Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification 6.9, ''Reporting Requirements,'' by deleting the annual requirement to submit a description of changes made pursuant to 10 CFR 50.59. Administrative changes are also made to correct inconsistencies in the TS Table of Contents and in a footnote for Table TS 3.5-1.

Date of issuance: January 6, 1997

Effective date: January 6, 1997

Amendment No.: 131

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64397) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Dated at Rockville, Maryland, this 22nd day of January 1997.

For The Nuclear Regulatory Commission

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 97–1994 Filed 1-28-97; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 50–255 and 72–7]

Consumers Power Co., Palisades Nuclear Plant, License Nos. DPR–20; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated September 19, 1995, as amended on September 30, 1996, filed by Don't Waste Michigan and Lake Michigan Federation (Petitioners) under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition requested that the NRC (1) find that Consumers Power Company (licensee) violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades.

The Acting Director of the Office of Nuclear Reactor Regulation has determined that Petition should be granted in part and denied in part for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–01), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located in the Van Wylen Library at Hope College in Holland, Michigan.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, MD., this 23d day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

On September 19, 1995, the organizations Don't Waste Michigan and Lake Michigan Federation (Petitioners) filed a Petition pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) (1) find that Consumers Power Company (licensee) violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades.

On September 30, 1996, the Petitioners amended the Petition by including additional information in support of their position that the licensee did not have a workable unloading procedure before loading the 13 dry storage casks currently in the Palisades independent spent fuel storage installation (ISFSI).

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letter dated October 24, 1995, to Dr. Sinclair and Mr. Skavroneck, on behalf of the Petitioners, acknowledged receipt of the Petition. Notice of receipt was published in the Federal Register on October 31, 1995 (60 FR 55388).

On the basis of the NRC staff's evaluation of the issues and for the reasons given below, the Petitioners' requests are granted in part and denied in part.

II. Background

NRC regulations contain a general license that authorizes nuclear power plants licensed by the NRC, such as Palisades, to store spent nuclear fuel at the reactor site in storage casks approved by the NRC. (See 10 CFR part 72, subpart K.) In regard to dry cask storage of spent nuclear fuel at Palisades, the licensee opted to use the VSC–24 Cask Storage System designed by Sierra Nuclear Corporation. The VSC–24 Cask Storage System was added to the list of NRC certified casks in May 1993 (58 FR 17948). The associated certificate of compliance, Certificate Number 1007, specifies the conditions for use of VSC–24 casks under the general license provisions of 10 CFR part 72. Section 1.1.2, ''Operating Procedures,'' in the certificate of compliance for the VSC–24 casks, requires that licensees prepare an operating procedure related to cask unloading. Specifically, the condition states

> Written operating procedures shall be prepared for cask handling, loading, movement, surveillance, and maintenance. The operating procedures suggested generically in the SAR (safety analysis report) are considered appropriate, as discussed in Section 11.0 of the SER (safety evaluation report), and should provide the basis for the user's written operating procedures. The following additional written procedures shall also be developed as part of the user operating procedures:
>
> 1. A procedure shall be developed for cask unloading, assuming damaged fuel. If fuel needs to be removed from the multi-assembly sealed basket (MSB), either at the end of service life or for inspection after an accident, precautions must be taken against the potential for the presence of oxidized fuel and to prevent radiological exposure to personnel during this operation. This activity can be achieved by the use of the Swagelok valves, which permit a determination of the atmosphere within the MSB before the removal of the structural and shield lids. If the atmosphere within the MSB is helium, then operations should proceed normally, with fuel removal, either via the transfer cask or in the pool. However, if air is present within the MSB, then appropriate filters should be in place to permit the flushing of any potential airborne radioactive particulate from the MSB, via the Swagelok valves. This action will protect both personnel and the operations area from potential contamination. For the accident case, personnel protection in the form of respirators or supplied air should be

considered in accordance with the licensee's Radiation Protection Program.

The licensee for Palisades began loading casks in May 1993 after implementing pertinent certificate conditions, including those in Section 1.1.2.

