UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 03/07/02

COMMISSIONERS

SERVED 03/07/02

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In the Matter of	)	
DUKE COGEMA STONE & WEBSTER	)	Docket No. 70-03098-ML
(Savannah River Mixed Oxide Fuel Fabrication Facility)	)	

CLI-02-07

MEMORANDUM AND ORDER

This case involves the application of Duke Cogema Stone & Webster ("DCS") for authorization to construct a mixed oxide ("MOX") fuel fabrication facility. Intervenor Georgians Against Nuclear Energy ("GANE") requested that the proceeding be dismissed or held in abeyance on the ground that the NRC's contemplated two-step proceeding, divided between initial construction authorization and later licensing to operate the facility (*i.e.,* to possess and use special nuclear material), is incompatible with 10 C.F.R. Part 70. The Licensing Board denied GANE's motion, and GANE petitions for interlocutory Commission review. We grant GANE's petition and affirm the Board's decision.

I. BACKGROUND

On February 28, 2001, the DCS consortium submitted an application for authorization to construct a MOX fuel fabrication facility at the Department of Energy's Savannah River, South Carolina site. The MOX fuel fabrication facility, if approved and constructed, will convert

surplus weapons-grade plutonium to MOX fuel, a blend of uranium and plutonium oxides, that commercial nuclear power stations can use to generate electricity.

In March, 2001, the NRC Staff announced receipt of DCS's construction authorization request and its environmental report.[1] Later, the Commission published a Notice of Opportunity for a Hearing.[2] The hearing notice set out two requirements for NRC approval of the construction authorization request: (1) a safety finding "that the design bases of the proposed MOX fuel fabrication facility's principal structures, systems, and components, together with the DCS quality assurance plan, 'provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents.' 10 CFR 70.23(b);" and (2) an environmental finding, after a review under the National Environmental Policy Act ("NEPA"),[3] that "'the action called for is the issuance of the proposed license.' 10 CFR 70.23(a)(7)."[4]

The hearing notice also specified that the NRC would consider *operation* of the MOX facility later, when the agency would decide whether "construction of the facility has been properly completed (see 10 CFR 70.23(a)(8)), and ... all other applicable 10 CFR Part 70 requirements have been met."[5] The question of operation, the NRC said, would be subject to a separate hearing notice.[6] The NRC limited the current hearing process to contentions pertinent to DCS's construction authorization request, environmental report, and quality assurance plan.[7]

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[1] *See* 66 Fed. Reg. 13,794 (Mar. 7, 2001).

[2] *See* 66 Fed. Reg. 19,994 (Apr. 18, 2001).

[3] 42 U.S.C. §§ 4321 *et seq*.

[4] 66 Fed. Reg. at 19,994.

[5] *See id.*

[6] *See id.*

[7] *See id.*

Subsequently, GANE and several other petitioners submitted timely hearing requests. In June, 2001, we referred the hearing requests to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, and instructed him to appoint either a three-judge Licensing Board or a single presiding officer to consider the case.[8] Our referral order reiterated that only DCS's construction authorization request, and its attendant safety and environmental questions, were at issue.[9] Our order also stated that an enhanced Subpart L process governs the case, and set out a proposed schedule.[10] Shortly after our referral order, the Chief Judge appointed a three-judge Licensing Board to handle the case.

In August, 2001, GANE filed a set of contentions and also a "Motion to Dismiss Licensing Proceeding, or, in the Alternative, Hold It in Abeyance" ("Motion"). GANE's motion argued that the Commission lacked authority, under Part 70, to split the MOX hearing process into two parts, one focused on the construction authorization request and the other on operation of the facility. GANE maintained that NRC rules contemplate a single, unified process for licensing a MOX production facility. Over the opposition of DCS, the Board found that GANE had standing to intervene and had advanced several admissible contentions.[11] But, in a separate decision, the Board summarily denied GANE's motion to dismiss the proceeding or to

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[8] *See* CLI-01-13, 53 NRC 478, 479 (2001).

[9] *See id.,* at 483.

[10] *See id.*, at 480-82, 484-86.

