POLICY ISSUE
(Notation Vote)

February 13, 2006 SECY-06-0035

FOR: The Commissioners

FROM: Luis A. Reyes
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SUBJECT: PROCESS FOR RELEASING NON-IMPACTED AREAS OF THE WESTERN NEW YORK SERVICE CENTER BEFORE THE COMPLETION OF SITE DECOMMISSIONING

PURPOSE:

To request Commission approval to use pertinent provisions of 10 CFR 50.83 to release non-impacted portions of the Western New York Nuclear Service Center (Center) for unrestricted use prior to the approval of the New York State Energy Research and Development Authority's (NYSERDA's) decommissioning plan (DP) and the completion of site decommissioning.

SUMMARY:

This paper evaluates two approaches for releasing non-impacted portions of the Center before the completion of site decommissioning: (1) use of the 10 CFR 50.83 process for the release of non-impacted areas, during the period of the U.S. Department of Energy (DOE) cleanup; and (2) use of the U.S. Nuclear Regulatory Commission (NRC) existing decommissioning process for approving a partial site release, after the period of DOE cleanup. Based on this evaluation, the staff recommends that the Commission approve the use of the 10 CFR 50.83 process to consider future requests for the release of non-impacted portions of the Center during the period of DOE cleanup activities.

BACKGROUND:

By letter dated March 31, 2005 (Enclosure 1), NYSERDA requested that NRC identify a process for releasing non-impacted portions of the Center for unrestricted use before the completion of site decommissioning. On July 25, 2005, NRC responded (ML052010661) to NYSERDA's request stating that there is presently no approved NRC process for releasing a

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portion of the NRC-licensed area of the Center prior to the completion of the site decommissioning process, but added that staff plans to propose such a process for Commission consideration. Under the unique statutory and regulatory framework for decommissioning this site, the staff could only proceed to process such a request after the DOE completes its decontamination and decommissioning activities which could take a minimum of 5-10 years.

In April 2003, NRC amended its regulations to incorporate new provisions (10 CFR 50.83) to standardize the process for allowing a power-reactor licensee to release part of its facility or site for unrestricted use before NRC approves the license termination plan (LTP). The staff believes it is reasonable to consider the use of the 10 CFR 50.83 process to release non-impacted portions of the Center during the period of DOE's cleanup activities, given: (1) local interest in potential economic development possibilities for portions of the Center; (2) the unique statutory and regulatory framework for decommissioning this site; and (3) the extended time frame that would be required to release a portion of this site under NRC's existing process.

Since 10 CFR 50.83 applies only to licensees of operating and decommissioning power reactor plants, Commission approval would be required to use this approach for the former reprocessing facility at the Center. Such is the case even though the Center was licensed under Part 50 in 1966. A map of the Center, commonly referred to as the West Valley site, is provided in Enclosure 2. Background on the West Valley site, the West Valley Demonstration Project (WVDP) Act, and related information is provided in Enclosure 3.

DISCUSSION:

A partial site release is a release of a portion of an NRC-licensed site for unrestricted use. The evaluation of a process for releasing a non-impacted portion of the Center requires consideration of the scope and status of the NRC license, and who is in possession of the area to be released. The staff believes the NRC-licensed area consists of the 1335-hectare (3300-acre) Center area with the exception of a six-hectare (15-acre) State-licensed Disposal Area illustrated in Enclosure 2. The scope of the NRC license is summarized in Enclosures 3 and 4. On March 9, 2004, NRC staff addressed the status of the license in response to a letter from NYSERDA. The staff's response (ML040500501), in part, stated:

> ... [A]lthough we agree that the license is still in effect, we maintain that the license conditions for operation and maintenance of the facility which is the subject of DOE action pursuant to the WVDP [Act] are effectively suspended or in abeyance while DOE is in possession of the facility. ....[T]he Commission's Policy Statement contemplates that after DOE completes its decontamination and decommissioning responsibilities under Section 2(a)(5) of the WVDP [Act], NYSERDA could initiate license termination for all or portions of the site. In our view, this sequential approach is consistent with the thrust of the WVDP [Act] ... and Condition 7 of the license. Under Condition 7, NYSERDA may not undertake decommissioning at the site until DOE indicates it is ready for NYSERDA to reacquire and possess the entire site. ....[A] decision on the NYSERDA decommissioning plan could not be given finality until DOE's decontamination and decommissioning actions are completed and the project area is returned to NYSERDA.