In July 1994, the licensee discovered radiographic indications of possible defects in a weld in multi-assembly sealed basket (MSB) No. 4. MSB No. 4 had been loaded with spent fuel earlier that month and placed, inside a ventilated concrete cask, on the ISFSI storage pad. The licensee evaluated the flaw indications and determined that the MSB continued to meet its design basis and was capable of safely storing spent fuel for the duration of the certificate (20 years). Nevertheless, the licensee stated that MSB No. 4 would be unloaded to support additional inspections and evaluations related to its future use.[1] In preparation for the unloading of MSB No. 4, the licensee reviewed the unloading procedure issued in May 1993 (Revision 0) and identified several technical questions. A revision of the unloading procedure (Revision 1) was subsequently developed to resolve the identified technical questions.

The technical questions and the associated procedural changes were discussed during meetings with the NRC staff, and additional information was provided in submittals from the licensee to the NRC. Evaluation of the revised unloading procedure by the NRC staff was initially made through the review of submittals from the licensee and has continued through an inspection of the licensee's revised unloading procedure.

As a result of its inspections and reviews, the NRC staff recognized that some licensees, including Consumers Power Company, had developed unloading procedures that tended to be simplistic and lacked sufficient details and contingencies. In order to address these issues, an item related to cask loading and unloading procedures was added to the NRC dry cask storage action plan that was implemented in July 1995. Some issues, such as the thermal-hydraulic behavior of casks during the unloading process, were included largely as a result of questions related to the original unloading procedure at Palisades. Experience at other facilities using storage and transportation casks resulted in the identification of other issues. For example, as a result of the turbidity of the spent fuel pool during the unloading of a transportation cask at the Shearon Harris Nuclear Power Plant, the NRC staff assessed the potential for and significance of deposits on fuel assembly surfaces becoming loose during the unloading of dry storage casks. Evaluations and inspections were used to resolve these issues for specific facilities and revisions to NRC guidance documents have been prepared to resolve generic concerns.

Completion of the NRC inspection of the revised unloading procedure for Palisades was postponed following an event at the Point Beach Nuclear Plant.[2] Following the hydrogen ignition event at Point Beach, the NRC issued confirmatory action letters (CALs) to those licensees using or planning to use VSC–24 casks for the storage of spent nuclear fuel (i.e., licensees for Point Beach, Palisades, and Arkansas Nuclear One). The CALs document the licensees' commitments not to load or unload a VSC–24 cask without resolution of material compatibility issues identified in NRC Bulletin 96–04, ''Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks,'' and confirmation of corrective actions by the NRC.[3]

The NRC staff is continuing to review the bulletin responses and corrective actions for the Palisades facility, and, therefore, the licensee is restrained from loading or unloading additional VSC–24 casks. Completion of the ongoing NRC inspection of the revised unloading procedure at Palisades will be coordinated with the staff's review of the licensee's response to the bulletin. Further, the NRC has committed to State officials and members of the public that the exit meeting for the inspection at Palisades will be open to the public, the meeting will be noticed sufficiently in advance to allow interested parties to attend, and the NRC staff will allocate time to discuss issues with the public following the meeting with the licensee.

III. Discussion

The Petition requests four actions by the NRC on the basis of the contention that the original unloading procedure (Revision 0) implemented by the licensee was inadequate, and therefore, the licensee violated NRC regulations requiring the licensee, prior to using an approved cask, to establish that all conditions in a dry storage cask certificate of compliance have been met (see 10 CFR 72.212(b)(2)).

(1) Determine That the Licensee Violated NRC Requirements

In support of the Petition's contention that the licensee violated NRC requirements related to the original unloading procedure, the Petitioners claim that issues identified in licensee documents dated November 11, 1994, and June 2, 1995, regarding revisions to the unloading procedure to support the planned unloading of Cask No. 4, demonstrate that the original procedure was inadequate. The amendment to the Petition filed on September 30, 1996, included issues related to material compatibility identified in NRC Bulletin 96–04 as additional evidence that the licensee's original unloading procedure was inadequate.

