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POLICY ISSUE **(Information)**

September 27, 1999

SECY-99-238

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: PROPOSED SALE OF SOME LAND THAT IS A PORTION OF A LICENSEE'S SITE, INCLUDING LAND IN THE EXCLUSION AREA

PURPOSE:

To inform the Commission of the issues raised by the proposed sale of a portion of the site and exclusion area and the gas turbines located within the exclusion area at Oyster Creek Nuclear Generating Station (OCNGS, Oyster Creek), and the staff's actions to address such issues.

BACKGROUND:

The OCNGS is located on the coastal pine barrens of New Jersey in Lacey and Ocean Townships, Ocean County. The site, as described in the final safety analysis report (FSAR), comprises approximately 755 acres located west of U.S. Route 9. It is bounded on the north by the South Branch of the Forked River and on the south by Oyster Creek. The Garden State Parkway forms the western boundary. The licensee, GPU, Inc., proposes to sell about 603 acres, leaving a site area of about 152 acres. In 1990-1991, the licensee disposed of soil that contained trace concentrations of licensed material (principally cobalt-60) on about 1 acre of the land to be sold. Subsequently, the licensee removed the contaminated material and remediated that portion of the land.

In a letter dated November 10, 1998, the licensee for OCNGS made application to amend the plant Technical Specifications (TSS) to remove a restriction on the sale or lease of property within the exclusion area. As the relief from the restriction did not affect the exclusion area required by the NRC or compliance with other substantive regulatory requirements, the amendment approving the removal of the restriction on the sale or lease of property within the exclusion area was issued on May 12, 1999.

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As a result of the licensee's application, and in conversations with the licensee, the staff was informed of the licensee's intention to sell portions of the site. This proposed sale included the gas turbines (used for station blackout) and also other property both within and outside the exclusion area.

In a letter dated January 11, 1999, the State of New Jersey (State), Department of Environmental Protection (DEP), asked two questions of the NRC related to the proposed amendment. The first question concerned the applicable regulatory requirements for the plant's designated site and exclusion area during operation and decommissioning. The second question concerned the NRC's position on whether the sale of a large portion of the site, which contained part of the exclusion area, would be handled as a partial license termination under the NRC's regulations.

In telephone conferences on August 4, 1999, the staff advised the licensee and the State, separately, that we were studying issues related to the proposed sale of portions of the Oyster Creek site and that we would inform them, by letter, of our position in this matter.

On August 12, 1999, the staff sent a letter to the State (Attachment 1) noting applicable regulations and acknowledging that NRC's regulations in 10 CFR Part 50 do not explicitly provide for partial termination of a license. We stated that, in the specific context of the proposed transaction, provisions of 10 CFR Part 50, Part 30 and Part 20 were applicable and the release criteria of 10 CFR Part 20, Subpart E, applied to the release of the portion of the site. Further, the staff stated that 10 CFR 50.59 applied, and that the site description, which is part of OCNCS's licensing basis, would have to be changed in the FSAR.

The staff sent a letter to the licensee on September 2, 1999 (Attachment 2), noting that, in order for the staff to determine whether it objected to the release of the property to be sold, it would need additional information. That information concerned radiation surveys to determine whether the criteria of 10 CFR Part 20 Subpart E were met.

In addition, the licensee was told that, after the staff reviewed this information and any other information it needed, the NRC would conduct confirmatory surveys, as warranted, with appropriate participation by the State. As part of this effort, the staff stated it intended to hold a meeting, open for public observation, with the licensee and the State to ensure a common understanding of the nature and extent of the licensee's efforts to support release of the affected property.

Finally, the licensee was informed that, should the staff not object to release of this property following a determination that the criteria of Subpart E were met, the licensee would remain responsible for assuring at the time of final license termination pursuant to 10 CFR 50.82 that the site, as originally licensed, met the release limits of Subpart E. That is, the licensee would need to account for any dose from the released portion of the site in determining the dose levels for the entire original site for comparison against the standards of Subpart E.

DISCUSSION:

The standard for release of property for unrestricted use is set forth in 10 CFR Part 20, Subpart E. The regulations in 10 CFR 50.82 state that a site must meet Subpart E in the termination of a license. Unlike Parts 30, 40, and 70, Part 50 does not provide for partial site release.

Nevertheless, because 50.82 applies to the decommissioning of the whole site, it is necessary to assure that any partial release meets Part 20, Subpart E. This will avoid potential problems in later determining whether the decommissioned site may be released for unrestricted use and meets the requirements of 10 CFR Part 20, Subpart E. While the standard for site release is 10 CFR Part 20, Subpart E, there is no specific regulation that addresses a partial reactor site release pursuant to Subpart E. Nevertheless, the NRC has asked information of the licensee to determine whether the NRC should object to the release of the portion of the site that is proposed for sale. If the criteria for an unrestricted release under Subpart E can be met, then there would not appear to be a basis to object to releasing the site. On the other hand, if those criteria are not met and the licensee objects to remediating the site to those criteria, then the NRC may need to issue an order to require further action.