[11] *See* LBP-01-35, 54 NRC __ (Dec. 6, 2001). DCS filed with the Board a "Motion for Reconsideration or, in the Alternative, for Certification to the Commission" (Dec. 17, 2002), challenging the Board's admission of GANE contentions dealing with terrorism, the controlled area boundary, and inclusion of material control and accounting and physical security as principal systems of the MOX fuel fabrication facility. The Board denied the motion. *See* unpublished Memorandum and Order (Ruling on Motion to Reconsider) (Jan. 16, 2002). DCS then sought interlocutory Commission review. We have granted DCS's petition in part (insofar as it deals with terrorism). *See* CLI-02-04, 55 NRC ___ (Feb. 6, 2001). We have not yet acted on the remainder of DCS's petition.

hold it in abeyance.[12] The Board reasoned that in both the initial hearing notice and the referral order, the Commission had already approved the two-step MOX licensing process challenged by GANE.

GANE then filed the petition for interlocutory review that we consider today. GANE also sought a stay of proceedings pending our review. Both DCS and the NRC staff oppose GANE's petition and its stay motion.[13]

II. DISCUSSION

Ordinarily, we avoid piecemeal interference in ongoing Licensing Board proceedings. We typically turn down petitions to review interlocutory Board orders summarily, without engaging in extensive merits discussion.[14] Here, though, GANE's petition questions the very structure of our announced two-step licensing process. We find this question suitable for our consideration.[15] If GANE were correct that Part 70 renders a two-step MOX licensing process unlawful, there would be no basis for the Board to continue on its current course of considering

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[12] *See* unpublished Memorandum and Order (Ruling on Motion to Dismiss) (Dec. 20, 2001) ("Denial Order").

[13] DCS, however, requests that the Commission accept review of GANE's petition and affirm the Board's Denial Order.

[14] *See, e.g., Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant License Termination Plan), CLI-01-25, 54 NRC ___ (Dec. 5, 2001); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297 (2000); *Dr. James E. Bauer,* CLI-95-3, 41 NRC 245 (1995).

[15] *See* 10 C.F.R. § 2.786(g)(2). The Commission will consider a petition for interlocutory review under 10 C.F.R. § 2.786(g) in a Subpart L case. *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-98-7, 47 NRC 307, 310 (1998). This provision states one of the standards for review of a presiding officer's referral or certification is that the issue "[a]ffects the basic structure of the proceeding in a pervasive or unusual manner." Even in the absence of a presiding officer's referral or certification, the Commission will consider a party's petition for review of an interlocutory order if one of the standards in 10 C.F.R. § 2.786(g) is met. *See Oncology Services Corp.,* CLI-93-13, 37 NRC 419, 421-22 (1993). In addition, "[s]ometimes...interlocutory review is appropriate as an exercise of our inherent and ongoing supervisory authority over adjudicatory proceedings." *See Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 29 (2000).

the MOX facility in two separate steps: at the construction authorization stage and at the operating license stage. And, although (as the Board noted) the Commission's initial hearing notice and its referral order took as their premise the validity of the two-step process, the Commission did not explain the legal basis for that premise. Hence, we take the opportunity of GANE's petition, and the other parties' responses, to do so now.

The Board, in its denial order, determined that the Commission had effectively decided the issue raised by GANE. The Board simply denied GANE's motion as incompatible with our actions -- the initial hearing notice and the referral order -- setting up the two-step process in the first place and offered no analysis of its own on the "two-step" question.[16] GANE insisted in its motion, and again in its petition before us, that the construction authorization proceeding is being conducted "far outside the bounds of the law."[17] GANE construes the Atomic Energy Act[18] ("AEA") and our 10 C.F.R. Part 70 regulations to require but a single application, and but a single hearing process, for construction and operation of a MOX facility. GANE also maintains that the two-step process improperly leaves important operational safety questions out of the NEPA inquiry, which is conducted at the construction authorization stage.

For the reasons below, we find GANE's position unpersuasive, and uphold the lawfulness of the two-step approach.