The primary information offered by the Petitioners in support of their claim that the original procedure violated NRC requirements is identified in the licensee's document dated November 11, 1994. Although the issues identified by the Petitioners have been represented by the licensee as improvements or enhancements to the original unloading procedure to support the planned unloading of Cask No. 4 at Palisades, a potential inference that might be drawn from the November 11 document is that the original unloading procedure could not adequately support the unloading of Cask No. 4. However, the licensee's letter dated December 29, 1994, affirmed the licensee's position that the original unloading procedure was adequate, and therefore complied with the certificate of compliance. Additional information, including the revised unloading procedure and the supporting engineering analyses, was provided in the licensee's submittal to the NRC dated June 2, 1995. The NRC staff requested additional information from the licensee, and that information was provided by the licensee in submittals dated October 16, 1995, December 20, 1995, and July 19, 1996.

On the basis of its review, the NRC staff concluded that, had the licensee attempted to unload a cask using the

[1] The schedule for unloading MSB No. 4 remains indefinite. The staff has recently learned that the licensee may postpone the unloading until a multi-purpose cask is available. This would allow the spent fuel currently stored in MSB No. 4 to be transferred to a cask that would support both storage and transportation of the spent fuel. The NRC staff is reviewing this plan and will initiate discussions pertaining to this matter with the licensee and other affected parties.

[2] On May 28, 1996, a hydrogen gas ignition occurred during the welding of the shield lid on a VSC–24 cask at the Point Beach Nuclear Plant. The hydrogen was formed by a chemical reaction between a zinc-based coating (Carbo Zinc 11) and the borated water in the spent fuel pool.

[3] On December 3, 1996, the NRC staff informed the licensee for the Arkansas Nuclear One facility in Russellville, Arkansas, that it had completed its reviews and inspections associated with that facility and found that the licensee had satisfactorily completed the commitments documented in the CAL. Shortly thereafter, the licensee initiated cask-loading activities.

original unloading procedure, certain deficiencies associated with the original procedure would have prevented completion of the unloading process. The original unloading procedure's administrative limit for maximum cask pressure would have prevented the licensee from establishing a continuous cooling cycle because the internal cask pressure would not have been sufficient to force steam to the outlet of the discharge piping at the bottom of the spent fuel pool. Other weaknesses in the original unloading procedure that would have hampered cask unloading included a restrictive venting capacity due to reliance upon a small vent line with an installed Swagelok fitting, scant guidance for personnel performing tasks such as drawing a gas sample from the MSB to check for damaged fuel, and several examples of references to the wrong step within the procedure. Such deficiencies and weaknesses would have required the licensee to suspend activities at one or more times during the unloading process in order to evaluate the problems encountered and implement necessary revisions to the procedure. Therefore, because the original unloading procedure would have required revision in order to complete the unloading process, this was a violation of requirements that all activities affecting quality be prescribed by procedures appropriate for the circumstances and that procedures are reviewed for adequacy. (See Criteria V and VI in Appendix B to 10 CFR Part 50.)[4] However, the staff also determined that the deficiencies in the original unloading procedure would not have challenged the integrity of the cask or fuel contained in the cask and that the licensee would have ultimately been able to safely unload a cask. Thus, given the limited safety significance of the procedural deficiencies and the fact that the licensee identified and corrected the deficiencies, the NRC exercised its discretion to refrain from issuing a Notice of Violation or a civil penalty for the violation.

