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# NUCLEAR REGULATORY COMMISSION ISSUANCES

January 1996



U.S. NUCLEAR REGULATORY COMMISSION

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# NUCLEAR REGULATORY COMMISSION ISSUANCES

January 1996

This report includes the issuances received during the specified period from the Commission (CLI), the Atomic Safety and Licensing Boards (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM).

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or have any independent legal significance.

**U.S. NUCLEAR REGULATORY COMMISSION**

Prepared by the  
Division of Freedom of Information and Publications Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
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COMMISSIONERS

Shirley A. Jackson, Chairman  
Kenneth C. Rogers

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B. Paul Cotter, Jr., Chief Administrative Judge, Atomic Safety and Licensing Board Panel

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Commission  
Issuances

COMMISSION

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**COMMISSIONER:**

**Shirley A. Jackson, Chairman<sup>1</sup>**

**In The Matter of**

**Docket No. 50-029  
(Decommissioning Plan)**

**YANKEE ATOMIC ELECTRIC  
COMPANY  
(Yankee Nuclear Power Station)**

**January 16, 1996**

The Commission refers to the Atomic Safety and Licensing Board, for a ruling on standing and contentions and with guidance on several novel issues and a suggested expedited schedule, pleadings filed regarding Petitioners' intervention in a proceeding to consider approval of a plan to decommission the Yankee Nuclear Power Station ("Yankee NPS").

The matter now before the Commission follows the Commission's recent reinstatement, in light of a decision by the First Circuit Court of Appeals, of its pre-1993 policy of providing an opportunity for an adjudicatory hearing on nuclear power reactor decommissioning plans.

**RULES OF PRACTICE: INTERVENTION PETITION**

Where a petitioner has not expressly requested a hearing on its petition, but where it seems clear from the petition as a whole that a hearing is what the petitioner desires, the Commission will not dismiss that petition solely on the basis of such a technical pleading defect.

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<sup>1</sup>This Decision was made by Chairman Jackson under delegated authority, as authorized by NRC Reorganization Plan No. 1 of 1980, after consultation with Commissioner Rogers. Commissioner Rogers has stated his agreement with this Decision.

**RULES OF PRACTICE: STANDING TO INTERVENE**

In order to establish standing to intervene in a proceeding, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.

**RULES OF PRACTICE: STANDING**

As the Commission has noted on other occasions, a prospective intervenor may not derive standing to participate in a proceeding from another person who is not a party to the action or is not a member of its organization.

**RULES OF PRACTICE: STANDING TO INTERVENE;  
ADMISSIBILITY OF CONTENTIONS**

Once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing.

**RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS  
(LIMITATION)**

The Commission construes the provision in 10 C.F.R. § 2.714(g), in accordance with the relevant case law, i.e., that an intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing.

**REGULATIONS: DECOMMISSIONING**

A fair reading of the Commission's decommissioning rules at 10 C.F.R. § 50.82 is that it is for the licensee in the first instance to choose the decommissioning option and that neither the DECON nor the SAFSTOR option can be deemed unacceptable *a priori*.

**REGULATIONS: DECOMMISSIONING**

The principal criterion for judging a decommissioning alternative is the proposed time required for decommissioning completion. 10 C.F.R. § 50.82(b)(1)(i). Both the SAFSTOR and the DECON alternatives would, in



general, meet the criterion in that section and in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (GEIS).

**REGULATIONS: DECOMMISSIONING**

In addition to meeting the "time" requirement in 10 C.F.R. § 50.82(b)(1)(i), decommissioning plans must also meet other applicable NRC regulations, including the "as low as is reasonably achievable" (ALARA) requirement in 10 C.F.R. § 20.1101(b).

**REGULATIONS: INTERPRETATION (PART 20)**

One of the purposes of revising 10 C.F.R. Part 20 was to change the status of ALARA from the hortatory suggestion in old 10 C.F.R. § 20.1(c) to the mandatory requirement in the current 10 C.F.R. § 20.1101(b); thus, ALARA is an essential part of Federal Radiation Protection Guidance.

**REGULATIONS: DECOMMISSIONING**

While a licensee's choice of decommissioning options is not beyond all challenge, such a challenge to a licensee's choice of alternative decommissioning procedures cannot be based *solely* on differences in estimated collective occupational doses on the order of magnitude of the estimates in the GEIS.