A. The Atomic Energy Act does not specify a single application or hearing.

Section 57 of the AEA requires a license to *possess* the "special nuclear material" required for production of MOX fuel, but requires no license to *construct* a fuel fabrication

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[16] *See* Denial Order at 2-3.

[17] *See* Petition at 6. As the paper copy of GANE's Petition is not yet available because of mail delays, all page citations are keyed to the electronic version of the document.

[18] 42 U.S.C. §§ 2011 *et seq.*

facility.[19] Indeed, the Act specifies no particular hearing or review requirements at all for MOX facilities. By contrast, when it comes to uranium enrichment facilities, the AEA (section 193) prescribes a one-step process, including a single adjudicatory hearing, that considers both construction and operation.[20] Similarly, for nuclear power reactors, the AEA (section 185) mandates particular construction permit and operating license processes (either one-step or two-step, depending on circumstances).[21] For MOX facilities, however, Congress has not said whether the NRC is to consider construction and operation together (a one-step process) or separately (a two-step process).

The absence of statutory procedural requirements leaves the Commission free to establish its own process to consider construction and operation of MOX facilities. This is consistent with the general approach of the AEA, which established "a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives."[22] The NRC has exceptionally wide latitude in designing its own proceedings.[23] The agency even has authority "to change its procedures on a case-by-case basis with timely notice to the parties involved."[24]

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[19] 42 U.S.C. § 2077.

[20] 42 U.S.C. § 2243. This provision entered the AEA in 1990, upon enactment of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act, Pub. Law. 101-575, 104 Stat. 2835.

[21] 42 U.S.C. § 2235.

[22] *Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968). *Accord Kelley v. Selin,* 42 F.3d 1501, 1511 (6th Cir. 1995), *cert. denied*, 515 U.S. 1159 (1995).

[23] *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 524-25 (1978).

[24] *City of West Chicago v. NRC*, 701 F.2d 632, 647 (7th Cir. 1983). *Accord National Whistleblower Center v. NRC*, 208 F.3d 256, 262 (D.C. Cir. 2000), *cert denied*, 121 S. Ct. 758

In sum, the AEA does not speak to the "two-step" issue as such, but does grant the NRC broad power to organize its licensing process efficiently. The Commission has ample statutory authority to establish separate construction authorization and operating license reviews (and hearings) for licensing a MOX facility.

B. NRC regulations do not specify a single application.

GANE principally argues that NRC regulations in Part 70 contemplate that "an entity seeking to build and operate a plutonium processing plant will file a single application that is complete with respect to both construction and operation."[25] GANE cites 10 C.F.R. §§ 70.21 and 70.22(f) -- specifying the filing requirements for applications to possess and use special nuclear material -- for this proposition. We find, however, that Part 70 does not require a single application or a single licensing review except for the special case of uranium enrichment facilities.[26]

The key regulations for a plutonium processing and fuel fabrication facility are 10 C.F.R. §§ 70.23(a)(7), 70.23(a)(8), and 70.23(b). These regulations contemplate two approvals, construction and operation. A license to *operate* requires prior Commission approval of construction under section 70.23(b). In addition, the Commission will make a separate determination that the license applicant has completed construction in accordance with its application:

> Where the proposed activity is the operation of a plutonium processing and fuel fabrication plant, [the NRC must determine that] construction of the principal

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(2001).

[25] *See* GANE Petition at 1.

[26] For uranium enrichment facilities, we added §§ 70.23a and 70.31(e) to our regulations specifically to implement the one-step licensing process mandated by 42 U.S.C. § 2243. *See* "Final Rule - Uranium Enrichment Regulations," 57 Fed. Reg. 18,388 (Apr. 30, 1992). *See also* note 21, *supra,* and accompanying text.

> structures, systems, and components approved pursuant to paragraph (b) of this section has been completed in accordance with the application.

10 C.F.R. § 70.23(a)(8). Authorization to *construct* requires prior Commission findings on specific environmental, design, and quality assurance issues:

> [The NRC must determine] before commencement of construction ... on the basis of information filed and evaluations made pursuant to subpart A of part 51 ... after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is issuance of the proposed license, with any appropriate conditions to protect environmental values.

