

the Commission had violated the National Environmental Policy Act by permitting YAEC to initiate the CRP before the agency had prepared an environmental assessment or impact statement. The Court remanded the case to the Commission for further action in accordance with these holdings.

In reaching these results the Court criticized the Commission's change in interpretation of its 1988 decommissioning regulations¹ that it announced in a staff requirements memorandum dated January 14, 1993. In that memorandum, the Commission decided to allow its licensees to conduct "any decommissioning activity" prior to NRC approval of a decommissioning plan, so long as the activity did not "violate the terms of the licensee's existing license * * * or 10 CFR 50.59 as applied to the existing license." Previously, the Commission had required that "major dismantling and other activities * * * must await NRC approval of a decommissioning plan." See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 73 n.5 (1991). Accord, *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 61 n.7 (1992). Relying on the Commission's new interpretation, YAEC began removing major components from its Yankee reactor before obtaining approval of a decommissioning plan.² In its decision, the First Circuit held (among other things) that the Commission had failed to give an adequate explanation for its shift in policy.

The Commission will not seek either rehearing of this decision by the First Circuit or review in the United States Supreme Court. When the First Circuit's mandate issues, the Commission will comply with the decision.³ The Commission currently believes that, pending completion of its ongoing rulemaking on decommissioning, further decommissioning activities must be conducted under existing NRC regulations as the Commission interpreted and applied them prior to the 1993 change in interpretation that

the court rejected.⁴ Prior to January, 1993, NRC licensees could not initiate major dismantling activities prior to Commission approval of a decommissioning plan. Furthermore, prior to 1993 the Commission consistently offered opportunities for hearings on proposed decommissioning plans.⁵

By a separate notice published today the Commission is soliciting public comments on how to proceed on remand in the Yankee proceeding itself. But other nuclear power plants contemplating or engaged in decommissioning may also be affected by the First Circuit decision. The most notable of these is the Trojan Nuclear Power Station, located near Portland, Oregon, and operated by Portland General Electric ("PGE"). Currently, PGE is engaged in a program of dismantlement and removal of large components in advance of receiving NRC approval of the Trojan decommissioning plan. The Trojan decommissioning plan was submitted to the NRC in January, 1995, and review by the NRC staff is currently in progress.

In view of the First Circuit decision the Commission intends to issue a **Federal Register** notice offering an opportunity for a hearing on whether to approve the Trojan plan. In addition, the Commission is considering whether it is necessary to halt any decommissioning activity at Trojan, pending a hearing. The First Circuit decision does not require the Commission to take affirmative action halting dismantling activities currently being conducted in reliance on the interpretation rejected by the court. Nonetheless, the Commission's prior interpretation of its rules precludes major dismantling activities prior to approval of a decommissioning plan.

Comments submitted at this time by interested persons should address the Commission's legal authority to allow or forbid further decommissioning activity at Trojan and should address the current

balance of equities, including (1) any consequences for public health and safety and the environment, (2) the costs to PGE and others from interrupting decommissioning activities, and (3) the public interest. The Commission also requests comments on the Commission's proposed response to the First Circuit decision as a general matter. Alternative suggestions on how the Commission should oversee decommissioning in the wake of the First Circuit decision are welcome.

The NRC requests PGE to submit its comments no later than 10 calendar days after publication of this notice. The NRC requests other interested members of the public to submit comments as soon thereafter as possible, but no later than 17 calendar days after publication of this notice. The NRC promptly will place copies of all comments in its Public Document Room and in the Local Public Document Room at the Trojan site.

In addition, PGE and the parties to the Oregon state proceeding reviewing the Trojan CRP should serve their comments directly on each other and on the NRC staff. All comments should be addressed to: Emile Julian, Chief, Docketing and Service Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Service of comments on the NRC Staff may be accomplished by addressing them to: Seymour H. Weiss, Chief, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Lawrence J. Chandler, Esq., Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal Workdays.

FOR FURTHER INFORMATION CONTACT: Charles Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 415-1606.

Dated at Rockville, MD, this 30th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95-22034 Filed 9-5-95; 8:45 am]

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¹ See 53 FR 24018 (June 27, 1988).

² Subsequently, on February 14, 1995, the NRC approved a decommissioning plan for Yankee Rowe. See 60 FR 9870 (February 22, 1995). During the approval process, the NRC staff held an informal public meeting to receive comments about the plan.

³ Pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the Court's mandate will issue no later than September 12, 1995, unless the intervenor YAEC petitions for rehearing or obtains a stay of mandate pending a petition for Certiorari.

⁴ The Commission has published for comment a proposed decommissioning rule that would introduce significant changes in the present regulations. See 60 FR 37374 (July 20, 1995). Because this new rulemaking is underway, the Commission does not intend to undertake procedures to reinstate the 1993 policy change.