The purpose and objective of the NRC's enforcement program are focused on using enforcement actions (1) as a deterrent to emphasize the importance of compliance with requirements, and (2) to encourage prompt identification and prompt, comprehensive correction of violations. Mitigation of enforcement sanctions, such as refraining from issuing a civil penalty and/or a Notice of Violation, is described in Section VII.B of the ''General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy),'' for those cases in which a licensee identifies a problem and corrects it within a reasonable time. These mitigating factors were applicable to the subject Severity Level IV violation pertaining to the original unloading procedure at Palisades and the violation was, therefore, dispositioned as a Non-Cited Violation.[5]

As noted, the licensee, in various correspondence, took the position that the original unloading procedure was adequate and that subsequent changes incorporated into the revised procedure were enhancements based on lessons learned from operating experience and additional evaluations. Several statements in the licensee's correspondence appear to assert that unloading procedures for dry storage casks do not need to maintain fuel integrity during the unloading process in order to satisfy requirements of the certificate of compliance or NRC regulations. The NRC staff disagrees with this interpretation. NRC requirements mandate that the unloading process should be developed with due consideration to maintaining fuel integrity (see 10 CFR 72.122(h), 72.122(l), and 72.236(h)). Unloading activities are required to prevent gross ruptures of the fuel cladding in order to prevent operational safety problems. Unloading procedures are also required to include contingencies in case fuel cladding has degraded during storage such that additional measures are necessary to address increased radiological hazards during the unloading process. The NRC staff has concluded that the original unloading procedure would have supported unloading of undamaged fuel assemblies without causing a significant loss of fuel cladding integrity.

The issues identified by the licensee in the document of November 11, 1994, and for which the Petitioners claim that the original unloading procedure was inadequate, are addressed below.

MSB Cooling Skid

The licensee modified the configuration of the fill and vent piping and components from that used in the original unloading procedure. An increase in the venting capacity and the use of the previous vent path for instrumentation necessitated these modifications. The original unloading procedure included steps to remove a gas sample for analysis, connect the venting arrangement to the spent fuel pool, and connect the cooling water supply from the spent fuel pool to the vacuum drying system water pump and the MSB drain line. Neither the Petitioners nor the NRC staff have identified fundamental safety concerns with the arrangement used in the original unloading procedure.

Thermal Hydraulic Modeling

In order to verify that undamaged fuel could be safely removed from MSB No. 4 and to support preparing the revised unloading procedure, the licensee performed multiple analyses by modeling the thermal hydraulic behavior of the cask during the cooling process. These analyses were used to estimate the pressure response of the cask, to estimate the time requirements for cooling the cask, and to select the appropriate venting capacity in the revised unloading procedure. The analyses performed by the licensee showed that the venting capacity available for the original unloading procedure would have supported the cooling and refill of the MSB. These analyses also showed that cask unloading using the original procedure would have taken significantly longer than the time estimated for the revised procedure. However, no violations of regulatory requirements would have resulted from taking longer to complete the unloading process. The licensee's performance of the analyses during preparation of the revised unloading procedure highlighted the lack of supporting analyses or evaluations for the original version of the unloading procedure and contributed to the staff's finding that the licensee had violated the requirements of Criterion VI of appendix B to 10 CFR part 50 by issuing the original procedure without sufficient reviews to determine its adequacy.

[4] Section 1.1.3 of the certificate of compliance for the VSC–24 cask states that activities at the ISFSI shall be conducted in accordance with the requirements of 10 CFR part 50, appendix B. Requirements related to quality assurance for ISFSIs are also contained in subpart G to 10 CFR part 72. The requirements of Criteria V and VI in appendix B to 10 CFR part 50 are the same as the requirements stated in 10 CFR 72.150 and 10 CFR 72.152. In the case of the original cask unloading procedure at Palisades, the number of problems in the original procedure and the failure of the licensee to identify these problems during reviews performed prior to approval of the procedure resulted in the finding that a violation of NRC regulations had occurred. This finding is documented in NRC Inspection Report 50–255/96014.

[5] Although the NRC staff has identified weaknesses and deficiencies in the unloading procedure developed by the licensee, these problems resulted from the licensee giving insufficient consideration to the complexity of the activity. As part of its evaluation pertaining to the mitigation of enforcement sanctions, the NRC staff concluded that the licensee had not knowingly and willfully violated NRC requirements related to having an unloading procedure for dry storage casks as was claimed by the Petitioners.