**REGULATIONS: RADIATION PROTECTION STANDARDS;  
INTERPRETATION (10 C.F.R. Part 20)**

A licensee's actions do not violate the ALARA principle simply because some way can be identified to reduce radiation exposures further. The practicality and the cost of the measures required to achieve these reductions as well as "other societal and socioeconomic considerations" must also be taken into account. *See* 10 C.F.R. § 20.1003 (definition of ALARA).

**RULES OF PRACTICE: RADIATION PROTECTION STANDARDS**

The Commission will generally find that exposures are ALARA when further dose reductions would cost more than \$1000 or \$2000 for each person-rem reduction achieved. *See generally* "Regulatory Analyses Guidelines," NUREG/BR-0058, Rev. 2 (1995).

## **REGULATIONS: DECOMMISSIONING**

The essential purpose of the requirement in 10 C.F.R. § 50.82 is to provide "reasonable assurance" of adequate funding for decommissioning. Thus, to be entitled to relief, a petitioner needs to show not only that a licensee's decommissioning cost estimate is in error, but that there is not reasonable assurance that the correct amount will be paid.

## **NRC: ENFORCEMENT ACTIONS**

To the extent that a petitioner's contention alleges "illegal" past conduct in violation of NRC regulations, those allegations are more properly the subject of a separate enforcement action.

# **MEMORANDUM AND ORDER**

## **I. INTRODUCTION**

This matter is before the Commission on a petition by the Citizens Awareness Network ("CAN") and the New England Coalition on Nuclear Pollution ("NECNP") (collectively "Petitioners") in response to a Notice of Opportunity for a Hearing published in the *Federal Register*. See 60 Fed. Reg. 55,069 (Oct. 27, 1995). The Petitioners seek to intervene in a proceeding to consider approval of a plan to decommission the Yankee Nuclear Power Station ("Yankee NPS"), submitted by the Yankee Atomic Electric Company ("YAEC" or "Licensee"), which holds a possession-only license for Yankee NPS. The NRC Staff and YAEC have now filed answers to the petition. We have granted Petitioners' motion seeking leave to file a reply and considered their reply in issuing this Order. This Order refers the pleadings to the Atomic Safety and Licensing Board ("Licensing Board") for appropriate action with guidance on several novel issues raised in this proceeding and a suggested expedited schedule.<sup>2</sup>

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<sup>2</sup> The NRC Staff has filed a response to the Petitioners' motion for leave, in which the Staff does not oppose the motion but asks for leave to file a pleading in opposition to the "new issues" it alleges are raised in the Reply. The Licensee has filed two responsive pleadings. The first opposes the Petitioners' motion for leave; the second is a motion for leave to file a substantive pleading in opposition to the Reply if we accept the reply. These two requests to file additional responses are forwarded to the Licensing Board for its appropriate consideration.

## II. BACKGROUND

We have discussed the background of this matter before at some length. Suffice it to say that we have reinstated our pre-1993 policy on providing an opportunity for an adjudicatory hearing regarding the possible approval of nuclear power reactor decommissioning plans in light of a decision by the U.S. Court of Appeals for the First Circuit. See generally *Citizens Awareness Network v. NRC*, 59 F.3d 284 (1st Cir. 1995); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-95-14, 42 NRC 130 (1995). In accord with that pre-1993 policy, we offered an opportunity for a hearing on the unfinished portion of work to be completed under the proposed Yankee NPS decommissioning plan, which had previously been approved by the NRC Staff. See 60 Fed. Reg. 55,069 (Oct. 27, 1995), *supra*.

In order to obtain such a hearing, Petitioners must satisfy the requirements of 10 C.F.R. § 2.714. Thus, Petitioners must (1) demonstrate that they have standing to intervene and (2) submit at least one valid contention. In this case, as required by the expedited procedures announced in the *Federal Register* Notice, *id.*, Petitioners submitted a supplemental petition containing five proposed contentions. The Licensee and the Staff have responded, arguing that: (1) Petitioners have not requested a hearing; and (2) all proposed contentions are inadmissible. Petitioners have, in turn, replied to Licensee's and Staff's objections and advocated the admissibility of each of the proffered contentions.

