

May 24, 1996

FOR: The Commissioners
 FROM: James M. Taylor /s/
 Executive Director for Operations
 SUBJECT: PROPOSED STAFF RESPONSE TO PRIOR NOTIFICATION OF ADDITIONAL PLANNED ACTIVITIES AT THE YANKEE
 NUCLEAR POWER STATION

- [PURPOSE:](#)
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PURPOSE:

To provide the Commission (1) a notification, dated May 10, 1996, by Yankee Atomic Electric Company (YAEC or the licensee, who provided supplemental information on May 14, and May 15, 1996) of four new activities related to decommissioning the Yankee Nuclear Power Station (YNPS), scheduled to begin about May 24, 1996, (2) options for the Commission to consider as a response to the notification and (3) the staff's proposed resolution of the May 13, 1996, objection of Citizens Awareness Network, Inc. (CAN) and New England Coalition on Nuclear Pollution (NECNP) to YAEC's use of decommissioning funds for the four proposed activities prior to approval of a decommissioning plan. The Commission referred CAN's May 13, 1996, letter to the staff for preparation of a response. The staff has notified YAEC by letter dated May 23, 1996, that they should not proceed pending completion of the staff's consultation with the Commissioners on these matters.

DISCUSSION:

In *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), DD-96-01 (February 22, 1996) and DD-96-02 (March 18, 1996), the staff denied petitions of CAN and NECNP which sought to halt to all decommissioning activities at Yankee Nuclear Power Station prior to approval of a decommissioning plan. Upon *sua sponte* review, the Commission affirmed both decisions. *Yankee Atomic Electric Company*, CLI-96-6 (April 1, 1996). The Commission stated its understanding that YAEC then planned no further minor activities with radioactive dose consequences beyond those found permissible in the Director's Decisions. The Commission further stated that if that understanding should prove false and YAEC were to propose additional activities, the Commission stood "ready to call a halt" to additional activities, "'minor' or not, that individually or cumulatively would threaten the continued viability of SAFSTOR." CLI-96-06 slip op. at 11-12. Although, the staff has determined, as discussed below, that the additional activities will not individually or cumulatively preclude the viability of SAFSTOR, one option is that the Commission may, as a policy matter, wish to call a halt to additional activities. A draft letter, [Attachment 1](#), would inform YAEC that no additional activities may be commenced or conducted before final approval of a decommissioning plan for the YNPS, should the Commission conclude that in the absence of an approved decommissioning plan, additional activities, beyond those addressed in DD-96-01, DD-96-02, and CLI-96-6, threaten the continued viability of SAFSTOR.

The following four new activities are proposed by the licensee:

1. Removal of miscellaneous electrical and mechanical components from the containment in a less than 1-mrem/hour area. The associated radioactive dose is estimated as 1.8 person-rem.
2. Removal of structural steel from under the containment. The associated radioactive dose is estimated as 0.1 person-rem.
3. Decontamination of the concrete surfaces of the Ion Exchange Pit. The associated radioactive dose is estimated as 0.6 person-rem.
4. Excavation under containment for construction of a concrete pad. The associated radioactive dose is estimated as 0.1 person-rem.

The staff has determined that these activities would have been permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

The staff has also determined that the four activities will neither individually nor cumulatively demonstrably affect the methods or options available for decommissioning the Yankee Nuclear Power Station, and likewise will not individually or cumulatively preclude the viability of the SAFSTOR option. In CLI-96-6, the Commission considered the Director of the Office of Nuclear Reactor Regulation's decision regarding the effect on the YNPS SAFSTOR option of activities estimated to involve a dose of 65.3 person-rem. The Commission stated that, in its judgment, the 65.3 person-rem represented a reasonably small portion of the total estimated 358 person-rem dose then available for possible SAFSTOR treatment and, therefore, did not compromise a meaningful SAFSTOR option. CLI-96-01, slip op. at 9-10. The total estimated radiation dose for these four activities is 2.6 person-rem, which is a very small portion of the remaining approximately 300 person-rem estimated by the licensee to complete decommissioning of the plant.

The staff has determined that the four activities will neither individually nor cumulatively substantially increase the costs of decommissioning the plant. The licensee-estimated cost of these four activities is \$1.3 million, a very small portion of the \$368.8-million estimated total cost of decommissioning. Further, because YAEC is not precluded from using decommissioning funds to conduct the four proposed activities as explained below, the staff proposes to not object to the activities.

