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UNITED STATES OF AMERICA
before the
NUCLEAR REGULATORY COMMISSION '93 NOV 26 P3:05

Ex Parte:
Environmentalists, Inc.

Petitioner,

In the Matter of
Yankee Atomic Electric Company
(Decommissioning and Dismantlement of
Yankee Rowe Nuclear Power Plant

Docket No. 50-29

RESPONSE OF THE LICENSEE TO DOCUMENT ENTITLED "PETITION FOR ADJUDICATORY HEARING AND FOR LEAVE TO INTERVENE"

Now comes Yankee Atomic Electric Company (Yankee), holder of the Possession Only License (POL) for Yankee Nuclear Power Station (YNPS) and for a response to a document entitled "Petition for Adjudicatory Hearing and for Leave to Intervene" (the Filing) filed by Environmentalists, Inc. (EI) respectfully states as follows:

BACKGROUND

Yankee is currently engaged in the process of removing from YNPS and shipping to the low level waste disposal site at Barnwell, South Carolina, four steam generators, a pressurizer and reactor vessel internals. All of this activity is being carried out, inter alia, pursuant to a letter, issued July 15, 1993, stating that the Staff of the United States Nuclear Regulatory Commission (Staff) "does not object to the proposed

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component removal activities prior to NRC approval of the [YNPS] decommissioning plan," a copy of which letter is attached hereto and marked "A."[1] That letter recounts in detail the meticulous and detailed process followed by the Staff in reaching its conclusions. In addition, the letter sets forth the Staff's conclusion that the contemplated activities require no change in the existing facility POL.[2]

Under date of November 15, 1993, exactly four months after issuance of the Staff letter described above, EI made the Filing at issue. After generalized assertions as to the authority of the United States Nuclear Regulatory Commission (NRC) to grant the requests set out in the Filing, a brief description of the organization and concerns of its unnamed members, an assertion that unnamed members have certain rights which would be "endanger[ed]" by "releases of radioactive waste materials into the atmosphere, water or environs," and a statement of some six vaguely worded and nonspecific contentions, the Filing requests that there be convened an adjudicatory hearing (of undescribed scope) that EI be allowed to intervene therein, and:

> "that all dismantlement and decommissioning operations at [YNPS] be halted and that all shipments of radioactive waste to the Barnwell Nuclear Waste Landfill of Waste Management, Inc. be stopped."[3]

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[1] Letter. Seymore H. Weiss to Jay K. Thayer Subject: ACTIVITIES PRIOR TO DECOMMISSIONING PLAN APPROVAL (TAC NO. M86283) (July 15, 1993)

[2] Attachment A at 2.

[3] Filing at 4.

A copy of the Filing was sent by FAX to counsel to Yankee by the Office of the General Counsel (OGC) (nonseparated branch) of NRC. This FAX was accompanied by a telephoned oral request from that office that Yankee file a response to the filing. *Yankee wishes to emphasize that absent such a direct request, this response would not have been filed. It is, as will appear more fully below, Yankee's position that the Filing, at best, may qualify as a 10 C.F.R. § 2.206 request to be handled in accordance with the procedures applicable to such requests. Thus, this response may not be construed as an acquiescence on the part of Yankee to what appears to be a departure from NRC regulations in the handling of this filing.*

I. THE FILING IS WHOLLY INAPPOSITE UNDER APPLICABLE NRC REGULATIONS.

In 10 C.F.R. § 2.700, there are listed, in succinct fashion, those occurrences which trigger a right to intervene in NRC proceedings. Each of these events, and only these events, give rise to a "proceeding" which is the sine qua non for the commencement of an adjudicatory hearing before the NRC or any of its subordinate adjudicatory tribunals. If there is no proceeding in existence, then there is no framework in which to adjudicate.[4] The 10 C.F.R. § 2.700 "list" is:

> ". . . the issuance of an order pursuant to § 2.202, an order pursuant to § 2.205(e), a notice of hearing, a notice of proposed

[4] See Bellotti v. NRC, 725 F.2d 1380, 1381 (D.C. Cir. 1982); Massachusetts v. NRC, 878 F.2d 1516, 1520-21 (1st Cir. 1989).

action issued pursuant to § 2.105, or a notice issued pursuant to § 2.102(d)(3)."[5]

None of the orders and notices listed in the above quoted regulation have issued. Thus there is no proceeding and therefore EI has no right or standing to request a hearing and there is nothing in which EI can intervene. The sole avenue for a person or entity which is not a licensee NRC or an applicant for an NRC license to request the initiation of action by NRC with respect to an NRC licensee is found in 10 C.F.R. § 2.206.[6] And it is the procedures under that section of the regulations to which EI should be remitted.

Prescinding from the lack of any requisite order or notice giving rise to a proceeding, the Filing is wholly inapposite given the lack of any licensing action required before the carrying out of the contemplated activities. As noted earlier, all actions contemplated by Yankee are consistent with the terms of the extant facility license. In addition, all shipments will be made pursuant to the general licenses for shipment granted under 10 C.F.R. 71.[7] Thus there exists no contemplated licensing action upon which to base a prerequisite notice or order to give rise to hearing rights.