We refer the matter to the Atomic Safety and Licensing Board ("Licensing Board" or "ASLB") to rule on standing and contentions and to conduct any necessary further proceedings. In so doing, we construe the original petition as requesting a hearing and not just intervention in the proceeding in the event a hearing is requested by someone else. While Petitioners may be faulted for not *expressly* requesting a hearing in their original petition, it seems clear from the petition as a whole that this is what they desire, and their reply confirms this. Accordingly, we decline the suggestions by the Staff and the Licensee that we dismiss the petition solely on the basis of a technical pleading defect.

## III. GUIDANCE TO THE LICENSING BOARD

We expect that many of the issues raised by the Petitioners and related pleadings will be resolvable within the framework of the NRC's regulations and case law. However, in order to expedite this proceeding and to avoid future delay, we are providing guidance to the Licensing Board on several novel issues raised by the pleadings.

## A. The Nexus Between Standing and Contentions

The Licensee and the Staff challenge Petitioners' "standing" to raise contentions related to occupational dose issues. In order to establish standing to intervene in a proceeding, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision. See, e.g., *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993). See generally *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988). And as we have noted on other occasions, a prospective intervenor may not derive standing to participate in a proceeding from another person who is not a party to the action or is not a member of its organization. See, e.g., *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

However, once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing. See, e.g., *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 78-81 (1978) (rejecting a requirement for a "nexus" between the injury claimed and the right being asserted); *Sierra Club v. Morton*, 405 U.S. 727, 740 n.15 (1972) ("The test of injury-in-fact goes only to the question of standing to obtain judicial review. Once this standing is established, the party may assert the interests of the general public in support of its claims for equitable relief."). See generally 3 K. Davis and R. Pierce, *Administrative Law Treatise* § 16.13 (1994).<sup>3</sup>

In this case, the Petitioners have asserted standing to intervene in this proceeding alleging that (1) they will suffer injuries resulting from implementation of the currently proposed Yankee NPS decommissioning plan and (2) these injuries could be redressed either by the choice of a different alternative or by modification of the plan. Assuming *arguendo* that the Licensing Board determines that Petitioners do indeed have standing to intervene in this proceeding, they will then be free to assert any contention, which, if proved, will afford them the relief they seek, i.e., the rejection or modification of the Yankee NPS decommissioning plan in a manner that will redress their asserted injuries. Of course, any contention must also satisfy the other applicable requirements for contentions. We address here only the matters of "nexus" between standing and contentions.

<sup>3</sup>Section 2.714(g) of 10 C.F.R. provides that an intervenor's participation may be limited in accordance with its interests. We construe this provision in accordance with the cited case law, i.e., that an intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing.

## B. NRC Review of the Choice of Decommissioning Option

The Petitioners allege that the Licensee's choice of DECON as a decommissioning option violates 10 C.F.R. § 20.1101 "in that it fails to maintain occupational and public radiation doses as low as reasonably achievable ["ALARA"]." The basis Petitioners offer for this contention is that "significant dose savings" could be achieved by "cost effective measures," i.e., by postponing dismantlement of the facility for a 30-year SAFSTOR period.

We are not prepared at this time to put the Licensee's choice of a decommissioning option forever beyond all challenge. Nevertheless, a fair reading of our decommissioning rules at 10 C.F.R. § 50.82 is that it is for the Licensee in the first instance to choose the decommissioning option and that neither DECON nor SAFSTOR can be deemed unacceptable *a priori*.<sup>4</sup> A choice of DECON over SAFSTOR involves tradeoffs, e.g., earlier achievement of the decommissioning goal of unrestricted site release but at the cost of higher collective doses to plant workers performing the dismantlement.

In this case the Petitioners challenge the validity of the Licensee's evaluation of this tradeoff by asserting that the site will not be available for release for unrestricted use for many years to come because spent fuel will have to remain stored at the site. Thus, they argue, implementation of DECON will involve approximately 900 person-rem more occupational exposure than implementation of SAFSTOR<sup>5</sup> but will provide no countervailing benefit. They further argue that, contrary to YAEC's figures, the SAFSTOR alternative would actually cost somewhat less than DECON. Petitioners thus contend that Yankee's proposal for a modified DECON plan violates the ALARA requirement because radiation exposure could be lowered at reasonable cost by adopting the SAFSTOR alternative.