The staff also agrees with the argument that YAEC has put forth regarding the advantages of keeping skilled labor, who are familiar with the facility, under continued employment.

Therefore, a second option is that the Commission may approve the additional activities. A draft letter, [Attachment 2](#), would inform YAEC that the staff has no objection to the four activities proposed by the licensee. In addition, the staff would ask the licensee to identify all additional activities it might wish to undertake prior to the staff approval of the decommissioning plan. This information would allow the staff additional time in the future to consult with the Commission.

The Commission referred to the staff, for direct response, a May 13, 1996 letter from Jonathan Block, counsel for CAN and NECNP (petitioners in the YNPS decommissioning plan approval proceeding) in which he objects to the activities discussed in the YAEC May 10, 1996 letter. Among other things, Mr. Block alleged that the activities are not permitted because they involve the expenditure of decommissioning funds prior to the approval of a

decommissioning plan, citing as authority, a statement by the staff to the Commission in SECY-92-241 (July 9, 1992). SECY-92-241 provided the Commission with decommissioning and funding information regarding the YNPS and requested Commission approval of the issuance of a possession-only amendment for the YNPS license. In SECY-92-241 the staff asserted that "[o]nly after the NRC approves the proposed decommissioning plan, can the licensee begin drawing down the [decommissioning trust] fund." SECY-92-241 at 4.

The 1988 decommissioning regulations are silent regarding whether decommissioning plan approval must precede withdrawals from a licensee's decommissioning trust fund. The NRC does not supervise or review the expenditure of decommissioning funds. Further, as discussed below, there was no established Commission policy, pre-1993, regarding the expenditure of decommissioning funds prior to a 1994 draft policy statement.⁽¹⁾

Subsequent to the staff's statement in SECY-92-241, YAEC, in a letter to the Commission dated November 25, 1992, stated its intention to use its decommissioning trust funds to remove reactor core internals, steam generators and the pressurizer from YNPS before approval of the YNPS decommissioning plan. Also, by SRMs dated January 14, 1993,⁽²⁾ and March 30 1993,⁽³⁾ the Commission directed the staff to address, among other things, the use of decommissioning funds before approval of a decommissioning plan.

By letter dated April 16, 1993, the staff, using criteria stated therein, evaluated YAEC's proposed use of decommissioning funds and informed YAEC that the staff did not object to the proposed use. Further, the staff, in response to the Commission's March 30 1993 SRM, prepared SECY-93-137 which noted that the current decommissioning regulations in 10 CFR 50.75 and 50.82 are silent on whether approval of a decommissioning plan must precede withdrawal of decommissioning funds, and proposed the criteria used in evaluating the YAEC request as those that the NRC should use in addressing similar requests from power reactor licensees that have permanently shut down their reactors. The Commission approved the staff proposals and directed that the criteria be implemented and published in the Federal Register for information and comment.

The criteria were published as a draft policy statement on February 3, 1994.⁽⁴⁾ 59 Fed. Reg. 5216. The criteria in the draft policy statement are the only published standards of the Commission concerning the use of decommissioning trust funds prior to decommissioning plan approval.⁽⁵⁾

The staff has evaluated the activities described in the YAEC May 10, 1996 letter using the criteria described in the NRC's draft policy statement on the use of decommissioning trust funds before the decommissioning plan approval and concludes, for the reasons discussed below, that YAEC will maintain decommissioning funds at an adequate level during conduct of the activities. The first criterion in the February 3, 1994 Draft Policy Statement is that fund withdrawals are for legitimate decommissioning activities. The staff in its enclosed proposed letter to YAEC has determined that the May 10, 1996 activities would have been allowed under NRC pre-1993 decommissioning activities, and, as these activities are described in the FSAR, which includes the decommissioning plan, the four subject activities are clearly defined "decommissioning" tasks. The second criterion requires that the expenditures would not reduce the trust fund to an amount below that required to place and maintain the plant in SAFSTOR. The fund, at present, contains about \$111 million and is growing at the rate of \$39.4 million per year. This funding is sufficient to complete the dismantlement of the plant and far exceeds the cost to place and maintain the plant in SAFSTOR. The third of the criteria requires that withdrawals for these four activities would not inhibit the ability of the licensee to ultimately release the site for unrestricted use. In the enclosed staff response to the licensee, the staff has calculated that the impact of these four activities, estimated by the licensee at \$1.3 million, on the total estimated cost of decommissioning is only four-tenths of one percent of the total estimated cost. Based on these considerations, the staff concludes that YAEC meets these three criteria. The issue of decommissioning funds is addressed in the enclosed draft letter, [Attachment 3](#), to Mr. Block, counsel for CAN and NECNP, a copy of which will be provided to YAEC. This letter will be sent only if the second option, approving the additional activities, is approved by the Commission.