The licensee informed the staff that they planned to respond in late September to the staff's September 2, 1999, request for information. However, GPU, Inc. (GPU), indicated that it intended to proceed with the closing on the land sale. GPU has not determined an exact closing date but it expects to be early October. GPU does not intend to wait for the NRC to complete its review of their response. GPU is planning to proceed at its own risk and is willing to remediate this part of the land if deemed necessary to meet NRC regulations. The contract of sale addresses remediation of the property. The staff has asked GPU to obtain a commitment from the buyer not to disturb the property for up to 90 days. The staff also asked for access to complete its confirmation surveying inspections, and monitoring of remediation, if necessary. The staff is planning to complete its review expeditiously, but the review is not expected to be completed before the projected date for closing.

Additionally, the staff is reviewing the licensee's 10 CFR 50.59 evaluation. This evaluation discusses, or briefly summarizes, numerous impacts of this land sale, including: (1) the sale of the gas turbines, which are used as an alternate ac power source to meet 10 CFR 50.63, Station Blackout rule; (2) the reduction in the site boundary, including the sale of about 20% of the exclusion area; and (3) emergency planning and security assessments. Region I has the lead for conducting the inspections of the licensee's 50.59 evaluation.

The staff review (ongoing) is verifying that appropriate controls exist to provide adequate assurance of the availability of emergency power from the gas turbines and associated switchyard in the event of a station blackout and to maintain sufficient control of all activities within the exclusion zone. Additionally, the staff is verifying the licensee has conservatively calculated the radiological dose at the new (reduced) site boundary.

The licensee's response to the staff's September 2, 1999 information request will be reviewed for acceptability by the NRR staff. This review effort will be supported by Region I and NMSS in verifying the radiological condition of the property and assumptions used in the licensee's evaluation in supporting the release of the subject land. Region I, NMSS, NRR, and OGC will be working in an integrated manner to review the licensee's response with an expected completion date within 90 days of receipt. This review will include: (1) evaluation of the basis for concluding that the property is suitable to be released in accordance with the criteria in 10 CFR Part 20, Subpart E, (2) NRC confirmatory surveys, and (3) exit interview with the licensee open to the public on the inspection and survey results. If the licensee's response is satisfactory, the staff will issue a letter to the licensee stating that the criteria of 10 CFR Part 20 Subpart E have been met, and the NRC does not object to the land being released for

unrestricted use. Included in the staff's review plans is a public meeting with the licensee and the State of New Jersey to address the licensee's response to our September 2, 1999, letter.

As noted above, the regulations do not address the sale of a portion or portions of a site to a non-licensed entity. And to the staff's knowledge, this is the first time this issue has arisen since the promulgation of 10 CFR Part 20, Subpart E. With electric utility restructuring, the staff believes that other licensees may be considering the same course of action pending the outcome of the Oyster Creek sale. At least five sites in decommissioning are considering the sale of portions of their sites: Haddam Neck, Zion, Humboldt Bay, Maine Yankee, and Big Rock Point. The Office of the General Counsel (OGC) recommended that the staff initiate rulemaking action to address the apparent gap in 10 CFR 50.82 involving partial site release. OGC believes the rulemaking will provide an orderly process with standards for addressing partial release of a site. The staff will inform the Commission of its plans to initiate the recommended rulemaking and the required resources in a separate paper.

RESOURCES:

Although resources are not specifically budgeted for the inspection activities described above, this work can be accomplished within NRR's budgeted resources for the reactor inspection program.

COORDINATION:

OGC has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

for 
William D. D'Avers
Executive Director
for Operations

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NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 12, 1999

Mr. Kent W. Tosch, Manager
Bureau of Nuclear Engineering
Department of Environmental Protection
P. O. Box 415
Trenton, NJ 08625-0415

Dear Mr. Tosch:

I am responding to your letter dated January 11, 1999, regarding Technical Specification Change Request (TSCR) 264 from Oyster Creek Nuclear Generating Station. You asked two questions related to the proposed sale of property within the site boundary and exclusion area.

Your first question concerns the applicable regulatory requirements for the areas designated the site and the exclusion area and, in particular, the NRC's regulatory authority and requirements for continued operation and for decommissioning.

