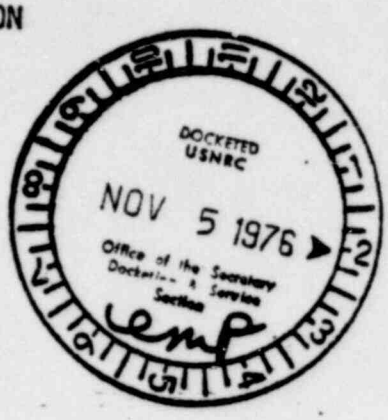
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



COMMISSIONERS:

Edward A. Mason, Acting Chairman
Victor Gilinsky
Richard T. Kennedy

In the Matter of

VERMONT YANKEE NUCLEAR POWER CORPORATION (Vermont Yankee Nuclear Power Station)	Docket No. 50-271
PUBLIC SERVICE ELECTRIC & GAS COMPANY (Salem Nuclear Generating Station, Units 1 & 2)	Docket Nos. 50-272 50-311
PHILADELPHIA ELECTRIC COMPANY (Peach Bottom Atomic Power Station, Units 2 & 3)	Docket Nos. 50-277 50-278
METROPOLITAN EDISON COMPANY, ET AL. (Three Mile Island Nuclear Station, Units 1 & 2)	Docket Nos. 50-289 50-320
DUQUESNE LIGHT COMPANY, ET AL. (Beaver Valley Power Station, Units 1 & 2)	Docket Nos. 50-334 50-412
PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 & 2)	Docket Nos. 50-352 50-353
PUBLIC SERVICE ELECTRIC AND GAS COMPANY and ATLANTIC CITY ELECTRIC COMPANY (Hope Creek Generating Station, Units 1 & 2)	Docket Nos. 50-354 50-355
PENNSYLVANIA POWER AND LIGHT COMPANY (Susquehanna Steam Electric Station, Units 1 & 2)	Docket Nos. 50-387 50-386
UNION ELECTRIC COMPANY (Callaway Plant, Units 1 & 2)	Docket Nos. STN 50-438 STN 50-486

MEMORANDUM AND ORDER

On September 27, 1976, Vermont Yankee Nuclear Power Corporation submitted a document entitled "Motion of Licensee for Recall of Orders in Light of Changed Circumstances". Although the caption of that document indicated that it was only filed in the proceeding directly involving

the Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Docket No. 50-271, the requested relief would apply to all of the proceedings listed above.[1/] Since that was so, and in view of events occuring subsequent to Vermont Yankee's motion, on October 13, 1976, we asked all parties to those proceedings to respond to Vermont Yankee's motion for "the suspension of all pending show cause proceedings on fuel cycle grounds".

The questions raised by Vermont Yankee's motion form a part of the complex set of issues presented to this Commission by the decision in Natural Resources Defense Council v. U.S. Nuclear Regulatory Commission, ___ F.2d ___, Nos. 74-1385, 74-1586 (D.C. Cir. July 21, 1976) (the "fuel cycle decision"). Many of those issues and the Commission's response to them are detailed in our Memorandum and Order issued today in Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2). Therein we explain our reasons for suspending the proceedings seeking suspension of the Seabrook construction permit on fuel cycle grounds. That decision is founded upon our judgment that an interim rule on the environmental effect of the uranium fuel cycle is not likely to be substantially different from the rule now in place, and would be in place in about three mon

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1/ Formally, Vermont Yankee did not make motions in those proceedings but moved the Commission to recall as much of its General Statement of Policy, 41 Fed. Reg. 34707 (August 16, 1976) as authorized any subordinate element of the Commission to reconsider a permit or license on fuel cycle grounds. As a matter of procedure, we note that Vermont Yankee, which is not a party to any proceeding other than its own, normally could not make any motion in a proceeding to which it is not a party. However, in view of the conclusions we reach, we can suspend further proceedings in the other cases on our own motion.

In such circumstances, suspension of the Seabrook Construction permit pending review by the Appeal Board appeared unwarranted. Since our Seabrook decision was not based on the specific facts of the Seabrook situation but depended upon our generic assessment of the issues involved, it is equally applicable to each of the above-styled proceedings.

Accordingly we find suspension proceedings unwarranted in these cases, in many of which licenses have issued following final agency action, and in which the cost/benefit balance as already struck favors the reactor. There is not a sufficient likelihood that the balance would be tipped to warrant the substantial costs that would be imposed by suspending construction or operation for the brief period that appears necessary to resolve these issues.

Our conclusion in Seabrook is also based on our analysis of the stay of mandate of the fuel cycle decision. In the Commission's motion for a stay of mandate it indicated that it would use the General Statement of Policy as a basis for implementing the fuel cycle decision subject to possible changed procedures in light of the revised survey, and to the possibility that it might seek a further stay of mandate based on the results of the survey. See, Seabrook, slip opinion at 22-23 and n.11. It also indicated to the court that suspension proceedings in Vermont Yankee had been undertaken. The stay motions of Vermont Yankee and the intervenor utilities, however, were based on entirely different considerations and sought specifically to prevent shutdown of the Vermont Yankee facility and to halt all suspension proceedings based on fuel cycle grounds. Seabrook, slip opinion at 23-24. As explained more fully in the Seabrook opinion, we believe that the October 8 order granting their motions introduces new circumstances of which the Commission must take account; it frees

us of any constraint which may have been introduced by our representation that suspension proceedings had been undertaken for the Vermont Yankee facility. As we discuss in the Seabrook opinion at pp. 24-28, we believe that the most logical interpretation of the effect of the stay of mandate is that it postpones any mandatory effect of the fuel cycle decision, subject to a condition on any new licenses, until the possibility of a successful appeal has been resolved. The Commission remains free, if later-developed facts so warrant, to suspend licenses or take any other action required in the exercise of its ordinary regulatory authority.[2/] Consequently, we do not believe that the fuel cycle decision or the stay of the mandate in that decision disables us from suspending these show cause proceedings.

For the reasons stated above, the pending proceedings in these cases are suspended.[3/]

It is so ORDERED.

By the Commission.

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 5th day of November 1976.

2/ Admittedly, the meaning of the court's order is subject to different interpretations. We are transmitting a copy of this decision setting forth our assessment of the meaning of the order to the court for its information.

3/ This Memorandum and Order does not apply to the reopened proceeding involving Consumers Power Company (Midland Plant, Units 1 and 2), Docket Nos. 50-329, 50-330, which is dealt with in a separate order. We note that ALAB-352, the Appeal Board decision in the Union Electric

(Footnote 3 continued on page 5)

(Foonote 3 continued from page 4)

Company (Callaway Plant, Units 1 and 2), Docket Nos. STN 50-483, STN 50-486 proceeding, is presently within the twenty-day review period prescribed by 10 CFR § 2.786(a). Without intimating any opinion on the merits of the issues decided in ALAB-352, we believe that proceeding should also be suspended.