RECOMMENDATIONS:

For the reasons discussed above, the staff recommends that YAEC be allowed to undertake the four additional activities described in their letter dated May 10, 1996, and that YAEC and Mr. Jonathan Block, be informed of this decision by letters, [Attachment 2](#) and [3](#), respectively.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection to it.

Original signed by:

James M. Taylor
Executive Director for Operations

CONTACTS: Seymour Weiss, NRR/PDND/DRPM
415-2170

Mort Fairtile, NRR/PDND/DRPM
415-1442

Attachments: 1. [Draft Letter to YAEC](#)
2. [Draft letter to J.M. Block, Counsel for CAN and NECNP](#)
3. [Draft letter to YAEC](#)

ATTACHMENT 1

Mr. James A. Kay
Principal Licensing Engineer
Yankee Atomic Electric Company
580 Main Street
Bolton, Massachusetts 01740-1398

SUBJECT: MAY 10, 1996, PRIOR NOTIFICATION OF FOUR ADDITIONAL PLANNED ACTIVITIES

Dear Mr. Kay:

In accordance with the Commission's Order CLI-96-6 (April 1, 1996), Yankee Atomic Electric Company (YAEC), in a letter dated May 10, 1996, provided the requisite 14-day prior notice of four planned activities at the Yankee Nuclear Power Station. In letters dated May 14 and 15, 1996, YAEC provided additional information requested by the NRC staff.

In its April 1, 1996, Order, CLI-96-6, the Commission stated its understanding that YAEC planned no further "minor" activities with radioactive dose consequences, beyond those found permissible in DD-96-01 (February 22, 1966) and DD-96-02 (March 18, 1966). Based on this understanding, the Commission concluded that the SAFSTOR option remains viable pending final approval of YAEC's decommissioning plan. The Commission also stated, however, that should YAEC propose additional activities, "minor" or not, that individually or cumulatively would threaten the continued viability of SAFSTOR, the Commission stood ready to call a halt to such activities.

After consultation with the Commission, it has been concluded that in the absence of an approved decommissioning plan, additional activities, beyond those addressed in DD-96-01, DD-96-02, and CLI-96-6, threaten the continued viability of SAFSTOR. Accordingly, no additional activities may be commenced or conducted before final approval of a decommissioning plan for the Yankee Nuclear Power Station. YAEC may complete those activities found permissible in DD-96-01, DD-96-02 and CLI-96-6.

Sincerely,

William T. Russell, Director
Office of Nuclear Reactor Regulation

cc: Jonathan M. Block

ATTACHMENT 2

Mr. James A. Kay
Principal Licensing Engineer
Yankee Atomic Electric Company
580 Main Street
Bolton, Massachusetts 01740-1398

SUBJECT: MAY 10, 1996, PRIOR NOTIFICATION OF FOUR ADDITIONAL PLANNED ACTIVITIES

Dear Mr. Kay:

In accordance with the Commission's Order CLI-96-6 (April 1, 1996), Yankee Atomic Electric Company (YAEC), in a letter dated May 10, 1996, provided the requisite 14-day prior notice of four planned activities at the Yankee Nuclear Power Station. In letters dated May 14 and 15, 1996, YAEC provided additional information requested by the NRC staff. YAEC states that these four activities will not have a significant cumulative impact on the remaining decommissioning activities that must await re-approval of a decommissioning plan. YAEC also states that these activities are "minor" in nature, and do not affect the implementation of the SAFSTOR option for the remaining plant. Finally, YAEC states that these activities are bounded by the types of activities previously considered permissible by NRC under a Possession-Only License (POL) prior to approval of a decommissioning plan.

The staff's concludes that each of the four activities is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations. A detailed explanation is provided in the enclosure to this letter.

YAEC estimates the cost of the four activities to be approximately \$1.3 million, or less than four-tenths of 1 percent of the estimated total decommissioning cost of \$368.8 million. Therefore, the staff concludes that the four proposed activities will neither individually nor collectively substantially increase the cost of decommissioning.