Maximum Allowable Pressurization

During its review of the unloading procedure, the licensee determined that the cask should be limited to 38.3 psig in order to satisfy criteria established by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. This value is conservative with respect to the pressure that would challenge the structural integrity of the MSB. The original unloading procedure included precautions to maintain the internal pressure less than 10 psig and thus was bounded by the subsequent evaluations and the acceptable conditions specified in the revised procedure.

However, the staff has concluded that the procedural limitation of 10 psig in the original unloading procedure would have introduced problems in establishing the cooling cycle because the pressure would have been too low to force steam or water from the MSB to the coolant discharge at the bottom of the spent fuel pool. These problems, in turn, likely would have prevented completion of cask unloading without revising the procedure. However, the problems would not have challenged the integrity of the cask or otherwise introduced a safety concern. Rather, upon identifying the problems caused by the administrative limit of 10 psig, the licensee could have revised the procedure, proceeded to establish the desired cooling cycle, and completed unloading of a cask.

Fuel Integrity During Cooling

In support of preparing the revised unloading procedure, the licensee, with support from the nuclear fuel supplier, analyzed the allowable temperature differences between fuel assembly components and cooling water. Additional analyses determined maximum expected fuel temperatures before establishing the cooling flow to the MSB. These evaluations and the expected thermal response of the MSB and fuel assemblies following the introduction of coolant during the unloading procedure confirmed that thermal shocking would not challenge the integrity of the fuel assemblies in the MSB.

Fuel Heatup While the MSB is in the Transport Cask

As previously mentioned, the licensee and the contractors analyzed the maximum fuel temperatures that could be experienced during the time that the MSB is in the transfer cask before establishing the cooling flow from the spent fuel pool to the MSB interior. These analyses were performed for various heat loads and time periods and included conservative analysis assumptions. The analyses showed that fuel temperature limits would not be exceeded before establishing the cooling flow from the spent fuel pool using the original (or the revised) unloading procedure.

MSB Lid Removal

The revised unloading procedure uses more advanced cutting technologies in order to incorporate operating experience, ease lid removal, and minimize personnel exposure. The capability of the original unloading procedure to control removal of the MSB lid was verified by the licensee during mockups before loading casks at Palisades. Some of the improvements in the revised procedure are related to problems experienced during that exercise. However, the licensee has demonstrated that techniques for lid removal in the original unloading procedure were adequate to remove the lids and provide access to the fuel assemblies in compliance with NRC requirements.

Criticality Prevention

The original unloading procedure included steps for sampling the spent fuel pool boron concentration and establishing time limits for lid removal following termination of recirculation flow. The NRC staff considers the original procedure's lack of a detailed contingency for preventing bulk boiling, as was incorporated into the revised procedure, a procedural weakness. However, the weakness does not translate into a concern related to public health and safety or personnel exposure because of the inherent conservatisms related to reactivity control for storage casks, such as assuming nonirradiated fuel assemblies in supporting calculations, and the time that would be available for the licensee to implement compensatory actions.

10 CFR 50.59 Evaluation Related to the MSB Cooling Skid

Modifications to the MSB cooling skid led the licensee to question whether an unreviewed safety question was introduced by a possible break of the return line to the spent fuel pool. Upon further review, the licensee determined that the cooling system configuration did not create the possibility for an accident or a malfunction of a different type than any evaluated previously in the facility's final safety analysis report or otherwise exceed the criteria that define an unreviewed safety question under 10 CFR 50.59. The licensee has stated that this conclusion is also applicable for the original unloading procedure. Neither the Petitioners nor the NRC staff have identified a safety or compliance issue regarding the licensee's conclusion.

Rigging Procedures

The licensee investigated several minor changes to the rigging process during the development of the revised unloading procedure. These changes are intended to ease the operations and reduce personnel radiation exposures. However, the staff determined that the guidance provided by the original procedure, combined with expected skill of licensee personnel, would have been adequate to control the lifting of the various loads associated with unloading a cask.

