

December 23, 1986

Docket No. 50-271

Mr. R. W. Capstick
Licensing Engineer
Vermont Yankee Nuclear Power
Corporation
1671 Worchester Road
Framingham, Massachusetts, 01701

Dear Mr. Capstick:

Re: Vermont Yankee Nuclear Power Corporation

The Commission has filed the enclosed "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" with the Office of the Federal Register for publication. The notice relates to your amendment request dated April 25, 1986, regarding revisions to the Technical Specifications for Vermont Yankee. These proposed changes would authorize increasing the storage capacity of the spent fuel pool from the present capacity of 2000 fuel assemblies to 2870 fuel assemblies.

Sincerely,

Original signed by

Vernon L. Rooney, Project Manager
BWR Project Directorate #2
Division of BWR Licensing

Enclosure:
Notice of Consideration

cc w/enclosure:
See next page

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OGC-Bethesda
R. Bachmann
12/11/86
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12/ /86

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Mr. R. W. Capstick
Vermont Yankee Nuclear Power Corporation

Vermont Yankee Nuclear Power
Station

cc:

Mr. J. G. Weigand
President & Chief Executive Officer
Vermont Yankee Nuclear Power Corp.
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Brattleboro, Vermont 05301

Mr. W. P. Murphy, Vice President &
Manager of Operations
Vermont Yankee Nuclear Power Corp.
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Brattleboro, Vermont 05301

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Mr. Gerald Tarrant, Commissioner
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Montpelier, Vermont 05602

New England Coalition on
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State of Vermont
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Montpelier, Vermont 05602

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Resident Inspector
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Honorable John J. Easton
Attorney General
State of Vermont
109 State Street
Montpelier, Vermont 05602

Regional Administrator, Region I
U. S. Nuclear Regulatory Commission
631 Park Avenue
King of Prussia, Pennsylvania 19406

John A. Ritscher, Esquire
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

(7590-01)

UNITED STATES NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-271

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont.

In accordance with the licensee's application dated April 25, 1986, the proposed amendment would revise the Vermont Yankee Technical Specifications to authorize the licensee to increase the storage capacity of the spent fuel pool from the present capacity of 2000 fuel assemblies to 2870 fuel assemblies. The change would be accomplished by the installation of high density fuel rack modules with center to center clearances between cells of 6.218 inches compared to the current design of 7.0 inches. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration.

On June 18, 1986, the Commission issued a Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations (51 FR 22226) which included notice concerning the proposed amendment of the Vermont Yankee license (51 FR 22246). That Notice

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contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest may be affected to petition for leave to intervene. Comments on the proposed determination were received from the New England Coalition on Nuclear Pollution.

Due to oversight, the June 18, 1986 Notice did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by Commission regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWP), 42 U.S.C. 10154. Under section 134 of the NWP, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NHPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985)). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G continued to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By January 30, 1987 the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the proposed amendment or any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to

participate as a party in such proceeding, must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene seeking to invoke hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing or petitions for leave to intervene which do not seek to invoke the hybrid hearing procedures are not authorized by this notice and would be considered nontimely.

As required by 10 CFR §2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party

may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should

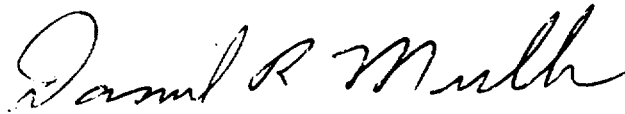
also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John A. Ritcher, Esquire, Ropes and Gray, 225 Franklin Street, Boston Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 25, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland, this 23rd day of December, 1986.

FOR THE NUCLEAR REGULATORY COMMISSION



Daniel R. Muller, Director
BWR Project Directorate #2
Division of BWR Licensing