DOCKET NUMBER
PROD & UTIL FAC. 50-271

SHELDON, HARMON, ROISMAN & WEISS

1725 I STREET, N. W.
SUITE 506
WASHINGTON, D. C. 20006

TELEPHONE
(202) 833-9070

KARIN P. SHELDON
GAIL M. HARMON
ANTHONY Z. ROISMAN
ELLYN R. WEISS
WILLIAM S. JORDAN*
*ADMITTED IN MICHIGAN ONLY

NRC PUBLIC DOCUMENT ROOM

May 29, 1979

Joseph Hendrie, Chairman
Victor Gilinksy, Commissioner
Richard Kennedy, Commissioner
Peter Bradford, Commissioner
John Ahearne, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: New England Coalition on Nuclear Pollution v. NRC, No. 78-2032 (D.C. Cir., May 23, 1979)

Gentlemen:

On Wednesday, May 23, 1979, the United States Court of Appeals for the District of Columbia issued its decision in two appeals brought against the NRC by the New England Coalition on Nuclear Pollution (NECNP) and the State of Minnesota on the issue of indefinite storage of spent fuel at the Vermont Yankee and Prairie Island reactor sites. The Court remanded those cases to the Commission with directions to answer the following factual questions:

> whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates.

Id. at 14. The court advised the Commission that it could use either rulemaking or adjudication to resolve these questions, but that it could not simply avoid resolving them by making public "assurances" not based on a legitimate record. NECNP believes that, at this stage, proceeding by adjudication would be by far the best course, allowing all parties the opportunity to cross-examine witnesses. The adjudicatory process would be the most efficient way to ensure the development of a complete record. In any case, even if the Commission decides to proceed

7907050539

292 272

generically, it would clearly be a mistake to incorporate this proceeding into the almost complete S-3 rulemaking.

Although there will almost certainly be some parts of the record from the S-3 table rulemaking which the staff would wish to rely on in a proceeding to answer the remanded questions, there are a variety of reasons why simply folding this case into S-3 at this point would be unwise and questionable as a matter of law. First to do so would cause great procedural confusion. Neither NECNP nor Minnesota are parties to the S-3 proceeding, and they had no control over the development of the record there. Both would certainly have to be accorded an opportunity to present evidence and argument on whatever issues they felt were relevant to the questions here. The resulting delay and confusion would prejudice both cases.

Second, as NECNP has maintained all along, while the S-3 record may, as the court held, "bear on" the issues presented by indiscriminate and widespread spent fuel pool expansion, the ultimate questions are very different. That is, the S-3 proceedings are concerned with the environmental impact of long-term off-site waste disposal, while the Vermont Yankee issues involve the environmental and safety significance of waste storage for the indefinite term on the site of individual power reactors.

We therefore urge the Commission to direct a reopening of the record before the Licensing Board in the Vermont Yankee spent fuel case to answer the questions remanded by the District of Columbia Court of Appeals.

Very truly yours,

Ellyn R. Weiss

ERW/dmw

221 217