10 C.F.R. § 70.23(a)(7); and

> The Commission will approve construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant *on the basis of information filed pursuant to § 70.22(f)* when the Commission has determined that the design bases of the principal structures, systems, and components, and the quality assurance program provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents...

10 C.F.R. § 70.23(b) (emphasis added).

GANE appears to construe the phrase "information filed pursuant to 70.22(f)" to require the applicant, before construction approval, to submit *all* information referred to in 10 C.F.R. § 70.22(f), including "the other information required by this section [§ 70.22]." However, the "information filed pursuant to § 70.22(f)" considered for construction authorization is a subset of the full-scale information required for a license application.[27] At the construction authorization

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[27] Section 70.22(f) applies only to applications for a plutonium processing and fuel fabrication plant and its requirements are in addition to the other applicable provisions of § 70.22 Contents of applications. It states:

> Each application for a license to possess and use special nuclear material in a plutonium processing and fuel fabrication plant shall contain, in addition to the other information required by this section, a description of the plantsite, a description and safety assessment of the design bases of the principal structure, systems, and components of the plant, including provisions for protection against natural phenomena, and a description of the quality assurance program to be applied to the design, fabrication, construction, testing and operation of the structures, systems, and components of the plant.

stage the NRC is considering construction issues alone and the review is aimed at the findings required for construction approval in 10 C.F.R. § 70.23(b). While 10 C.F.R. § 70.23(b) indicates that a construction permit approval will be made on the "basis of information" submitted under § 70.22(f), that does not mean the Commission need concern itself with information not relevant to the decision before it. Thus, the agency need only review documents and information related to those findings for construction approval, and can forgo (until later) obtaining the complete license application required to operate the facility. The NRC can, therefore, confine its initial adjudicatory hearing to only the construction issues that are the subject of a Commission decision at this stage.

That, in fact, is just what the Commission did in establishing a hearing process for DCS's proposed MOX facility. The safety and environmental findings for construction authorization under 10 C.F.R. §§ 70.23(a)(7) and 70.23(b) are identical to those set out in the notice of opportunity for hearing.[28] As the process is set up, DCS's application for an operating license will come later, and will generate a second hearing opportunity keyed to the operating license.[29] Thus, interested members of the public, like GANE, will have a full opportunity to raise and litigate all of their concerns at appropriate points in the process.

In short, the regulations contemplate two approvals -- approval of construction (10 C.F.R. §§ 70.23(a)(7), (b)) and approval for operation (10 C.F.R. § 70.23(a)(8)). It is reasonable, and well within the Commission's discretion, therefore, to allow an applicant to submit the required materials to the NRC in increments corresponding to those two stages, and

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[28] *See* 66 Fed. Reg. at 19,994.

[29] *See id*.

to set up a two-step hearing process corresponding to the two stages. Contrary to GANE's view, nothing in our regulations provides otherwise.[30]

C. The nine-month provision of section 70.21(f) does not require a one-step process.

GANE calls special attention to one of our filing regulations, 10 C.F.R. § 70.21(f), which states that an application to possess and use special nuclear material "shall be filed at least 9 months prior to commencement of construction of the plant or facility," and "shall be accompanied by an Environmental Report."[31] According to the proposed schedule for the MOX facility review as of the date of the filing of GANE's petition, DCS was to submit its license application for operation of the MOX facility on July 31, 2002. The NRC staff was due to issue its final environmental impact statement and safety evaluation report on September 30, 2002.[32] Thus, GANE asserts, under the original schedule the NRC might have been in a position to

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[30]This is not to say that our regulations preclude an applicant from making a single comprehensive application. But the NRC staff's review in the event of a single submission would nonetheless proceed in two phases -- the preliminary environmental and technical review necessary to authorize construction and the final review necessary to issue an operating license.

[31] *See* GANE Petition at 7-8. The pertinent provision states in full:

> An application for a license to possess and use special nuclear material for processing and fuel fabrication...shall be filed at least 9 months prior to commencement of construction of the plant or facility...and shall be accompanied by an Environmental Report required under subpart A of part 51 of this chapter.