YAEC estimates the total radioactive dose for the four activities will be 2.6 person-rem, which likewise is very small, or approximately 0.87 percent of the remaining approximately 300 person-rem to decommission the plant. Accordingly, the staff concludes that the completion of these activities will neither individually nor cumulatively demonstrably affect the methods and options available for decommissioning, and likewise will not individually nor cumulatively preclude the SAFSTOR option, should that option be required as a result of the still-pending challenge to the re-approval of the YAEC decommissioning plan.

In view of all the above, the staff interposes no objection to the four activities identified in YAEC's letter of May 10, 1996. However, we request that you provide by June 17, 1996, a list of all additional activities with radioactive dose consequences which YAEC plans to conduct prior to approval of a decommissioning plan. This list should include projected start date for each activity, associated doses to the workers, radiation curries, and estimated cost.

The staff considered and will respond to the May 13, 1996 letter of Citizens Awareness Network and the New England Coalition on Nuclear Pollution, concerning use of decommissioning funds before approval of a decommissioning plan, in separate correspondence.

Sincerely,

William T. Russell, Director
Office of Nuclear Reactor Regulation

Docket No. 50-029

Enclosure: As stated

cc w/enclosure: See next page

ENCLOSURE

The four activities identified in the May 10, 1996 letter from Russell A. Mellor to Morton B. Fairtile are permissible under the pre-1993 interpretation of the NRC's decommissioning regulations, for the following reasons:

1. Removal of Vapor Container miscellaneous electrical and mechanical components

This activity will result in the removal of electrical components, small pipe, ventilation system components and miscellaneous handrails, platforms and ladders from the space outside the Vapor Container biological shield wall. Licensee estimates dose at 1.8 person-rem and total radioactivity in these components at 0.0012 curies.

This work is similar to activities conducted at Shoreham prior to approval of its decommissioning plan. See Director's Decision (DD) 96-01 (February 22, 1996), pp. 10-11, and DD 96-02 (March 18, 1996), pp. 7-8, items c, d, and g.

2. Removal of structural steel under the Vapor Container

This activity involves the removal of steel framework and other minor equipment in the yard between the Primary Auxiliary Building and the Turbine Building. Licensee estimates dose at less than 0.1 person-rem and total radioactivity in these components as less than 0.000001 curies.

This work is similar to activities conducted at Shoreham and Fort St. Vrain (FSV) prior to approval of their decommissioning plans. See DD 96-01, pp. 10-11 for Shoreham and p. 11 for FSV, and DD 96-02, pp. 7-8, items d and g for Shoreham, and p. 8, item b for FSV.

3. Decontamination of the Ion Exchange Pit concrete surfaces

This decontamination activity involves an estimated dose of 0.6 person-rem and removed radioactivity of 0.05 curies. This decontamination activity is related to the Ion Exchange Pit decontamination, which was required for safety reasons. Such decontamination activities are permissible prior to approval of a decommissioning plan. See DD 96-01, pp. 9 and 16.

4. Excavation under Vapor Container for construction of pad

This activity involves the removal of soil and asphalt paving from under the Vapor Container to enable construction of a replacement concrete pad to be used as a future work surface. The associated dose is 0.1 person-rem and the removed material contains less than 0.002 curies of radioactivity. This work constitutes a maintenance upgrade of the present paving, which has deteriorated and can not support the movement of heavy loads. Under the pre-1993 interpretation of the decommissioning regulations, this activity is permissible prior to approval of a decommissioning plan. See NRC Inspection Manual Chapter 2561, Section 06.06; DD 96-01, p.12 and n.4; and DD 96-02, p.7 and n.4.

ATTACHMENT 3

Jonathan M. Block
Attorney at Law
Main Street, P.O. Box 566
Putney, VT 05346-0566

Dear Mr. Block:

Your letter on behalf of Citizens Awareness Network, Inc. and New England Coalition on Nuclear Pollution, dated May 13, 1996, to Chairman Shirley Ann Jackson, Commissioner Kenneth C. Rogers and Commissioner Greta J. Dicus has been referred to me for reply. Your letter objects to four additional activities which Yankee Atomic Electric Company proposes in its letter of May 10, 1996, to commence on May 24, 1996.