For continued operation, the licensee is bound by the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. In particular, the licensee is subject to the provisions of 10 CFR Parts 30, 40, 50, and 70. The specific provisions of their license are contained in their full power license issued July 2, 1991. With respect to decommissioning, when the facility permanently ceases operation, 10 CFR 50.82 specifies the requirements and process to follow.

Your second question concerns NRC's position on whether the sale of a large portion of the site, which includes part of the exclusion area, will be handled as a partial license termination under the NRC's regulations. The NRC's regulations in 10 CFR Part 50 do not explicitly provide for partial termination of a license. In the specific context of the proposed transaction, as we understand it, the provisions of 10 CFR 50, 30 and 20 are applicable. Under these provisions, the release criteria of 10 CFR Part 20, Subpart E apply to the prospective sale of the portion of the Oyster Creek site.

The licensee has been informed that the sale of the property is a matter of concern to the NRC and that they must apply the criteria of 10 CFR Part 20 Subpart E. We will communicate with the licensee, regarding the process for satisfying these criteria.

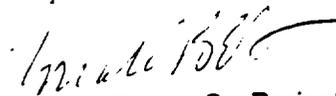
K. Tosch

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The NRC will review existing documents and documents in progress, such as the licensee's Safety Evaluation pursuant to 10 CFR 50.59.

I hope these answers have been responsive to your concerns. If I can be of further help please contact me at (301) 415-3041.

Sincerely,



Ronald B. Eaton, Sr. Project Manager, Section 1
Project Directorate I
Division of Licensing and Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-219

cc: See next page

GPU Nuclear, Inc.
Oyster Creek Nuclear Generating Station

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Mr. Michael B. Roche
Vice President and Director
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P. O. Box 388
Forked River, NJ 08731



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

September 2, 1999

Mr. Michael B. Roche
Vice President and Director
GPU Nuclear, Inc.
Oyster Creek Nuclear Generating Station
P. O. Box 388
Forked River, NJ 08731

**SUBJECT: SALE OF A PORTION OF LAND THAT IS PART OF THE OYSTER CREEK
NUCLEAR GENERATING STATION SITE INCLUDING A PORTION OF THE
EXCLUSION AREA**

Dear Mr. Roche:

In a telephone conference on August 4, 1999, with the management and staff of the Oyster Creek Nuclear Generating Station (Oyster Creek), you were informed that the U.S. Nuclear Regulatory Commission (NRC) has under consideration issues related to the subject sale. At that time, we stated that we would inform you and the State of New Jersey (State) of our regulatory position in this matter.

The proposed sale includes certain portions of your property which are contained within the site boundary of your Oyster Creek facility as defined in your operating license and 10 CFR 20.1003. The standard for release of licensed property is 10 CFR Part 20, Subpart E. In order for the NRC to determine whether it objects to the release of the property to be sold, we need additional information. Therefore, please provide the following information, in writing and under oath or affirmation:

- (1) The location of all areas within the property to be released where licensed radioactive material is or was present at any time.
- (2) The disposition of all licensed radioactive material, including accumulated wastes.
- (3) The basis for concluding that the property is suitable to be released in accordance with the criteria in 10 CFR Part 20, Subpart E. This should include the results of a radiation survey of the property where licensed material was present at any time. The staff would find acceptable a survey based on the guidance in the "Multi-Agency Radiation Survey and Site Investigation Manual" for preparing, implementing, and evaluating environmental radiological surveys to demonstrate compliance with the dose-based criteria contained in 10 CFR Part 20, Subpart E.

The information should be submitted to the NRC, Attention: Document Control Desk, Washington, D.C. 20555, with copies to the undersigned and to the Regional Administrator, Region I, U.S. NRC, 475 Allendale Road, King of Prussia, PA 19406-1415.

M. Roche

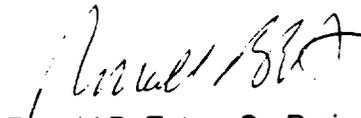
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After review of this information and any further information needed, the NRC might conduct confirmatory surveys, as warranted, with appropriate participation by the State. As part of this effort, we intend to hold a meeting, open for public observation, with you and the State to ensure a common understanding of the nature and extent of your efforts to support release of the affected property.

You should be aware that should we not object to release of this property following a determination that the criteria of Subpart E have been met, you will remain responsible for assuring at the time of final license termination pursuant to 10 CFR 50.82 that the site as originally licensed meets the release limits of Subpart E. That is, you must account for any dose from the released portion of your site in determining the dose levels for the entire original site.

If you have questions regarding this correspondence, please contact me at (301) 415-3041.

Sincerely,



Ronald B. Eaton, Sr. Project Manager, Section 2
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Office of Nuclear Reactor Regulation

Docket No. 50-219

cc: See next page

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