Helium Sampling

During the development of the revised unloading procedure, the licensee recognized possible difficulties in drawing a gas sample from the MSB before initiating the cooling operation. The original unloading procedure included a step to ''remove a gas sample from the cask,'' but did not include the more detailed guidance that is incorporated into the revised procedure. This lack of guidance in the original procedure may have resulted in licensee personnel underestimating the helium concentration in the MSB. The original unloading procedure included provisions to suspend the unloading process if the sampling indicated air within the MSB. Therefore, this potential weakness in the original unloading procedure would not have introduced adverse safety consequences but instead may have erroneously caused the licensee to suspend cask unloading activities in order to conduct management briefings and determine compensatory measures due to the potential oxidation of the fuel cladding.

Summary for (1) ''Determine That the Licensee Violated NRC Requirements''

On the basis of its evaluation of the licensee's original unloading procedure, the NRC staff affirmed the licensee's determination that the procedure had numerous weaknesses. The staff believes that the administrative limit of 10 psig for maximum cask pressure and other identified weaknesses in the original unloading procedure would have required the licensee to suspend activities at one or more times during the unloading process in order to evaluate the problems encountered and implement necessary revisions to the procedure. Given the number of weaknesses in the original unloading procedure and the licensee's failure to

perform the necessary levels of review and analysis to have determined its adequacy prior to its issuance, the NRC staff found that the licensee violated NRC requirements contained in Criteria V and VI of appendix B to 10 CFR part 50. The first request in the Petition, to find that the licensee violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, is therefore granted. The violation was dispositioned as a Non-Cited Violation consistent with the NRC Enforcement Policy.

The Petitioners' amendment to the Petition dated September 30, 1996, claims that the original unloading procedure was inadequate because of its lack of controls related to the generation of hydrogen gas from a chemical reaction between coatings used on the VSC–24 casks and the borated water in the spent fuel pool. The chemical reactions and hydrogen issue were identified following an event that occurred during welding of the shield lid on a spent fuel storage cask at the Point Beach plant on May 28, 1996. The need to include special precautions in the unloading procedures for VSC–24 casks in order to prevent ignition of hydrogen gas had not been recognized by the cask vendor, licensees, or the NRC staff prior to the event at Point Beach. The licensee's original unloading procedure was developed before the event at Point Beach caused the recognition of the potential for ignition of hydrogen gas during the unloading of a VSC–24 cask. Accordingly, the NRC cannot reasonably fault the licensee, by taking enforcement action, for not having accounted for an issue that was not known to the NRC staff, the vendor, or the licensee.

(2) Suspend the Licensee's Use of the General License

On the basis of the contention that the licensee's unloading procedure was inadequate, the Petitioners requested that the licensee's use of the general license provisions of 10 CFR part 72 be suspended until such time as the significant issues described in the licensee's document of June 2, 1995, have been resolved, the NRC has documented its review, approved the licensee's revised procedure, and Cask No. 4 has been safely unloaded.

The licensee's submittal of June 2, 1995, provided Revision 1 of the unloading procedure and supporting engineering analyses. The Petition includes specific questions and comments regarding the licensee's submittal of June 2, 1995, in support of the Petitioners' position that actions taken by the licensee had not resolved significant safety issues. In response to questions from the NRC staff, the licensee provided additional information related to the submittal dated June 2, 1995. The subsequent submittals were dated October 16, and December 20, 1995.[6] In addition, the NRC staff was reviewing and will continue to review the issues included in the submittal dated June 2, 1995, as part of the ongoing NRC inspection of the revised unloading procedure. Further, as described above, the NRC staff has already concluded that the deficiencies in the original unloading procedure violated NRC requirements, and that the violation should be treated as a Non-Cited Violation because of the limited safety significance of the procedural deficiencies and consideration of mitigating factors defined in the NRC Enforcement Policy.

