a solution that goes beyond the power of a licensing board, which must decide issues before it according to the applicable law. Parties may examine other aspects of their relationship and fashion a solution that may better serve all who are affected and reach for a win/win solution.

We have concluded that the Commission has two policies that should both be served. First, the Commission encourages settlements. Second, the Commission desires to have a record that assures it that the public interest has been served, particularly in cases that have been fully tried at great expense to the public.

In this case, both interests shall be served. The parties have expressed an unwillingness to reveal the terms of the settlement. Though they have not revealed the reasoning for this reluctance, it seems likely that it is related to the terms of the settlement, which was made subsequent to a decision by the Secretary of Labor in favor of Mr. Mosbaugh. Secretary of Labor, Case No. 90-ERA-30, Marvin B. Hobby v. Georgia Power Co., August 4, 1995, and
Secretary of Labor, Case Nos. 91-ERA-1 and 91-ERA-11, Allen Mosbaugh v. GPC, November 20, 1995. While a public disclosure of this settlement would permit public scrutiny of the consequences of potential actions with respect to whistleblowers, we do not consider disclosure of the details of a settlement to be essential.

We have no reason to believe that there is anything improper about the settlement in this case. Both sides are represented by competent lawyers and have made reasonable, well-considered decisions during the prosecution of this case. Georgia Power has assured the Board that nothing in the settlement agreement will prohibit, restrict, or otherwise discourage Mr. Mosbaugh from participating in protected activity under section 211 of the Energy Reorganization Act or reporting any nuclear safety concern or any suspected improper activity to the NRC or any other federal or state governmental agency. Georgia Power Motion for Reconsideration at 2 n.1. In addition, Intervenor has stated that he has raised all his safety or regulatory concerns before the NRC. He also remains free to communicate any additional concerns to the NRC and nothing in the proposed settlement would interfere with the free flow of information to the NRC. Intervenor's Response at 2 n.1.

We have no reason to suspect that the agreement, which neither the Board nor the Staff has seen, is in any way improper. See Staff Response, passim.

We have full knowledge of the record of this proceeding, which permits us to determine the possible safety consequences of not publishing our Initial Decision. We reviewed the safety concerns raised by the Intervenor and, because of our concern about Georgia Power's difficulty in ascertaining and revealing the root cause of its misrepresentations to the NRC, created and analyzed an extensive record on a variety of root-cause issues existing in 1990. We are satisfied, based on our analysis of the record, that the Staff has been an active guardian of the public interest at Plant Vogtle and, to the extent that they may have not already done so, that the Staff will take the record we have developed into account in exercising its continuing authority. See Notice of Violation and Proposed Imposition of Civil Penalty (NOV) and Demands for Information (DFI), May 9, 1994; Modified Notice of Violation and Proposed Imposition of Civil Penalties, February 13, 1995; Notice of Violation (Department of Labor Case Nos. 90-ERA-30, and 91-ERA-011), May 29, 1996.

Based on our assessment of the safety considerations reflected in our record, we find that there is no practical reason to review the settlement in this case in order to protect the public interest. If there were unresolved safety issues, we undoubtedly would feel differently about that.

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III. REQUEST FOR DISMISSAL WITH PREJUDICE

Georgia Power and the intervenor, with Staff concurrence (Staff Response at 10), request that we dismiss this case “with prejudice.” Practically speaking, this legal nicety has no effect in this case. Such a formal order would preclude Allen Mosbaugh from filing a new petition against Georgia Power. To successfully file a new petition, even if we do not dismiss “with prejudice,” Mr. Mosbaugh would have to meet the well-nigh Herculean burden of showing how his refiled petition was “timely.”

We have decided to dismiss this case without commenting in our order on whether or not the dismissal is with prejudice. Three Mile Island, supra. (Since the Board did not see the agreement, it refused to dismiss the action with prejudice, as requested by the parties.) The basis for dismissing with prejudice was not established by the parties in this case. Once we determine that a petition to intervene may be withdrawn, there is no further license amendment case. We do not consider ourselves authorized to effectuate a provision of a settlement agreement that we have not seen.

We accept the withdrawal of the Intervenor, Allen L. Mosbaugh, from these proceedings. Having approved the Intervenor’s request to withdraw, pursuant to principles explained in this Memorandum, the Licensee’s Motion for Reconsideration will be granted for reasons set forth above.