We assume that an ALARA challenge can properly be made against a Licensee's decommissioning alternative choice, if an adequate basis for the challenge is offered. The question presented by Petitioners' ALARA contention is whether the Petitioners' assertions regarding dose savings and cost-effectiveness

<sup>4</sup>Under 10 C.F.R. § 50.82(b)(1), "The proposed decommissioning plan must include— [t]he choice of the alternative for decommissioning," and under 10 C.F.R. § 50.82(b)(1)(i), "[f]or an electric utility licensee [of a nuclear power reactor], an alternative is acceptable if it provides for completion of decommissioning within 60 years." Thus, the *principal* criterion for judging a decommissioning alternative is the proposed time required for decommissioning completion; both SAFSTOR and DECON will, in general, meet this criterion. The Generic Environmental Impact Statement ("GEIS") supporting the decommissioning rule also finds both SAFSTOR and DECON generally acceptable.

However, decommissioning plans must also meet other applicable NRC regulations, including the ALARA requirement in 10 C.F.R. § 20.1101(b). See 10 C.F.R. § 50.82(e). It must be emphasized that one of the purposes of the revised 10 C.F.R. Part 20 was to change the status of ALARA from the hortatory suggestion in old 10 C.F.R. § 20.1(c) to the mandatory requirement in new 10 C.F.R. § 20.1101(b). Thus, ALARA is an essential part of Federal Radiation Protection Guidance.

<sup>5</sup>For this figure the Petitioners cite Table 4.3-2 of NUREG-0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" ("GEIS").

provide an adequate basis. As for the asserted dose savings, we note that the 900 person-rem figure is based on estimates for decommissioning of a much larger nuclear plant than the Yankee NPS.<sup>6</sup> But different dose estimates may be expected at the Yankee NPS. Furthermore, Yankee's decommissioning plan has already been partially implemented, and the results of that implementation (which should be available for review) may reduce the anticipated occupational dose.

In any event, the 900 person-rem figure, being a generic estimate, is necessarily somewhat speculative as applied to a particular facility. The differences in occupational exposure between the DECON and SAFSTOR alternatives could in actual practice be less than 900 person-rem, or perhaps not much at all. Among the few inevitable uncertainties are the actual conditions of the facility after several decades, and the amount of institutional memory held by plant management and workers regarding the facility configuration and the extent and location of contamination. It is one thing to review a licensee's choice of alternative procedures and actions when that review can be based upon relatively certain data in the here and now; it may be quite another thing to review a licensee's choice based on estimates of doses that will occur 30 or more years in the future. Given that our rules treat DECON as a generally acceptable alternative, despite the acknowledged likelihood of reduced occupational dose under SAFSTOR, we conclude that a challenge to the Licensee's choice of the modified DECON option instead of SAFSTOR cannot be based solely on differences in estimated collective occupational dose on the order of magnitude of the estimates in the GEIS.

We believe that this position as applied in this case is entirely consistent with the ALARA concept. The Petitioners appear to recognize that a licensee's actions do not violate the ALARA principle simply because some way can be identified to reduce radiation exposures further. The practicality and the cost of the measures required to achieve these reductions as well as "other societal and socioeconomic considerations" must also be taken into account. See 10 C.F.R. § 20.1003 (definition of ALARA). As a matter of agency practice, the NRC will generally find that exposures are ALARA when further dose reductions would cost more than \$1000 or \$2000 for each person-rem reduction achieved. See generally "Regulatory Analyses Guidelines," NUREG/BR-0058, Rev. 2, announced in 60 Fed. Reg. 65,694 (Dec. 20, 1995). Applying that analysis here, the "value" of a 900 person-rem occupational dose reduction would be no more than about \$2 million.

In the case before us, all parties appear to agree that the cost estimates for both the DECON and SAFSTOR alternatives are on the order of \$200 million

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<sup>6</sup> Table 4.3-2 of the GEIS presents dose analyses for decommissioning "the reference PWR," which is an 1175-MWe facility, significantly larger than the Yankee NPS.

and lie within \$10 million to \$15 million of each other. The estimates (especially Petitioners' "present value" estimates) are highly dependent on difficult-to-predict variables like interest, discount, and inflation rates and waste disposal fees. In short, it is not possible to say with great assurance whether switching from DECON to SAFSTOR might actually save money, as Petitioners contend, or whether over the next 30 years additional costs considerably in excess of \$2 million might be incurred. In these circumstances we do not believe that potential dose reductions on the order of 900 person-rem can have ALARA significance, unless there is some extraordinary aspect to the case not apparent to us from the pleadings that the Licensing Board may uncover on its own review.