On June 3, 1996, the NRC issued CALs to the licensee and other users of the VSC–24 cask system. The CALs confirmed a commitment made by each licensee to the NRC staff to refrain from loading or unloading a VSC–24 cask pending completion of investigations and implementation of corrective actions. On June 27, 1996, a supplement to the CAL was issued to confirm a further commitment by the licensee to refrain from placing a VSC–24 cask into the spent fuel pool until after the NRC has reviewed and accepted applicable responses to NRC Bulletin 96–04 and verified corrective actions taken in response to the bulletin. CALs are among the administrative mechanisms that the NRC uses to supplement Notices of Violation, civil penalties, and orders in its enforcement program. CALs may be issued to confirm an agreement by a licensee or vendor to take certain actions to remove significant concerns about health, safety, safeguards, or the environment. The NRC expects licensees and vendors to adhere to stated obligations or commitments included in a CAL and will not hesitate to issue appropriate orders to ensure that such obligations or commitments are met.

The NRC issued the CALs and Bulletin 96–04 in recognition of the fact that the generation of hydrogen gas during the loading of VSC–24 casks at Point Beach was evidence that possible material compatibility issues were not fully addressed during the design or certification reviews associated with some spent fuel storage and transportation casks. It is not unusual for the NRC to use such administrative mechanisms to address generic issues. Given that the generation of flammable gases was a particular concern for the users of the VSC–24 cask system, those licensees, including Consumers Power Company, were issued CALs to confirm that VSC–24 casks would not be loaded, unloaded, or otherwise placed in a spent fuel pool before the resolution of issues identified in NRC Bulletin 96–04.

In regard to those issues contained in the amendment to the Petition, the existing CAL documents the licensee's commitment to refrain from loading, unloading, or otherwise placing a VSC–24 cask into the spent fuel pool pending verification of corrective actions related to NRC Bulletin 96–04. Given the licensee's commitment not to load or unload a cask, the NRC does not, in this instance, envision the need to issue an order as requested by the Petitioners.

Those portions of the Petition that address NRC's approval of the revised unloading procedure and include the unloading of Cask No. 4 as a condition for resuming normal activities under the general license are denied. The NRC staff does not generally review and approve specific procedures developed by licensees. NRC regulations, facility licenses, and NRC-approved quality assurance programs require licensees to establish and maintain a formal process for the preparation and issuance of procedures and changes thereto. NRC assessments of licensee procedures are generally conducted as part of the NRC's inspection program. In this instance, given the licensee's commitment to refrain from action until completion of NRC's inspections, the inspections will confirm that applicable regulatory requirements are satisfied before use of the licensee's revised unloading procedure. As previously mentioned, the NRC staff will resume its inspection activities related to the revised unloading procedure when the licensee has resolved the issues identified in NRC Bulletin 96–04. If, and provided that, there is satisfactory resolution of the issues identified in NRC Bulletin 96–04 and any other questions that may arise during the inspection of the licensee's revised unloading procedure, then the NRC will have reasonable assurance of the licensee's compliance with regulatory requirements. Accordingly, the staff would not have any basis or reason to require the licensee to unload Cask No. 4 before resuming normal activities under the general license at Palisades. Thus, following resolution of all issues to the satisfaction of the NRC staff, the determination of the sequence of events

[6] These documents, like all others identified in this decision, are available to the public at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and from the local public document room located in the Van Wylen Library at Hope College in Holland, Michigan.

related to the planned unloading of Cask No. 4 and the loading of additional casks at Palisades will be at the discretion of the licensee. As noted above, the NRC staff has committed to open the exit meeting with the licensee to the public at the conclusion of the ongoing inspection and will document its review in an inspection report that will be available for public review.

