

**RAS 3443**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 10/02/01**

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 40-8838-MLA
U.S. ARMY	)	
	)	ASLBP No. 00-776-04-MLA
(Jefferson Proving Ground Site)	)	

NUCLEAR REGULATORY COMMISSION STAFF'S  
RESPONSE TO SEPTEMBER 17, 2001 MEMORANDUM AND ORDER

INTRODUCTION

This proceeding was initiated by a hearing request filed by Save the Valley, Inc. ("STV") concerning a decommissioning plan ("DP") submitted by the U.S. Army ("Licensee") for the Jefferson Proving Ground site. The Nuclear Regulatory Commission Staff ("Staff") completed its acceptance review, triggering the beginning of its detailed technical review and the public notification of its consideration of the DP in the Federal Register on December 16, 1999. An intervention petition was filed by STV on February 2, 2000. The Presiding Officer found that STV had identified several areas of concern with regard to the proposed decommissioning of the site, and had established standing, and therefore granted the hearing request.

In July 2000, the Army submitted a revised decommissioning plan, also referred to as a license termination plan for the Jefferson Proving Ground site. On the basis that the revised plan represented a significant change from the previous plan, the Staff treated the revised plan as a new submittal, rather than an amendment to the previous plan, and initiated an acceptance review. For the same reason, STV expressed a desire to withdraw its hearing request on the basis that the original DP on which it was filed was no longer viable. Accordingly, a telephone conference was held on September 5, 2001, at which the options open to STV were discussed. Following the conference, STV filed a motion on September 13, 2001, requesting that its hearing request be held

in abeyance pending the Staff's consideration of the new DP. Specifically, STV stated that since the new DP replaced the 1999 submission, it would not be appropriate to pursue a hearing request on the earlier DP.

In a subsequent Memorandum and Order issued September 17, 2001, the Presiding Officer directed the Staff to address the question of whether any jurisdictional impediment exists to keeping the proceeding alive in any respect. Since that time, the Staff completed its acceptance review of the revised DP, deciding to reject the revised plan on September 27, 2001,<sup>1</sup> on the basis that a number of deficiencies had been identified which must be corrected before the Staff may begin a full technical review. Given the totality of these circumstances, the Staff is of the view that the proceeding should be terminated because there is no DP currently before the Staff or the Commission.

#### DISCUSSION

The Commission has said that a case becomes moot when the issues are no longer "live," noting that "a test for mootness is 'whether the relief sought would, if granted, make a difference to the legal interests of the parties'" *Texas Utilities Generating Co. (Comanche Peak Steam electric Station, Unit 2) CLI-93-10*, 37 192, 200 (1993), *citing, Air Line Pilots Association Int'l v. UAL Corp.*, 897 F.2d 1394, 396 (7<sup>th</sup> Cir 1990). Further, the Commission has noted that the mootness doctrine should be applied at all stages of the proceeding, not merely when the petition is filed. *Id.*

The question contemplated by the Memorandum and Order of September 17, 2001, was whether a case or controversy was still before the Presiding Officer after the filing of a revised DP which was treated by the Staff as an entirely new DP. Pursuant to the Staff's procedures, all new DP submittals are first subjected to an acceptance review which precedes a full technical review.

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<sup>1</sup>The Staff's letter to the Licensee stating that the revised DP has been rejected is attached. As noted in that letter, the Licensee has the opportunity to cure the defects in the revised DP and resubmit it for review.

Among other things, the purpose of the Staff's acceptance review is to determine whether the plan is complete, the information is generally adequate, and whether any obvious technical inadequacies are present.

The Staff's acceptance review of the July 2001 DP resulted in rejection of the submittal. At this time, therefore, there is no DP currently before the Staff for review. The Licensee may, of course, attempt to correct or explain the deficiencies found by the Staff and resubmit a revised version of the DP. Until that happens, however, there can be no case or controversy before the Commission. These events have therefore mooted the proceeding initiated by STV's hearing request. The first DP was replaced by the revised DP, which in turn was rejected by the Staff. Consequently, there can be no proceeding to consider the adequacy of the DP.

#### CONCLUSION

For the foregoing reasons, the proceeding initiated to consider the adequacy of the Licensee's DP should be dismissed.

Respectfully submitted,

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Lisa B. Clark  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 1<sup>st</sup> day of October, 2001

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE TO SEPTEMBER 17, 2001 MEMORANDUM AND ORDER" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal Mail system or by U.S. Mail, first class, this 1<sup>st</sup> day of October, 2001:

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