

New Hampshire Yankee

Ted C. Feigenbaum
President and
Chief Executive Officer

NYN-92074

June 4, 1992

United States Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Document Control Desk

- References:
- (a) Facility Operating License No. NPF-86, Docket No. 50-443
 - (b) NHY Letter to NRC dated October 20, 1988; E. A. Brown to Document Control Desk (Response to CLI-88-07)
 - (c) NHY Letter to NRC dated March 20, 1989; E. A. Brown to Document Control Desk (Decommissioning Funding Assurance)
 - (d) NRC Letter to NHY dated March 31, 1989; S. A. Varga to E. A. Brown (Decommissioning Funding Assurance)
 - (e) NHY Letter to NRC dated April 27, 1989; E. A. Brown to Document Control Desk (Response to NRC Comments on Decommissioning Funding Assurance)
 - (f) Memorandum for Commissioners dated May 3, 1989 (Seabrook Decommissioning Funding and Readiness for Low Power License)
 - (g) NHY Letter to NRC dated May 22, 1989; E. A. Brown to Document Control Desk (Notification of Purchase of Securities Required by Seabrook Supplementary Pre-Operational Decommissioning Trust)

Subject: Pre-operational Decommissioning Trust Fund

Gentlemen:

In its decision CLI-88-10 (28NRC573), the Commission imposed certain funding requirements on the Licensees to ensure that there would be adequate resources to decommission Seabrook Station Unit 1 if a full power operating license was ultimately denied after low power testing had been conducted. CLI-88-10 and the Staff evaluation (Ref. f) of the funding assurance plan established for this purpose required that the term of the funds extend until the earlier of a final non-appealable decision to grant a license to operate at full power or a final non-appealable decision that such further decommissioning funding is no longer required. New Hampshire Yankee (NHY), as agent for the Licensees, hereby informs the Staff that because the first of the above conditions has occurred, the preoperational decommissioning trusts that were established have been terminated. The background of these funding requirements is as follows:

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In its decision CLI-88-07 (28NRC271), dated September 22, 1988, the Commission imposed a special pre-operational decommissioning funding requirement upon the Licensees because of the unique circumstances which affected Seabrook at that time. Construction of the Unit had been completed and fuel loading authorization had been issued in October, 1986. As litigation of aspects of the Seabrook emergency plans continued, the applicants sought authority to conduct low power testing. The proceedings were complicated by the bankruptcy of a major owner of the facility and attempts by the intervenors to reopen the issue of financial qualifications in the context of low power testing. These circumstances led the Commission to require that the Licensees provide assurance of adequate funds for decommissioning Seabrook Station Unit 1 in the event a full power operating license was denied after low-power testing had been conducted.

In response, NHY submitted a plan (Ref. b) that included a cost estimate of \$21.1 million for decommissioning Seabrook in the event that low power testing occurred and a full power license was not granted. The Commission reviewed this estimate and, in CLI-88-10, increased it to \$72.1 million to account for the potential costs of onsite long term spent fuel storage, and an increased contingency allowance. By letter dated March 20, 1989 (Ref. c), NHY provided the Commission with a copy of a Surety Bond in the amount of \$72.1 million issued by The Aetna Casualty and Surety Company which unconditionally guarantees the payment of the pre-operational decommissioning costs, together with a Seabrook Pre-Operational Decommissioning Trust Agreement pursuant to which any such funds would be segregated for application only to such decommissioning.

By letter dated March 31, 1989 (Ref. d), based upon its reading of CLI-88-10, the Staff requested NHY to address the need for additional funding beyond the \$72.1 million to meet projected cost escalation during the hypothetical 28 year decommissioning period as a prerequisite to issuance of the low power testing license. NHY responded with a proposed supplemental financing plan that resolved the Staff's concerns (Ref. e). The Staff then completed its evaluation of the decommissioning funding assurance plans and notified the Commission (Ref. f) that the applicant had met the Commission's funding requirements. On May 22, 1989, (Ref. g), NHY filed a copy of a Supplemental Pre-Operational Decommissioning Trust Agreement that provided over \$40 million in the additional guarantees needed to meet the Staff's requirement. On May 26, 1989, the NRC issued the low-power testing license (NPF-67).

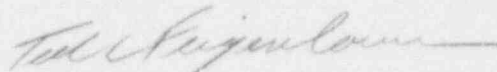
Issuance of the full power license (Ref. a) was authorized by the Commission in its decision CLI-90-03 (31NRC219), a decision that was promptly appealed by the intervenors to the United States Court of Appeals for the District of Columbia Circuit. That appeal was denied prompting a petition to the U.S. Supreme Court for a writ of certiorari which was also denied. Commonwealth of Massachusetts v. Nuclear Regulatory Commission, 924 F.2d 311 (D.C. Cir. 1991), cert. denied (U.S. October 7, 1991).

On April 3, 1992, the Commission decided the final appeal of a Seabrook full power licensing issue in CLI-92-08 (slip op.) when it affirmed the Licensing Board's decision in LBP-91-24. No petition for review of CLI-92-08 has been filed within the 60 day time frame allowed by the Federal Rules of Appellate Procedure.

In view of said denial of certiorari in Massachusetts v. NRC, supra, and expiration of the appeal period after the issuance of CLI-92-08, the termination conditions of the pre-operational decommissioning funding requirements have now been met and those unique funding arrangements are no longer mandated by CLI-88-10 or CLI-90-03. The Facility Operating License (Ref. a), issued in conformity with CLI-90-03, has been judicially upheld and no further appeal therefrom is available. The Seabrook Pre-Operational Decommissioning Trust Agreement and Seabrook Pre-Operational Supplementary Trust Agreement have therefore been terminated. Seabrook will be governed, hereafter, by the same decommissioning regulations as all other licensed facilities.

If you have any questions on this matter, please contact Mr. R. Jeb DeLoach, Executive Director of Engineering and Licensing, at (603) 474-9521 extension 2846.

Very truly yours,



Ted C. Feigenbaum

TCF:JBH/act/ss

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