It is also necessary to consider who possesses the portion of the Center to be released, since this can affect the partial site release process as discussed below. In accordance with Section 2(b)(4)(A) of the WVDP Act, NYSERDA made available to DOE the facilities and the high-level

waste at the Center necessary for the completion of the project. The WVDP Act directed DOE and NYSERDA to enter into a cooperative agreement to execute their respective responsibilities under the WVDP Act. In Section 4.01 of the Cooperative Agreement between DOE and NYSERDA (the Agreement), NYSERDA granted DOE exclusive use and possession of the Project Premises, described in Exhibit B of the Agreement, for use in carrying out the Project. DOE is now in possession of the 77-hectare (190-acre) Project Premises area (encompassing the former reprocessing facility), and NYSERDA retains possession of the remaining 1260-hectare (3110-acre) area of the Center (encompassing the State-licensed Disposal Area, and exclusion area outside the Project Premises). Therefore, if DOE possesses the non-impacted portion of the Center to be released at the time that NYSERDA requests the release, NYSERDA would first need to reacquire the area, potentially necessitating a license amendment. However, if NYSERDA possesses the non-impacted portion of the Center to be released, a license amendment would likely not be necessary as discussed under Option 1 below.

Finally, it should be noted that a small part of the site was released for unrestricted use in 1995. In a letter dated October 20,1995, NYSERDA informed NRC that it was preparing to transfer ownership of a 1.2-hectare (3-acre) parcel of land within the Center to the Town of Ashford. The land was located on the eastern boundary of the Center. In a letter dated December 20, 1995, NRC responded stating that it considered the parcel of land to be unaffected by current and past radiological operations from the project and former reprocessing facility license because of the distance of the parcel of land from active radiological operations. NYSERDA subsequently transferred ownership of this parcel to the Town of Ashford.

Options for Partial Site Release of the Center

This paper considers two approaches for releasing non-impacted portions of the Center: (1) use of the 10 CFR 50.83 process for the release of non-impacted areas, during the period of DOE cleanup; and (2) use of NRC's existing decommissioning process for approving a partial site release, after the period of DOE cleanup.

Option 1. Use of 10 CFR 50.83 Process during DOE Cleanup

Under this option, staff would use pertinent provisions of 10 CFR 50.83 to consider a request for the release of non-impacted areas before the completion of DOE's decommissioning activities and NRC's approval of NYSERDA's DP. The approval process under 10 CFR 50.83 depends on the potential for residual radioactivity remaining in the area to be released. Areas to be released are classified as either "non-impacted" having no reasonable potential for residual radioactivity, or "impacted" having some reasonable potential for radioactivity. Staff would consider only requests for partial site release of non-impacted areas under the provisions of 10 CFR 50.83 (a)(1) and (a)(2), (b), (c) and (f) which ensure there are no impacts to the public or environment. For proposed release areas classified as non-impacted, and if possessed by NYSERDA, NYSERDA would be allowed to submit a letter request for the approval of the release containing specific information for NRC approval, assuming a license amendment is not otherwise required.[1] Before acting on the request, NRC would conduct a public meeting in the vicinity of the site for the purpose of obtaining public comment on the release of the property. Consistent with 10 CFR 50.83(c)(3), NRC would approve the release of

[1] The Center property is described in the Final Safety Analysis Report (FSAR). NYSERDA would need to do an evaluation under 10 CFR 50.59 to make sure that a license amendment would not be needed to change the description in the FSAR.

the property by letter, upon determining that the licensee has otherwise met the criteria in 10 CFR 50.83. Guidance for demonstrating that a proposed release area is non-impacted is contained in NUREG-1575 "Multi-Agency Radiation Survey and Site Investigation Manual."

The staff does not propose to consider the early release of any non-impacted area possessed by DOE because of the area's proximity to sources of radiation and waste storage facilities. Likewise, the staff does not propose to consider the release of other non-impacted areas in proximity to sources of radiation that might be required to serve as a buffer zone for any residual radioactive material that remains onsite. The staff believes that any partial site release request for such areas should be deferred pending the completion of the decommissioning environmental impact statement which will include a comprehensive evaluation of radioactive sources and impacts associated with the preferred alternative.

Pros:

- A significant amount of time (a minimum of 5-10 years) may pass before DOE completes its decommissioning responsibilities, NRC reactivates NYSERDA's license, and NRC approves NYSERDA's DP for license termination. The use of the 10 CFR 50.83 process would allow NYSERDA to release non-impacted portions of the Center prior to that time. This would be responsive to State and local interests in the re-use of portions of the Center for economic development possibilities.

- This option discriminates between impacted and non-impacted areas. As such, the approval process and information requirements would be commensurate with the risk of the area to be released.

- This option uses an established regulatory framework that is open to the public, risk-informed, and protective of public health, safety, and the environment.

- Use of 10 CFR 50.83 would be limited to the unrestricted release of non-impacted areas. Therefore, a license amendment and decommissioning activities would likely not be required. This would also be consistent with the license and sequential decommissioning approach discussed above.

Cons:

- There is uncertainty in the number of partial site release requests that NRC might receive. NYSERDA's requests for release of portions of the site could reduce NRC resources available for reviewing DOE's decommissioning activities. However, this concern is mitigated by License Condition 7, which would require DOE to agree that the partial site release would not inhibit nor prevent DOE from fulfilling its responsibilities under the WVDP Act.