Order

For all the foregoing reasons and upon consideration of the entire record in this matter, it is, this 19th day of August 1996, ORDERED that:

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2 Faced with a petition to withdraw, a licensing board must decide whether to grant the petition. In the case before us, the denial of the petition would have resulted in our issuing the Final Initial Decision. In other cases, where the proceeding is not finished, a Board might have the additional problem of proceeding with an unwilling party or even without the assistance of a party. Without a willing party, the Board could continue the proceeding only by declaring a sua sponte issue and notifying the Commission.
Georgia Power Company, et al.'s June 28, 1996 Motion for Reconsideration is granted and the settlement agreement need not be filed with the Board. This case is dismissed.

THE ATOMIC SAFETY AND LICENSING BOARD

James H. Carpenter (by PBB)
ADMINISTRATIVE JUDGE

Thomas D. Murphy
ADMINISTRATIVE JUDGE

Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
Directors’ Decisions Under 10 CFR 2.206
By a letter dated January 25, 1996, and supplemented by a letter dated January 30, 1996, Ms. Jane A. Fleming (Petitioner) requested a fair and impartial review of the entire licensing process for the Watts Bar Nuclear Plant, Unit 1 (Watts Bar), operated by the Tennessee Valley Authority (TVA) and further requested that the low-power license for Watts Bar be suspended or revoked until such review is completed and the issues in dispute are resolved. The request was considered as a petition submitted pursuant to 10 C.F.R. § 2.206.

In a Director’s Decision issued on August 15, 1996, the Director of Nuclear Reactor Regulation denied the relief sought by Petitioner. The Director concluded that Petitioner had failed to provide a basis to warrant a review of the Watts Bar licensing process and has failed to raise any safety concerns that would warrant suspension or revocation of the operating license for Watts Bar.

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

I. INTRODUCTION

By a letter dated January 25, 1996, to NRC Chairman Jackson, Ms. Jane Fleming (Petitioner) requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Watts Bar Nuclear Plant, Unit 1 (Watts Bar), operated by the Tennessee Valley Authority (TVA or Licensee). Specifically, Petitioner requested that a full and impartial review of the entire Watts Bar
licensing process be conducted, examining the review procedures used by NRC and the validity of the information presented by TVA, and that the low-power license for Watts Bar be suspended or revoked until such review is completed and the issues in dispute are resolved. Petitioner also suggested that, if the Chairman did not choose to initiate her own review, the letter be considered under section 2.206 of Title 10 of the Code of Federal Regulations (10 C.F.R. § 2.206). Petitioner supplemented the January 25, 1996 letter with another letter dated January 30, 1996, to Chairman Jackson.

The Commission referred the letters to me for treatment as a petition pursuant to section 2.206 of the Commission’s regulations.

The Petitioner asserted that the NRC Staff was not fully aware of TVA’s license commitments and adherence to these commitments when it issued a low-power license to TVA on November 9, 1995. Specifically, Petitioner asserted that a letter from Stewart D. Ebneiter, Regional Administrator, NRC Region II, to Oliver Kingsley, TVA, dated January 12, 1996, stated that there were open issues regarding the radiation monitoring system for Watts Bar when TVA requested an operating license. Petitioner asserted that this raised a question about the conclusion drawn by the NRC Staff in Supplement 16 to the Watts Bar Safety Evaluation Report (SSER 16) issued in September 1995 that the system meets the acceptance criteria of the Standard Review Plan and is, therefore, acceptable. Petitioner also asserted that the NRC Staff, in its licensing review, was not aware of the criteria applicable to the licensing of Watts Bar. The specific bases for these assertions involved the design, installation, and testing of the radiation monitors at Watts Bar. The Petitioner also briefly refers to concerns associated with microbiologically induced corrosion (MIC) and security, as well as a concern that the large number of deviations described in the SER supplements documenting the NRC licensing review of Watts Bar presents questions about the current state of TVA’s compliance with NRC requirements. In her January 30th letter, Petitioner listed the deviations from SSERs 15, 16, and 18. These deviations are associated with radiation monitors, other instruments, and fire protection.

On the basis of these assertions, Petitioner sought a full review of the entire Watts Bar licensing process, and suspension or revocation of the Watts Bar license until the review is completed.