You state that there is no lawful basis for permitting the additional activities until the decommissioning plan and decommissioning funding plan are approved, and that the activities are not permissible for the following reasons:

- (1) they are not necessary to maintain the facility in a safe condition pending implementation of SAFSTOR;
- (2) they involve the expenditure of decommissioning funds in contravention of SECY-92-241 at 4 (July 9, 1992), which states that "[o]nly after the NRC approves the proposed decommissioning plan and the decommissioning funding plan, can the licensee begin drawing down the [decommissioning] fund"; and
- (3) they violate the Commission's Order of April 1, 1996, which states that an accumulation of "minor" activities could eviscerate the SAFSTOR option, and that if YAEC were to propose additional activities that would individually or cumulatively threaten the continued viability of SAFSTOR, the Commission stands ready to call a halt to such activities.

The staff has concluded, as explained in the enclosed letter from William T. Russell to YAEC, that the four additional activities are permissible under the pre-1993 interpretation of the Commission's decommissioning regulations, and will not affect the continued viability of SAFSTOR.

In SECY-92-241, which provided the Commission with decommissioning and funding information regarding the YNPS and requested Commission approval of the issuance of a possession-only amendment for the YNPS license, the staff did assert that "[o]nly after the NRC approves the proposed decommissioning plan, can the licensee begin drawing down the [decommissioning trust] fund." SECY-92-241 at 4.

As a result of the decision in *Citizens Awareness Network v. NRC*, 59 F.3d 284, (1st Cir. 1995), the Commission decided that it must reinstate its pre-1993 interpretation of its decommissioning regulations. See generally 60 FR 46317 (1995). The 1988 decommissioning regulations are silent regarding whether decommissioning plan approval must precede withdrawals from a licensee's decommissioning trust fund, and the NRC does not supervise or review the expenditure of decommissioning funds. On February 3, 1994, the Commission published a draft policy statement, "Use of Decommissioning Trust Funds Before Decommissioning Plan." 59 FR 5216 (1994). However, as explained below, it is not clear that a stated NRC pre-1993 policy regarding the expenditure of decommissioning funds existed prior to the 1994 draft policy statement.

Subsequent to SECY-92-241, YAEC, in a letter to the Commission dated November 25, 1992, stated its intention to use its decommissioning trust funds to remove reactor core internals, steam generators and the pressurizer from YNPS before approval of the YNPS decommissioning plan. Also, by SRMs dated January 14, 1993,⁽⁶⁾ and March 30 1993,⁽⁷⁾ the Commission directed the staff to address, among other things, the use of decommissioning funds before approval of

a decommissioning plan.

By letter dated April 16, 1993, the staff, using criteria stated therein, evaluated YAEC's November 25, 1992, proposal and informed YAEC that the staff did not object to the proposed use of decommissioning funds. Further, the staff, in response to the Commission's March 30, 1993, SRM, prepared SECY-93-137, which noted that the current decommissioning regulations in 10 CFR 50.75 and 50.82 are silent on whether approval of a decommissioning plan must precede withdrawal of decommissioning funds, and which proposed the criteria used in evaluating the YAEC request as those that the NRC should use in addressing similar requests from power reactor licensees that have permanently shut down their reactors. The Commission approved the staff proposals and directed that the criteria be implemented and published in the *Federal Register* for information and comment. The criteria were published as a draft policy statement on February 3, 1994.⁽⁸⁾ 59 FR 5216. The criteria in that draft policy statement are the only published standards of the Commission concerning the use of decommissioning funds prior to approval of a decommissioning plan.⁽⁹⁾

The staff has evaluated the activities described in the YAEC May 10, 1996, letter using the criteria described in the NRC's draft policy statement on the use of decommissioning trust funds before the decommissioning plan approval, and concludes, for the reasons discussed below, that YAEC will maintain decommissioning funds at an adequate level during conduct of the activities. The first criterion in the February 3, 1994 Draft Policy Statement is that fund withdrawals are for legitimate decommissioning activities. The staff, in its enclosed letter to YAEC, has determined that the for additional activities would have been allowed under the pre-1993 interpretation of the Commission's decommissioning regulations. Moreover, as these activities are described in the FSAR, which includes the decommissioning plan, the four activities are clearly defined "decommissioning" tasks. The second criterion requires that the expenditures would not reduce the trust fund to an amount below that required to place and maintain the plant in SAFSTOR. The fund, at present, contains about \$111 million and is growing at the rate of \$39.4 million per year. This funding is sufficient to complete the dismantlement of the plant and far exceeds the cost to place and maintain the plant in SAFSTOR. The third criterion requires that withdrawals for these four activities will not inhibit the ability of the licensee to ultimately release the site for unrestricted use. YAEC estimates the cost of these four activities at \$1.3 million, or four-tenths of one percent of the total estimated cost of decommissioning, and thus is not of a magnitude to possibly inhibit eventual release of the site for unrestricted use. Accordingly, the staff concludes that YAEC meets the three criteria for use of decommissioning funds for the proposed four activities prior to approval of a decommissioning plan.