10 C.F.R. § 70.21(f).

[32] By letter of January 24, 2002, DCS's counsel informed the Licensing Board that the Department of Energy has determined that some of the surplus plutonium material previously intended for immobilization will instead be processed by the MOX facility and converted to MOX fuel, thus requiring some revisions to the construction authorization request and the environmental report. Counsel for the NRC Staff subsequently informed the Board by letter of February 14, 2002, that DCS plans to submit a supplemental environmental report in August or October, 2002, and a supplemental construction authorization request in October, 2002.

allow construction to begin in as little as two months after DCS submits its full application for a license to possess and use special nuclear material.[33]

In GANE's view, regulatory history supports its position that the nine-month provision is pivotal. The Part 70 regulations the Commission proposed and adopted in 1971, says GANE, "clearly contemplated that the review of the operating license application and design bases would take place simultaneously, not sequentially as proposed in this case."[34] GANE notes that, before 1971, the NRC reviewed operation, but not design and construction, of plutonium processing plants. The stated purpose of the 1971 regulations was to "provide for Commission review of the site and design bases for plutonium processing and fuel fabrication plants for which a license is sought, prior to the beginning of plant construction."[35] The original 1971 rule included a requirement that the application must be filed at least six months before beginning construction. GANE points out that a subsequent amendment *lengthened* the period to the current nine months. Thus, GANE reasons, "the Commission's purpose in providing for pre-licensing approval of plutonium plant designs was to strengthen the safety requirements for a particularly dangerous type of facility, not to provide a short-cut for early construction before completion of a license application."[36] GANE sees the NRC's two-step plan for the MOX proceeding as weakening the NRC staff's safety review because the staff will not finish its review of operational issues until after construction is underway.

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[33] Contrary to GANE's assertion, the earliest date the Staff could have authorized construction to begin is Oct. 31, not Sept. 30, 2002. *See* 10 C.F.R. § 51.100(a)(1)(ii). Now, of course, the schedule has changed. *See* n. 31, *supra.*

[34] GANE Petition at 7.

[35] *See* "Proposed Rule: Plutonium Processing and Fuel Fabrication Plants," 36 Fed. Reg. 9786 (May 28, 1971).

[36] GANE Petition at 8.

GANE, we believe, has missed the point of the nine-month requirement. The Commission inserted it into our rules not to enhance the agency's safety review, as GANE maintains, but simply to provide enough time for the Commission and its staff to complete their environmental review before commencement of construction. This is made clear by the regulation's history:

> In order to assure that an opportunity is provided for full consideration of environmental effects before site preparation is begun, these amendments require that applications for such materials licenses be filed at least nine months prior to commencement of construction of plants or facilities in which the licensed activities will be conducted. ...the Director of Regulation must reach a favorable conclusion with respect to environmental considerations after completion of the environmental review...[37]

The Commission wanted to ensure enough time to perform an adequate environmental review before a proposed site is disturbed. The nine-month regulation simply does not speak to the question of separate construction-stage and operating-stage reviews.

Here, DCS submitted its construction authorization request and its environmental report nearly a year ago, approximately 18 months in advance of its proposed October, 2002, start-up of construction. This early filing satisfies the only stated purpose of the nine-month provision: adequate time for an NRC environmental review. GANE argues that DCS must file its full license application nine months in advance of construction authorization. But DCS did timely file the portions of its license application pertinent to construction authorization and its environmental report. We decline to read the nine-month provision to require DCS to file additional (operation-related) materials not yet needed by the NRC, and we also decline to read the provision to require a one-step licensing process.

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[37] "Final Rule, Prohibition of Site Preparation and Related Activities," 37 Fed. Reg. 5745, 5746 (Mar. 21, 1972).