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By letter dated February 7, 1996, I acknowledged receipt of the petition, and denied Petitioner's request for immediate suspension or revocation of the low-power license. By letter dated March 7, 1996, the NRC Staff informed Petitioner that the full-power license for Watts Bar was issued on February 7, 1996. The full-power license superseded the low-power license that Petitioner requested be suspended or revoked. However, the NRC Staff indicated that it would continue its review of the petition and would take whatever action would be appropriate, including suspension or revocation of the full-power license, if warranted. The NRC Staff also advised Petitioner that the information previously provided with respect to the issues on MIC and security was insufficient to permit evaluation and that additional information would be needed to enable these matters to be considered pursuant to section 2.206. Petitioner has not provided any additional information on these issues, so these issues will not be further considered herein.5

By letter dated April 3, 1996, the NRC Staff informed Petitioner that the NRC did not intend to hold an informal public hearing regarding this petition.

By letter dated March 7, 1996, the NRC Staff requested that TVA respond to the NRC, addressing points raised in the petition. TVA responded by letter dated April 8, 1996.

I have completed my evaluation of the petition. As explained below, Petitioner has failed to provide a basis to warrant a review of the Watts Bar licensing process and has failed to raise any safety concerns that would warrant suspension or revocation of the operating license for Watts Bar. Thus, Petitioner's request is denied.

II. BACKGROUND

On September 27, 1976, TVA submitted an application for an operating license for Watts Bar, including a Final Safety Analysis Report (FSAR) which described the design, construction, testing, and operation of the plant. The NRC Staff conducted an extensive review of TVA's application. The results of the review were documented in a Safety Evaluation Report6 (SER). TVA subsequently submitted ninety amendments to the FSAR which the NRC Staff reviewed. The NRC Staff thereafter issued twenty supplements to the SER documenting the results of this review. In addition, the Staff inspected various aspects of the design, construction, and testing of Watts Bar, and documented

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5 In her petition, Petitioner noted that she had requested that the NRC's Office of Inspector General (IG) act as a vehicle regarding certain security issues. In late 1995, prior to submitting her petition, Petitioner assisted the IG in pursuing security concerns. The IG forwarded information regarding the concerns to the NRC Staff. The NRC Staff evaluated the concerns in accordance with Management Directive 8.8, "Management of Allegations," and concluded that no NRC action was warranted.

On November 9, 1995, the NRC Staff issued a low-power operating license for Watts Bar Unit 1, which allowed TVA to load fuel and operate the plant up to a maximum power level of 5%. On January 30, 1996, the NRC Staff and TVA attended the NRC Commission meeting to discuss TVA's readiness to operate Watts Bar Unit 1 up to rated power. The Commission subsequently authorized the NRC Staff to issue a full-power operating license for Watts Bar Unit 1. The full-power license was issued on February 7, 1996.

Toward the end of the Watts Bar licensing review and before the submittal of the petition, the NRC Staff had extensive contact with Petitioner concerning various issues associated with Watts Bar. By letters dated July 27, August 22, and December 20, 1995, Petitioner raised issues associated with Watts Bar, including public participation in the Watts Bar licensing process and decommissioning cost associated with Watts Bar. By letters dated August 17 and September 5, 1995, the NRC Staff responded to various issues raised by her. In addition, the NRC Staff conducted frequent conference calls with Petitioner to gain a better understanding of the issues of concern to her, and to explain the results of the NRC Staff's ongoing assessment of these concerns.

III. DISCUSSION

A. Open Inspection Issues

Petitioner refers to a letter from Stewart D. Ebneter, Regional Administrator, NRC Region II, to TVA, dated November 3, 1995. Specifically, Petitioner cites the following language from that letter:

The problems and schedules resulted in System 90 [the radiation monitoring system] being the last of the major systems to be completed and turned over to the operating staff and there were several issues still open when TVA submitted the letter to NRC requesting the operating license.

Petitioner contends that the fact that Mr. Ebneter acknowledges open issues associated with the radiation monitoring system brings into question the conclusion by the NRC Staff in SSER 16 that, "the process and effluent radiological monitoring and sampling system for Watts Bar Unit 1 complies with 10 C.F.R. 20.1302 and General Design Criteria (GDC) 60, 63, and 64."