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[5]The section goes on to state that the licensing of high level waste depositories will be governed by subpart J. This filing does not involve high level waste.

[6]Bellotti v. NRC, supra, at 1382; see also Massachusetts v. NRC, supra at 1522-23.

[7]In the case of the steam generators, Yankee has received Certificate of Compliance No. 9256 (Oct. 28, 1993) and thus these shipments are licensed under 10 C.F.R. § 71.12.

II. EVEN IF THERE WERE AN EXTANT PROCEEDING, THE FILING IS INADEQUATE TO OBTAIN INTERVENTION ON THE PART OF EI.

Even assuming NRC had noticed a proceeding, or issued an order giving rise to hearing rights, or published a notice for an opportunity for hearing, the Filing is inadequate to establish EI's standing to intervene.

To begin with, EI has failed to set forth the name of any member of the organization with a statement of facts which demonstrate that that member has the requisite interest to intervene in the proceeding apparently contemplated EI.[8] Furthermore, at most, EI has set out in the Filing generalized grievances shared in substantially equal measure by all or a large class of citizens and this is insufficient to establish standing under NRC precedent.[9]

III. EVEN ASSUMING THE COMMISSION SHOULD GRANT A HEARING ON THE BASIS OF THE FILING, NO RELIEF PENDENTE LITE SHOULD BE ACCORDED EI.

As noted above, EI has requested that the Commission immediately order the suspension of "all dismantlement and decommissioning operations at [YNPS]." This request for immediate pendente lite relief should be denied.

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[8] Virginia Electric & Power Co. (North Anna Nuclear POwer Station, units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979).

[9] Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

The principles under which requests for pendente lite relief will be considered are the same as those set forth with respect to stays pending appellate review in 10 C.F.R. § 2.788. The burden of proof is on EI.[10] Even a cursory review of the Filing reveals that no case has been made for the relief requested. There has been no strong showing that EI would be likely to prevail on the merits if a hearing occurred.[11] The granting of relief would clearly cause significant economic injury to Yankee and to the ratepayers of its stockholder utilities.[12] And there has been no showing of irreparable harm to EI.[13]

CONCLUSION

The filing should be remitted to the Director of Nuclear Reactor Regulation for disposition under the procedures applicable to requests pursuant to 10 C.F.R. § 2.206. The

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[10] See Pacific General Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 4-5 (1986) Alabama Power Co. (Joseph M. Poley Nuclear Plant, Units 1 and 2), CLI-81-22, 14 NRC 795, 797 (1981).

[11] 10 C.F.R. § 2.788(e)(1).

[12] 10 C.F.R. § 2.788(e)(3) & (4).

[13] 10 C.F.R. § 2.788(e)(2). The injury demonstrated must be "both certain and great." Cuomo v. NRC, 772 F.2d 972, 976 (D.C. Cir. 1985); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-820, 22 NRC 743, 747 (1985).

request for pendente lite relief should not be addressed, or, if addressed, denied.

Respectfully submitted,

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Counsel for Yankee Atomic Electric Company

Dated November 23, 1993

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 15, 1993

WYR 93-081

Docket No. 50-029

Mr. Jay K. Thayer
Vice President and Manager of Operations
Yankee Atomic Electric Company
580 Main Street
Bolton, Massachusetts 01740-1398

Dear Mr. Thayer:

SUBJECT: ACTIVITIES PRIOR TO DECOMMISSIONING PLAN APPROVAL (TAC NO. M86283)

Your letter of April 23, 1993, provided the methodology by which Yankee Atomic Electric Company (YAEC) proposes to meet the criteria and guidance provided in our letter of March 29, 1993, regarding activities prior to NRC approval of the decommissioning plan (D-plan) for the Yankee Nuclear Power Station. These activities consist of the removal and shipment to a low level waste disposal site of the four steam generators, pressurizer and reactor vessel internals.

The NRC staff then requested a public meeting with the YAEC staff that was held on June 9, 1993, at a site near the plant. The purpose of this meeting was to discuss your proposals in the YAEC April 23 letter. The NRC participants requested information regarding your methodology in estimating occupational and public radiation exposures due to your decommissioning program and in particular to activities prior to approval of the D-plan. We also asked questions on your 10 CFR 50.59 safety analysis preparation process in regard to decommissioning. The NRC subsequently sent these requests for additional information to YAEC in a letter dated June 16, 1993. You promptly answered in a letter dated June 17, 1993, as supplemented on June 24, 1993. We have completed our review of this additional information and found it responsive to our requests.

The March 29, 1993 NRC letter provided criteria for proposed activities prior to D-plan approval. Namely, that licensees should be allowed to undertake any decommissioning activity that does not: (a) foreclose the release of the site for possible unrestricted use; (b) significantly increase decommissioning costs; (c) cause any environmental impact not previously evaluated; or (d) violate the terms of the existing facility license or 10 CFR 50.59 applied to the existing license.