Option 2. Use of NRC's Existing Decommissioning Process after DOE Cleanup

Under this option, NRC would process a NYSERDA request for partial site release of non-impacted areas only after DOE completes its decontamination and decommissioning responsibilities under the WVDP Act and NRC reactivates NYSERDA's license. This option uses NRC's existing decommissioning process to release NRC-licensed areas. After NYSERDA's license is reactivated, NRC would expect NYSERDA to submit a DP, reflecting the actions DOE has completed, and NYSERDA's planned remediation as well as an application for license termination if license termination is possible. This approach could involve a phased decommissioning approach under the DP whereby portions of the site are remediated, if

necessary, and released before the release of other portions of the site. NRC's authorization of a NYSERDA partial site release request would be in accordance with an approved DP and license amendment. The staff would follow the guidance for NRC's existing decommissioning process in NUREG-1757, "Consolidated NMSS Decommissioning Guidance."

Pros:

- This option uses an established regulatory framework that is open to the public, risk-informed, and protective of public health, safety, and the environment.

- This option is consistent with the license and sequential decommissioning approach discussed above.

Cons:

- This option denies consideration of partial site release requests until after DOE completes its decommissioning responsibilities and NRC reactivates NYSERDA's license (a minimum of 5-10 years). Therefore, this option would not facilitate the State and local community interest in early release of non-impacted portions of the Center.

RESOURCES:

The scope of the partial site release rule is limited to cases in which a reactor licensee requests NRC approval for a partial site release prior to NRC's approval of a LTP. After the LTP has been approved, partial site releases (as subsequent revisions to the LTP) would require NRC approval via license amendments unless the LTP contains a sufficient change process or describes staged releases of the property prior to license termination. Thus, the rule does not apply to a partial site release following approval of the LTP, because this type of partial site release would be governed by the LTP or changes thereto.

The staff proposes to apply the partial site release rule in a consistent manner at the West Valley site. At West Valley, the application of the rule would be limited to a partial site release request for non-impacted areas during the period of DOE's cleanup activities (e.g., minimum of 5-10 years) prior to the submittal of NYSERDA's DP. After DOE cleanup, NYSERDA would be required to submit a DP for the NRC-licensed site describing the proposed action for license termination for all or a portion of the NRC-licensed area. These partial site releases would be governed by NYSERDA's DP, or subsequent changes to the DP.

NYSERDA's March 31, 2005, letter requested that NRC identify a process for releasing non-impacted portions of the Center for unrestricted use before the completion of site decommissioning. At this time, NYSERDA has not requested the release of a specific portion of the site. Therefore, the only staff action planned is a letter response to NYSERDA communicating the Commission's decision on this paper.

Under Option 1, NYSERDA could request a partial site release of non-impacted portions of the Center during DOE's cleanup, assuming NYSERDA possessed the portion of the site to be released and DOE had no objection with the release. The staff would use the 10 CFR 50.83 process to consider such a request. The process includes provisions for public participation before any NRC action on a partial site release request. Specifically, 10 CFR 50.83 requires a public meeting in the vicinity of the site for the purpose of obtaining stakeholder feedback on the partial site release request. The resources needed to engage stakeholders and obtain their

feedback on a partial site request are estimated to be 0.2 full-time equivalent and not to exceed $10,000. Staff believes these resources are within the projected resources for West Valley.

Under Option 2, NYSERDA would defer a partial site release request until the completion of DOE cleanup activities. Therefore, there would be no resource implication associated with a partial site release request during DOE's cleanup activities. After DOE cleanup activities, staff would consider any request for partial site release in conjunction with an approved NYSERDA DP consistent with NRC's existing decommissioning process.

This information on resources and schedule reflects the current environment and that if a significant amount of time (greater than 30 days) passes or the Commission provides the staff direction that differs from or adds to the staff's recommended actions(s), this section of the paper would need to be revisited after issuance of the draft staff requirements memorandum.

COMMITMENTS:

The staff commits to respond to NYSERDA's request regarding a process for releasing non-impacted portions of the Center before the completion of site decommissioning. In addition, the staff would address any future request for a partial site release of non-impacted areas using the process identified.

RECOMMENDATIONS:

The staff recommends that the Commission approve the use of the 10 CFR 50.83 process (Option 1) to consider future requests for the release of non-impacted portions of the Center during the period of DOE cleanup activities.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

/RA/

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Enclosures:
1. NYSERDA Request for Guidance on Process for Releasing Non-Impacted Portions of NRC - Licensed Site (ML051240094)
2. Map of Western New York Nuclear Service Center and West Valley Demonstration Project Premises (ML052640178)
3. West Valley Legislative and Regulatory History
4. NYSERDA License CSF-1 Amendments No. 31 and 32 Summary

ENCLOSURE 1:

NYSERDA Request for Guidance on Process
for Releasing Non-Impacted Portions
of NRC - Licensed Site

ML051240094