The NRC Staff's evaluation of the process and effluent radiological monitoring and sampling system is described in section 11.5 of SSER 16. The conclusion in SSER 16 addresses the system as described by TVA in the FSAR. The adequacy of implementation is reviewed by NRC inspectors, and the results are documented in inspection reports. This is generally an effort for which the
NRC regional office has responsibility. As implementation proceeds, it is not uncommon for inspectors to identify open issues associated with implementation that must be addressed by a licensee. For example, there was an issue regarding training of TVA personnel on the operation of the radiation monitoring system at Watts Bar. This issue was identified as an open issue during an inspection in November 1995. TVA agreed to complete the training prior to initial criticality. The training was subsequently conducted, and the open issue was closed by the NRC in January 1996. Thus, the open issues referred to in Mr. Ebneter's letter dated November 3, 1995, are part of the normal NRC licensing process, and do not raise questions about the conclusions in SSER 16.

In January 1996, the NRC conducted a special inspection of the radiation monitors at Watts Bar (see NRC Inspection Report 50-390/96-01). The inspection focused on the technical issues raised by Petitioner. The inspection concluded that selected effluent monitors and postaccident radiation monitors at Watts Bar had been calibrated and installed in accordance with the TVA’s commitments, and the installation met NRC requirements.

In SSER 16, the NRC Staff concluded that design and testing requirements for the process and effluent radiological monitoring and sampling system for Watts Bar Unit 1 complied with 10 C.F.R. § 20.1302 and Part 50, Appendix A, GDCs 60, 63, and 64. In addition, the Staff conducted numerous inspections of the radiation monitoring system at Watts Bar. Open issues were identified and resolved to the satisfaction of the NRC Staff before licensing, enabling the NRC Staff to conclude that the installation and testing of the radiation monitoring system at Watts Bar met NRC requirements.

B. Regulatory Requirements and Licensee Commitments

Petitioner contends that the NRC Staff was not fully aware of TVA’s commitments and TVA’s adherence to those commitments when the NRC issued the low-power license for Watts Bar. Petitioner further asserts that the lack of understanding resulted from a lack of adherence to NRC procedures or “misinformation” provided by TVA, or a combination of both. Petitioner bases this assertion on NRC documents, including SSER 16. Petitioner quotes the following from SSER 16:

On the basis of its review, the staff concludes that the process and effluent radiological monitoring and sampling system for Watts Bar Unit 1 complies with 10 C.F.R. 20.1302 and GDCs 60, 63, and 64. The staff also concludes that the system design conforms to the guidelines of NUREG-0737 . . . Item II.F.1 . . . RGs 1.21 and 4.15, and applicable guidelines of RG 1.97. Thus, the system meets the acceptance criteria of SRP Section 11.5 and is, therefore, acceptable.
Petitioner contends that TVA did not implement specific guidelines in Regulatory Guide (RG) 4.15\(^7\) and ANSI N13.10\(^8\) at Watts Bar, and that there is no indication that the NRC Staff approved deviations from these guidelines.

RG 4.15 describes a method acceptable to the NRC Staff for designing a program to ensure the quality of the results of measurements of radioactive material in the effluents and environment outside of nuclear facilities during normal operation. ANSI N13.10 is an industry standard that provides guidance for instrumentation used to continuously monitor radioactive effluents.

Petitioner also contends that RG 1.21\(^9\) and ANSI N13.1\(^10\) have not been met at Watts Bar. RG 1.21 provides methods acceptable to the NRC Staff for measuring and reporting radioactivity in effluents from nuclear power plants. ANSI N13.1 is an industry standard that provides guidance for sampling airborne radioactivity in nuclear facilities.

The requirements that must be met before a plant can be licensed are defined in NRC regulations, including the General Design Criteria in 10 C.F.R. Part 50, Appendix A. GDCs 60, 63, and 64 address the radiation monitoring systems.

Over the years, the NRC Staff has prepared a number of guidance documents, such as Regulatory Guides, that describe methods that are acceptable to the Staff for meeting the requirements in the regulations. However, except for a few Regulatory Guides that are specifically referenced in a regulation or referenced in or incorporated into a license, these documents do not constitute requirements.

RG 4.15 contains the following statement:

Regulatory Guides are issued to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations, to delineate techniques used by the staff in evaluating specific problems or postulated accidents, or to provide guidance to applicants. Regulatory Guides are not substitutes for regulations, and compliance with them is not required.