Should you have any further questions on these issues, please contact Mr. Morton Fairtile of my staff at (301) 415-1442.

Sincerely,

William T. Russell, Director
Office of Nuclear Reactor Regulation

Encl: As stated

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1. As a result of the decision in *Citizens Awareness Network v. NRC*, 59 F.3d 284, (1st Cir. 1995), the Commission decided that it must reinstate its pre-1993 interpretation of its decommissioning regulations. See generally 60 Fed. Reg. 46317 (1995).
 2. The January 14, 1993 SRM was in response to SECY-92-382, prepared by the General Counsel to describe the issues involved in the decommissioning of the Shoreham Nuclear Power Station, Unit 1 (SECY-92-382, November 10, 1992). The SRM, among other things, directed the staff to address the availability and use of money from a licensee's decommissioning fund for activities normally associated with decommissioning before approval of a decommissioning plan.
 3. The March 30, 1993 SRM (COMIS-93-002), directed the staff to reexamine the Commission's requirements for decommission funding, including the timing of and criteria for access to funds set aside to conduct decommissioning operations.
 4. Comments on the policy statement received in response to the notice (59 Fed. Reg. 5216 (1993)) have been considered by the staff as part of the proposed rulemaking on decommissioning of nuclear power reactors, initiated in response to an SRM dated June 30, 1993, the current version of which is before the Commission in SECY-96-086, dated April 25, 1996. The new decommissioning rule provides for the limited use of decommissioning funds. See Proposed 10 CFR 50.82(a)(8).
 5. In *Citizens Awareness Network v. NRC*, 59 F.3d 284, (1st Cir. 1995), the Appeals Court cited the staff's April 16, 1993 letter to Yankee as indication that the agency "actively permit[ted] the release of funds" and thereby actively permitted the Component Removal Project before the approval of a decommissioning plan, the latter an action which the Court found to be contrary to the current decommissioning regulations. *Id.* at 292-293. The staff has determined, as explained in this paper, that the activities proposed in the YAEC May 10, 1996 letter would have been allowed under pre-1993 decommissioning policy. Therefore, acquiescing in YAEC's use of decommissioning funds for these activities, cannot be construed as permitting prohibited decommissioning activities.
 6. The January 14, 1993 SRM was in response to SECY-92-382, prepared by the staff to describe the issues involved in the decommissioning of the Shoreham Nuclear Power Station, Unit 1 (SECY-92-382, November 10, 1992). The SRM, among other things, directed the staff to address the availability and use of money from a licensee's decommissioning fund for activities normally associated with decommissioning before approval of a decommissioning plan.
 7. The March 30, 1993 SRM (COMIS-93-002), directed the staff to reexamine the Commission's requirements for decommission funding, including the timing of and criteria for access to funds set aside to conduct decommissioning operations.
 8. Comments on the policy statement received in response to the notice have been considered by the staff as part of the proposed rulemaking on decommissioning of nuclear power reactors, initiated in response to an SRM dated June 30, 1993, the current version of which is before the Commission in SECY-96-086, dated April 25, 1996. The new decommissioning rule provides for the limited use of decommissioning funds. See Proposed 10 CFR 50.82(a)(8).
 9. In *Citizens Awareness Network v. NRC*, 59 F.3d 284, (1st Cir. 1995), the Appeals Court cited the staff's April 16, 1993 letter to Yankee as indication that the agency "actively permit[ted] the release of funds" and thereby actively permitted the Component Removal Project before the approval of a decommissioning plan, the latter an action which the Court found to be contrary to the current decommissioning regulations. *Id.* at 292-293. The staff has determined that the activities proposed in the YAEC May 10, 1996, letter are permissible under the pre-1993 interpretation of the Commission's decommissioning regulations. Therefore, acquiescence in YAEC's use of decommissioning funds for

these activities, cannot be construed as permission to conduct prohibited decommissioning activities.