### **C. Decommissioning Cost Update**

In Contention C, Petitioners allege, *inter alia*, that YAEC's "updated cost estimate," submitted under 10 C.F.R. § 50.82(b)(4), is "not reasonable." Petition at 20. The essential purpose of this requirement in section 50.82 is to provide "reasonable assurance" of adequate funding for decommissioning. Thus, a contention that a licensee's estimate is not "reasonable," standing alone, would not be sufficient in and of itself because the potential relief would be the formalistic redraft of the plan with a new estimate. The issue seems important here because the Licensee maintains that it has funds or access to funds to pay for decommissioning, even if it costs more than it currently estimates. Thus, to be entitled to relief, Petitioners will need to show not only that the estimate is in error but that there is not reasonable assurance that the amount will be paid.

### **D. Remedy for Past Conduct**

In Contention D, Petitioners challenge allegedly "illegal" past conduct of the Licensee and seek a remedy for that conduct. To the extent that the contention alleges that YAEC has violated NRC regulations, those allegations are more properly the subject of separate enforcement action. The focus of this proceeding is prospective only — the future decommissioning of the remainder of the facility under the proposed decommissioning plan.

## **IV. EXPEDITED SCHEDULE**

As we noted in CLI-95-14, we intend to expedite this proceeding. We have already expedited the proceeding by requiring the filing of contentions with the petition to intervene. In an Appendix to this Order, we provide the Licensing Board with a suggested expedited schedule for the proceeding, subject always,

of course, to the demands of basic fairness. We will not *require* the Licensing Board to adhere to the following schedule to the letter and, indeed, we expect the Licensing Board to conduct its customarily thorough inquiry using all the tools normally at its disposal and following its customary practices and procedures under 10 C.F.R. Part 2, Subpart G (although a modification of usual discovery rules is suggested in the schedule). However, we expect that the Licensing Board will, if it declines to adopt our proposed schedule, adopt an equally expedited schedule which will generate a final initial decision by, at the latest, the middle of July 1996.

#### V. SUMMARY

We hereby refer all pleadings in this matter to the Atomic Safety and Licensing Board for processing under the Licensing Board's normal practices and procedures, subject to the guidance expressed above, and with the proposed schedule provided in the Appendix below. We expect the Licensing Board to act expeditiously with the goal of issuing a final initial decision by or about the middle of July 1996.

It is so ORDERED.

For the Commission

JOHN C. HOYLE  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 16th day of January 1996.



**APPENDIX**

**PROPOSED EXPEDITED SCHEDULE FOR YANKEE HEARINGS**

<b>Action</b>	<b>Intervening No. of Days</b>	<b>Date</b>
Commission Order Referring Case to ASLB		Day 0
ASLB Rules on Contentions: During this period, the ASLB should hold its normal special prehearing conference and take whatever steps it feels necessary to narrow the issues before it, including, if necessary, additional briefing and oral argument. The ASLB should then rule on preliminary matters including the admissibility of Petitioners' proposed contentions.	28	Day 28
Discovery Completed: During this period, the ASLB should require the parties to expedite discovery. If necessary, the ASLB may adopt the mandatory discovery procedures used in Rule 26(a)(1)-(3) of the Federal Rules of Civil Procedure.	21	Day 49
Prefiled Testimony (by all parties) and All Motions for Summary Disposition: During this period, all parties should prepare and submit any prefiled testimony and motions for summary disposition.	14	Day 63
ASLB Rules on Summary Disposition Motions: During this period, the parties should complete briefing and any oral argument (if necessary) on motions for summary disposition and the ASLB should rule on the motions.	21	Day 84
ASLB Starts Hearing (if needed)	7	Day 91
ASLB Completes Hearing	14	Day 105
Proposed Findings by Intervenors/Licensee	21	Day 126
Proposed Findings by Staff	7	Day 133
ASLB Final Initial Decision	28	Day 161