In addition, the industry has developed many documents, such as ANSI Standards, in which methods are described for meeting certain requirements contained in the regulations. To varying degrees, the NRC Staff has endorsed these documents as providing acceptable methods for meeting the regulations. But again, adherence to these guidance documents is not mandatory.


As an applicant develops the design of a system such as the radiation monitoring system, it may choose to "commit" to one or more of these NRC or industry reference documents. If an applicant commits to a document, then it should satisfy the guidelines contained in the document or request authorization from the NRC Staff for a "deviation." The NRC Staff specifically approves or denies each deviation requested.

However, an applicant may choose not to commit to a specific document, but may instead choose an alternative approach to meeting a regulatory requirement. When an applicant chooses to do this, the NRC Staff must evaluate the alternative approach to determine if it meets the regulation. The design of each nuclear power plant, including commitments and alternative approaches, is described in the FSAR specific to each plant and prepared by the applicant, and submitted to the NRC for review.

The NRC Staff's review of an application is guided by the Standard Review Plan (NUREG-0800). However, like Regulatory Guides, the Standard Review Plan imposes no requirements. Each section of the Standard Review Plan contains the following statement: "Standard review plans are not substitutes for regulatory guides or the Commission's regulations and compliance with them is not required."

As the NRC Staff reviews an application, the reviewer will often use the guidelines contained in a Regulatory Guide or ANSI standard as a measure of whether the application complies with the regulations. In such cases, the reviewer will often attempt to determine whether the application satisfies the intent of the guidelines in a Regulatory Guide or ANSI standard. This does not mean that the Regulatory Guide or ANSI standard becomes a requirement or a commitment, and it does not mean that the application must meet every guideline in the standard to be found acceptable.

The radiation monitoring system at Watts Bar must comply with GDCs 60, 63, and 64. In addition, TVA has committed to Regulatory Guides 1.21, 1.68 (Revision 2), 1.97 (Revision 2) which address, at least in part, the radiation monitoring system. More importantly in the context of this petition, TVA has specifically stated that it is not committed to RG 4.15.

Petitioner asserts that the statement in SSER 16 quoted above commits TVA to comply with RG 4.15. Petitioner further asserts that this assumed commitment requires that TVA also meet all of the guidelines contained in ANSI N13.10.

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13 Although Petitioner contends that TVA has not satisfied RG 1.21 and ANSI N13.1, Petitioner provides no basis for this assertion. In fact, the NRC Staff has determined that Watts Bar satisfies RG 1.21. TVA has not committed to meet ANSI N13.1 and there is no requirement that it do so.
because ANSI N13.10 is referenced in RG 4.15. Petitioner contends that, if any guideline in RG 4.15 or ANSI N13.10 is not met, TVA must submit a request for a deviation to the NRC Staff for approval.

These assertions are in error for the following two reasons.

First, TVA has explicitly stated in a letter dated July 21, 1995 (referenced at p. 11-1 of SSER 16), that it is not committed to RG 4.15, although TVA noted that Watts Bar “generally agrees with and satisfies the intent of RG 4.15 . . . .” Accordingly, the TVA application was not reviewed to ensure adherence to RG 4.15. Rather, the application was reviewed to ensure that regulatory requirements and guidance to which TVA did commit were satisfied. On p. 11-28 of SSER 16, the NRC Staff states: “The staff finds that the radiation monitoring system for Watts Bar Unit 1 meets the intent and purpose of RG 4.15, with respect to quality assurance provisions for the system.” This statement in SSER 16 is an acknowledgment of and agreement with TVA’s statement that Watts Bar generally meets the intent of RG 4.15. However, the NRC Staff did not review Watts Bar to the standards of RG 4.15, and strict adherence to RG 4.15 was not required.

Second, even if TVA were committed to RG 4.15, that would not commit TVA to ANSI N13.10 merely because it is referenced in RG 4.15. RG 4.15 specifically states:

Guidance on principles and good practices in the monitoring process itself and guidance on activities that can effect [sic] the quality of monitoring results . . . are outside the scope of this guide. However, some references are provided to documents that do provide some guidance in these areas [43 separate references are cited in the guide]. The citation of these references does not constitute an endorsement of all of the guidance in these documents by the NRC staff. Rather, these references are provided as sources of information to aid the licensee. . . .