In regard to criterion (a) above, a YAEC letter of January 12, 1993, had previously supplied this information. This letter stated that all of the removal activities must be completed in order to release the facility for unrestricted use regardless of the decommissioning alternative chosen and that none of the proposed activities would preclude the facility from being released. The staff agrees with the YAEC assessment. Based on the above, we conclude that YAEC would not foreclose the release of the site for possible unrestricted use by removing the specified components prior to NRC approval of the D-plan.

"A"

In regard to criterion (b), your April 23 letter stated that the estimated costs for the proposed activities are several million dollars less than the cost estimate provided to and approved by the Federal Energy Regulatory Commission, your governing rate setting authority. In addition, you have established a cost monitoring and control program to ensure that you remain within budget and maintain ongoing compliance with criterion (b). In your letter of April 8, 1993, YAEC stated that the decommissioning fund will grow by about $3 million during the component removal program. Your letter of March 25, 1993, indicated that for unforeseen occurrences YAEC included a $3 million contingency item in the program, based upon the hypothetical assumption that the low level waste disposal facility in South Carolina refused to accept a shipment, and the components had to be returned to the plant site for SAFSTOR. Based on the above, we conclude that YAEC has installed sufficiently prudent controls so that the component removal program should not significantly increase the cost of decommissioning.

Proposed compliance with criterion (c) is provided in the YAEC April 23 letter. The licensee states, adopting the language of the Final Generic Environmental Impact Statement (GEIS), NUREG-0586, that the environmental impact of decommissioning nuclear facilities is similar or less than that during construction and operation. YAEC also stated that they will verify that the proposed activity is bounded by the GEIS and by criterion (c). On September 15, 1987, the licensee submitted an Environmental Report (ER) as part of an application for license extension to recapture time during the construction period. The ER addressed the radiological and non-radiological effects of continued operation on both onsite and offsite environments; the radiological impact of the uranium fuel cycle and plant modifications; and the programs, practices and procedures in place to monitor and control the impacts. YAEC has committed, in the April 23 letter, to use the ER as part of the basis for ongoing environmental reviews of the proposed component removal program. The licensee will maintain documentation of each review, which is subject to NRC audit. In their June 17, 1993 submittal, YAEC stated that cumulative radiation exposure environmental impacts for both component removal and subsequent decommissioning activities would be documented and maintained within GEIS guidelines. As part of this review, the staff also considered the radiological impacts of such component removal at this time versus deferred removal in the year 2000 when the current license expires. Using data supplied by the licensee, which was reviewed by the staff and found to be conservative, the staff concluded that these activities, if carried out at the present time, would have radiological impacts within the envelope of the GEIS. Based on the above, we conclude that the licensee has in place an adequate program to ensure compliance with criterion (c).

Criterion (d) states that the activity should not violate the terms of the existing facility license or 10 CFR 50.59 as applied to the existing license. The staff performed a review of the Possession Only License (POL) No. DPR-3, the Technical Specifications contained in Appendix A of the license and exemptions issued by the NRC since the plant was permanently shut down. Based on this review, the staff concludes that the proposed activities are consistent with the terms of the existing facility license.

The licensee was asked in the NRC letters of March 29 and June 16 to describe the manner in which they intend to implement the 10 CFR 50.59 plant modification process in the permanently shutdown condition and in particular how they would treat fire and earthquake hazards. In addition, YAEC was asked to describe their process for change approval and how it will ensure continuing compliance with the March 29 criteria. The YAEC April 23, June 17, and June 24 letters provided a detailed program description of the 50.59 process now in use including a description of the controlling procedures and the changes to the procedures that have been made or are in the process of being made in order to comply with the criteria in the NRC March 29 letter and the provisions of the POL. The licensee stated that the design change process has always included and will continue to include fire hazards and seismic loads. The staff in an inspection performed from January 25-28, 1993, (Yankee Rowe Inspection Report 50-29/93-01 dated March 9, 1993) found the 50.59 process to be in accordance with NRC rules and the safety analyses prepared by the licensee to be comprehensive. Based on our review of the YAEC submittals and the results of the NRC inspection, we conclude that the licensee is properly implementing the 50.59 process and has suitable procedures in place, or in preparation, to ensure continuing compliance with the March 29 criteria. The staff plans future inspections of these programs.

Our March 29, 1993 letter also included an individual criterion regarding the YAEC use of decommissioning trust funds before approval of the D-plan for the removal cost of the specified components. By letter dated April 16, 1993, we advised that we did not object to such use of decommissioning trust funds. Our approval was based on licensee submittals of March 5, March 25 and April 8, 1993.

The staff concludes that the licensee has properly addressed all of the criteria and guidance in our March 29, 1993 letter and provided an adequate response to our June 16, 1993 letter. Therefore, the staff does not object to the proposed component removal activities prior to NRC approval of the decommissioning plan.

Sincerely,

Seymour H. Weiss

Seymour H. Weiss, Director
Non-Power Reactors and Decommissioning
Project Directorate
Division of Operating Reactor Support
Office of Nuclear Reactor Regulation

cc: See next page

Jay K. Thayer

Yankee Rowe
Docket No. 50-29

'93 NOV 26 P3:05

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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., hereby certify that on November 23, 1993, I made service of the within document by mailing a copy thereof, postage prepaid, to the following:

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