(3) Require the Licensee to Pay a Substantial Penalty

On the basis of the contention that the licensee's original unloading procedure was inadequate, the Petitioners requested that the NRC levy a monetary penalty of $1.3 million against the licensee. As previously mentioned, the NRC staff determined that, although finding that the deficiencies in the original unloading procedure violated NRC requirements, the violation satisfied the criteria to be treated as a Non-Cited Violation because of the limited safety significance of the procedural deficiencies and consideration of mitigating factors defined in the NRC Enforcement Policy. Enforcement sanctions, including issuance of civil penalties and orders, are normally used as a deterrent to emphasize the importance of compliance with requirements, and to encourage prompt identification and prompt, comprehensive correction of violations. In this case, the licensee identified the deficiencies that constituted the violation of NRC requirements and subsequently revised the unloading procedure to resolve the identified technical issues. It was the judgement of the NRC staff that the violation should be dispositioned as a Non-Cited Violation in order to convey the appropriate regulatory message in this case. Further, even if the violation had been cited, it is the NRC staff's judgment that it would have been categorized at a Severity Level IV, for which a civil penalty would not ordinarily be issued.

In regard to the hydrogen issues identified in the amendment to the Petition, the NRC staff has utilized an administrative mechanism in its enforcement policy (CALs) to ensure that the licensee takes certain actions to resolve this safety concern. As previously mentioned, the specific contentions raised by the Petitioners pertaining to hydrogen issues and the original unloading procedure do not warrant additional enforcement actions by the NRC.

(4) Allow Petitioners to Review Procedure, Require NRC to Hold Hearings, and Allow Petitioners to Participate in Proceedings

The original unloading procedure and the first revision of the unloading procedure have been provided to the Petitioners. In addition, correspondence between the NRC and the licensee regarding the procedures have been furnished to the Petitioners. Further, due to the course of events following the licensee's decision to unload Cask No. 4—including the licensee's evaluation of the original unloading procedure, identification of improvements to the unloading process, and the submittal of this Petition—the original and first revision of the unloading procedure and related documentation have been available for public review. Accordingly, Petitioners have had the opportunity to review the unloading procedure. Further, as noted elsewhere, it is the NRC staff's intention to hold a public meeting in the vicinity of the Palisades Nuclear Plant at the conclusion of its ongoing inspection of the licensee's revised unloading procedure.

The Petitioners' request for hearings and participation in proceedings has been addressed in previous correspondence with the Petitioners and the Attorney General for the State of Michigan. In that correspondence, the NRC staff explained that neither the general licensing provisions of 10 CFR part 72 nor the petition process described in 10 CFR 2.206 require the NRC to institute a proceeding. Under § 2.206, the NRC office director responsible for the subject matter of the request ''shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.''

As set forth in this Director's Decision, the NRC has determined not to institute the proceeding as requested by the Petition.

IV. Conclusion

Petitioners requested that the NRC determine that Consumers Power Company violated NRC requirements, suspend the licensee's use of the general license, impose a substantial penalty, and hold hearings related to the licensee's unloading procedure for dry storage casks. In response, the NRC determined the licensee violated NRC requirements insofar as the original unloading procedure (Revision 0) would have required revision in order to have completed the unloading process. Further, NRC staff determined that the violation, which was identified and corrected by the licensee, should be treated as a Non-Cited Violation consistent with the NRC's Enforcement Policy. Therefore, to this extent, Petitioners' request for a determination that the licensee violated NRC requirements is granted. The available information is sufficient to conclude, however, that no substantial safety issue has been raised regarding the operation of Palisades or its associated ISFSI given the licensee's commitment not to load or unload a cask until the NRC staff is satisfied that the licensee's procedures are adequate. Therefore, the NRC has determined that no adequate basis exists for granting Petitioners' requests for suspension of Consumers Power Company's use of the general license for dry cask storage of spent nuclear fuel at Palisades or imposition of a civil penalty.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this 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.

Dated at Rockville, Md., this 23d day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

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Individual Plant Examination Program; Perspectives on Reactor Safety and Plant Performance Volume 1, Part 1 and Volume 2, Parts 2–5, Draft

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of revised deadlines for public comments on draft NUREG–1560.

SUMMARY: The Nuclear Regulatory Commission has published a draft of ''Individual Plant Examination Program: Perspectives on Reactor Safety and Plant Performance,'' NUREG–1560, Volumes 1 and 2. Volume 1, Part 1 is a summary report from a review of the Individual Plant Examinations (IPE) submitted to the agency in response to Generic Letter