Petitioner identifies three technical issues as a basis for the assertion that ANSI N13.10 was not met. As described above, TVA is not required to meet ANSI N13.10. The NRC Staff has reviewed the radiation monitoring system and inspected its implementation. The system satisfies NRC requirements.

Thus, RG 4.15 and ANSI N13.10, which Petitioner contends were not implemented at Watts Bar, are not commitments, and TVA was not required to implement these guidelines or to request deviations from them. TVA documented the fact that it was not committed to RG 4.15, and the NRC Staff was aware of this, as is indicated by the language referred to above from SSER 16.

The NRC Staff acknowledges that the language in SSER 16 that Watts Bar “conforms” to RG 4.15 could cause confusion. Accordingly, the NRC Staff
attempted to clarify in SSER 20\textsuperscript{14} the conclusion reached in SSER 16. In SSER 20, the NRC Staff explicitly acknowledged that TVA was not committed to RG 4.15, ANSI N13.1, or ANSI N13.10. The NRC Staff clarified that Watts Bar meets the intent of RG 4.15 with respect to quality assurance provisions for the radiation monitoring system. The NRC Staff revised the statement in SSER 16 cited above to read:

The staff also concludes that the system design conforms to the guidelines of NUREG-0737 (TMI Action Plan II.F.1, Attachment 1 and 2), RG 1.21, and applicable guidelines of RG 1.97 (Revision 2). The staff further concludes that the system design meets the intent and purpose of RG 4.15.

As stated in SSER 20, the NRC Staff has concluded that the radiation monitoring system at Watts Bar meets the "intent and purpose" of RG 4.15. The intent and purpose of RG 4.15 is to provide an acceptable method to comply with applicable NRC requirements. However, as discussed above, alternatives to RG 4.15 may also be found to be acceptable in meeting this intent and purpose of RG 4.15 (i.e., compliance with applicable NRC requirements). In its review of Watts Bar, the NRC Staff has concluded that applicable NRC requirements have been satisfied while not necessarily conforming to all the details of RG 4.15. Thus, although the Staff’s conclusion in SSERs 16 and 20 could have been clearer, as explained above, TVA did not commit to RG 4.15.

For these same reasons, Petitioner’s assertions provide no basis to conclude that TVA provided “misinformation” in this area. Rather, the NRC Staff properly evaluated the radiation monitoring system at Watts Bar and correctly determined that the applicable regulatory requirements were satisfied prior to licensing.

C. Deviations from Regulatory Guides

By letter dated January 30, 1996, Petitioner submitted a list of deviations from Regulatory Guides that Petitioner extracted from the Watts Bar SER and supplements. Petitioner questioned whether an overall review of the aggregate effect of the deviations had been performed for Watts Bar.

Each deviation is reviewed by the NRC Staff and, if found to be acceptable, is approved in an SER. It should be noted that a deviation is an alternative. Approval of a deviation does not suggest that a lesser safety standard has been applied. The NRC Staff reviews each program area described in the FSAR, and related regulatory documents to ensure that the program complies with regulatory requirements. That review includes an assessment of the impact of

\footnote{\textsuperscript{14}U.S. Nuclear Regulatory Commission, "Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2 (Docket Nos. 50-390 and 50-391)," Supplement 20 to NUREG-0847, February 1996.}
any deviations requested by a licensee. Thus, the integrated impact of any requested deviations on a program is considered as part of the review of that program.

Accordingly, the concern raised by Petitioner regarding the overall effect of the deviations approved at Watts Bar has not raised a safety issue that would warrant suspension or revocation of the operating license for Watts Bar.

Accordingly, Petitioner has not provided a basis to warrant a review of the Watts Bar licensing process, nor has Petitioner identified a safety concern that would warrant suspension or revocation of the operating license for Watts Bar.

IV. CONCLUSION

The institution of proceedings in accordance with section 2.206, as requested by Petitioner, is appropriate only where substantial safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175 (1975), and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). This is the standard I have applied to the petition. Petitioner has not raised any substantial safety concerns with regard to Watts Bar. Therefore, Petitioner’s request to revoke or suspend the operating license for Watts Bar is denied.

A copy of this Decision will also be filed with the Secretary for the Commission’s review as provided in 10 C.F.R. § 2.206(c) of the Commission’s regulations.

As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION

William T. Russell, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland, this 15th day of August 1996.
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