

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION  
Harold R. Denton, Director

In the Matter of	)	
	)	Docket No. 50-309
MAINE YANKEE ATOMIC POWER COMPANY	)	(10 CFR 2.206)
(Maine Yankee Atomic Power Station)	)	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

On October 20, 1982, Mr. Peter L. Murray, on behalf of Safe Power for Maine and its representatives, Emil G. Garrett, John B. Green, and John Jerabek (referred to collectively herein as "the petitioners"), submitted a petition under the provisions of 10 CFR 2.206. The petition requests that the Director of the Office of Inspection and Enforcement issue an order to show cause why Maine Yankee Atomic Power Company should not be ordered to discontinue operation of its nuclear plant until it can demonstrate that it has adequate financial resources to continue operations and to provide for eventual decommissioning. The petition has been referred to the Director of the Office of Nuclear Reactor Regulation for action.

Effective March 31, 1982, the Commission's regulations were amended to eliminate the need for a financial qualifications review for electric utilities seeking a license to construct or operate power reactors. See 10 CFR 50.33(f)(1), 47 Fed. Reg. 13750 (March 31, 1982).<sup>1/</sup> This action

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<sup>1/</sup> This rule is currently under challenge in the United States Court of Appeals for the District of Columbia Circuit, New England Coalition on Nuclear Power v. NRC, Civil Docket No. 82-1581.

was taken after careful study and extensive consideration of public comments and the agency's regulatory experience. The Commission determined that no link had been demonstrated between, on the one hand, the NRC's review and finding that an electric utility applicant was financially qualified and, on the other hand, the applicant's ability to construct and operate a nuclear power plant safely. No electric utility applicant had in fact been found unqualified under the lengthy and detailed financial review procedures the Commission had been following. Thus, the Commission decided that retention of financial qualifications review for electric utility applicants was not warranted in terms of the NRC's statutory mission and resources in that the review did not significantly assist in protecting public health and safety. It was decided that, absent special circumstances that such a review is indicated (47 Fed. Reg. at 13752), <sup>2/</sup> those resources would be better used if directed to the examination of those factors which affect the public health and safety more directly.

The Commission's March 31, 1982 rule change included elimination of the financial qualifications review of utilities at the operating license stage. This stage of the review had included a required demonstration by the utility that it possessed or had reasonable assurance of obtaining the funds to cover the estimated costs of permanently shutting the facility down and maintaining it in a safe condition (i.e., decommissioning costs). Upon publication of the rule

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<sup>2/</sup> As discussed in the latter portion of this decision, such special circumstances are not present here.

change, the Commission stated that elimination of the requirements regarding decommissioning funding was not an implication that such funding is unimportant to public health and safety:

This is not meant to discount the importance of decommissioning funding to public health and safety, but rather recognizes that any action on decommissioning is more appropriate in the context of the generic rulemaking now being conducted. Until that time, the Commission has concluded that it is premature to include any final decision on decommissioning in this final rule on financial qualifications. Because the generic decommissioning rule is scheduled to be published in 1982 and since all licensees will be required to meet any financial requirements imposed as a result of that rulemaking, there should be little practical effect in temporarily eliminating consideration of decommissioning funding from licensing activities.

47 Fed. Reg. 13751 (March 31, 1982)

The Commission has placed development of decommissioning criteria for nuclear facilities on its regulatory agenda. <sup>3/</sup> 47 Fed. Reg. 48972 (Oct. 28, 1982). At the time a Notice of Proposed Rulemaking is issued, the petitioner, along with other interested members of the public, will be given an opportunity to comment. If the Commission's generic rule on decommissioning includes a funding requirement, Maine Yankee Atomic Power Company would have to comply with such requirement in the same manner as any other power reactor licensee. As a general rule, the Director will not institute proceedings in response to a petition under 10 CFR

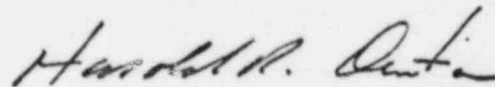
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<sup>3/</sup> Congress has also acted in this area. Section 302 of the Nuclear Waste Policy Act of 1982, Pub. L. No. 97-425, 96 Stat. 2201, provides for establishment of a nuclear waste fund to be used for radioactive waste disposal activities.

2.206 to consider an issue the Commission is treating generically through rulemaking. See Petition Concerning Financial Qualifications of Nuclear Power Plant Licensees, DD-81-23, 14 NRC 1807, 1810-11 (1981); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), DD-80-20, NRC 913, 914 (1980); Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), DD-80-19, 11 NRC 625, 627-28 (1980).

The Commission continues to be concerned with the radiological protection of the public health and safety in all aspects of the construction and operation of nuclear power plants. In those instances where financial constraints of a utility are connected to a problem affecting safe operation or construction of a particular facility, the Commission will take the appropriate action. However, the petitioners have raised no such connection in their petition. Financial constraints, in a vacuum, are an insufficient basis for initiating show-cause proceedings against a licensee.

Accordingly, the petitioners' request is hereby denied. A copy of this decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), this decision will become the final action of the Commission 25 days after issuance unless the Commission institutes review of this decision within that time.



Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland  
this 14th day of Feb. , 1983.