D. The NRC's case-specific orders override its procedural rules.

For the reasons we give above, we are persuaded that the two-step licensing process contemplated by our initial hearing notice and by our referral order lies entirely within what Parts 51 and 70 of our rules authorize. But even if our case-specific notice and order could not be reconciled with our general procedural rules, our case-specific requirements would prevail. In *National Whistleblower Center v. NRC* and *City of West Chicago v. NRC,* the courts of appeals recognized the NRC's authority "to change its procedures on a case-by-case basis with timely notice to the parties involved."[38] Here, from the outset, we gave ample notice of our procedural intent. GANE and other parties entered into the proceeding fully aware of the contemplated two-step process, the timing of the construction authorization and operating license steps, and the applicable hearing requirements. In these circumstances GANE cannot complain of departures, if any, from our general procedural rules.

E. NEPA findings do not require a complete operational safety review.

The crux of GANE's NEPA argument is that the NRC staff must issue its environmental impact statement ("EIS") in conjunction with making its safety findings on operation of the MOX facility; *i.e.*, the staff must complete its environmental and safety review of the entire license application before allowing construction to begin.[39] GANE's objection to the original schedule was that if, as planned, the staff issued the EIS on September 30, 2002, the staff would not have completed its full safety review, but only its construction-related review. The target date for the staff's Safety Evaluation Report for operation of the facility was July 31, 2004.

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[38] *City of West Chicago*, 701 F.2d at 647; *accord National Whistleblower Center*, 208 F.3d at 262.

[39] *See* GANE Petition at 9-10.

The Commission's NEPA regulations appear in 10 C.F.R. Part 51. They do not call for delaying the NRC's NEPA review until completion of the agency's operational safety review. On the contrary, Part 51 requires the NRC staff to "prepare a draft environmental impact statement as soon as practicable after publication of the notice of intent to prepare an environmental impact statement and completion of the scoping process."[40] That means, in effect, that the NRC must begin its environmental review under NEPA early enough to allow completion before the agency needs to take action that would have a significant effect on the environment. In this case, the environmental effects begin with construction, and are not confined to operation. Thus, the NRC reasonably performs its environmental review in connection with construction.

GANE is correct, of course, that the NRC must meet its responsibilities under both NEPA and the AEA. But nothing in our regulations joins together the NRC's NEPA and AEA obligations. The two inquiries are not coextensive. The courts, in fact, have taken care to remind the Commission that its AEA safety reviews do not satisfy its obligations under NEPA, which has independent statutory force.[41] GANE offers no reason to conclude that the NRC cannot complete a full environmental review, based on DCS's already-filed environmental report, prior to completion of its operating license safety review. DCS's environmental report addresses the environmental effects of operating the MOX facility, as will (presumably) the NRC staff's upcoming EIS. These issues are ripe for NEPA consideration now.

GANE was free to contest the environmental report during the current hearing process on construction authorization. And, if genuinely new environmental information emerges during subsequent phases of the proceeding, our rules provide for the possibility of supplements to the

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[40] 10 C.F.R. § 51.70(a).

[41] *See Limerick Ecology Action, Inc. v. NRC,* 869 F.2d 719, 729-31 (3d Cir. 1989).

EIS and for late-filed hearing contentions.[42] GANE, however, demands that we make the NRC staff's safety review of the facility operation a condition precedent to preparation of an EIS. We see no need or requirement to do this.[43]

III. Conclusion

For the foregoing reasons, the Commission (1) *reviews and affirms* the Licensing Board's December 20, 2001 Denial Order, and (2) *denies* as moot GANE's motion for a stay of proceedings pending review.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of March, 2002.

[42] *See* CLI-01-13, 53 NRC at 481 (adopting late-filed contention rule, 10 C.F.R. § 2.714(a)(1), for this proceeding); 10 C.F.R. § 51.92 (providing for supplements to an EIS).

[43] GANE's view of NEPA cannot be squared with established NRC practice under other subparts of our regulations which require an environmental impact statement (EIS) considering the effects of operation early in the process, sometimes before an application to operate is even submitted. For example, for early site permits issued, Part 52 provides that the Commission will prepare an EIS which will focus on, among other things, the effects of operation of "a reactor, or reactors, which have characteristics that fall within the postulated site parameters." 10 C.F.R. § 52.18. This review is performed "notwithstanding the fact that an application for a construction permit or a combined license has not been filed in connection with the site or sites for which a permit is sought." *See* 52.15(a).