⁵ The NRC staff offered an opportunity for hearings on proposed orders approving the Shoreham, Fort St. Vrain, and Rancho Seco decommissioning plans, which were the only plans approved under the Commission's 1988 decommissioning regulations. See, e.g., 56 FR 66459 (December 23, 1991); 57 FR 8940 (Mar. 13, 1992); and 57 FR 9577 (Mar. 19, 1992). A hearing was requested on the Rancho Seco plan and was being conducted when the case was settled. A hearing was requested on the Shoreham plan, but the case was settled before the hearing opened.

[Docket No. 50-29]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Federal Court Decision and Opportunity for Public Comments

On July 20, 1995, the United States Court of Appeals for the First Circuit issued a decision granting a petition by the Citizens Awareness Network ("CAN") for review of a decision by the Nuclear Regulatory Commission. See *Citizens Awareness Network, Inc. v. NRC*, No. 94-1562, ———F.3d———, 1995 WL 419188 (1st Cir., July 20, 1995). The First Circuit found that the Commission erred when it rejected CAN's request for a hearing on the component removal project ("CRP") that Yankee Atomic Electric Power Company ("YAEC") is carrying out as part of decommissioning the Yankee Nuclear Power Station, located in Rowe, Massachusetts. The Court held that "CAN was entitled to a hearing under section 189a (of the Atomic Energy Act of 1954) in connection with the NRC decision to permit YAEC's early CRP." Slip op. at 26. The Court also held that the Commission had violated the National Environmental Policy Act by permitting YAEC to initiate the CRP before the agency had prepared an environmental assessment or impact statement. The Court remanded the case to the Commission for further action in accordance with these holdings.

In reaching these results the Court criticized the Commission's change in interpretation of its 1988 decommissioning regulations¹ that it announced in a staff requirements memorandum dated January 14, 1993. In that memorandum, the Commission decided to allow its licensees to conduct "any decommissioning activity" prior to NRC approval of a decommissioning plan, so long as the activity did not "violate the terms of the licensee's existing license * * * or 10 CFR 50.59 as applied to the existing license." Previously, the Commission had required that "major dismantling and other activities * * * must await NRC approval of a decommissioning plan." See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 73 n.5 (1991). *Accord*, *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 61 n.7 (1992). Relying on the Commission's new interpretation, YAEC began removing major components from its Yankee reactor before obtaining

approval of a decommissioning plan.² In its decision, the First Circuit held (among other things) that the Commission had failed to give an adequate explanation for its shift in policy.

The Commission will not seek either rehearing of this decision by the First Circuit or review in the United States Supreme Court. When the First Circuit's mandate issues, the Commission will comply with the decision.³ By this notice the Commission intends (1) to inform persons with an interest in decommissioning activities at Yankee about the Commission's present views on what compliance likely will entail and (2) to solicit those persons' views on the compliance issue.

The Commission currently believes that, pending completion of its ongoing rulemaking on decommissioning, further decommissioning activities must be conducted under NRC decommissioning regulations as the Commission interpreted and applied them prior to the 1993 change in interpretation that the court rejected.⁴ Prior to January, 1993, NRC licensees could not initiate major dismantling activities prior to Commission approval of a decommissioning plan. Furthermore, prior to 1993 the Commission consistently offered opportunities for hearings on proposed decommissioning plans.⁵

Thus, after the mandate issues, the Commission intends to issue a **Federal Register** notice that will offer an opportunity for a hearing on the Yankee decommissioning plan and on whatever remains to be done under the CRP. In addition, the Commission is considering

whether it is necessary to halt any decommissioning activity at Yankee, pending a hearing. The First Circuit's decision does not require the Commission to take affirmative action halting dismantling activities YAEC currently is conducting in reliance on the interpretation rejected by the court. Nevertheless, the Commission's prior interpretation of its rules precludes major dismantling activities prior to approval of a decommissioning plan.

Comments submitted at this time by interested persons should address the Commission's legal authority to allow or forbid further decommissioning activity at Yankee and should address the current balance of equities, including (1) any consequences for public health and safety and the environment, (2) the costs to YAEC and others from interrupting decommissioning activities, and (3) the public interest. The Commission also requests comments on the Commission's proposed response to the First Circuit decision as a general matter. Alternative suggestions on how the Commission should oversee decommissioning in the wake of the First Circuit decision are welcome.

The NRC requests YAEC to submit its comments no later than 10 calendar days after publication of this notice. The NRC requests other interested members of the public, including CAN, to submit comments as soon thereafter as possible, but no later than 17 calendar days after publication of this notice. The NRC promptly will place copies of all comments in its Public Document Room and in the Local Public Document Room at the Yankee site.

In addition, CAN and YAEC should serve their comments on each other and on the NRC staff. All comments should be addressed to: Emile Julian, Chief, Docketing and Service Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Service of comments on the NRC Staff may be accomplished by addressing them to: Seymour H. Weiss, Chief, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Lawrence J. Chandler, Esq., Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland 20852.

FOR INFORMATION CONTACT: Charles Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission,

²Subsequently, on February 14, 1995, the NRC approved a decommissioning plan for Yankee Rowe. See 60 FR 9870 (February 22, 1995). During the approval process, the NRC staff held an informal public meeting to receive comments about the plan.

³Pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the Court's mandate will issue no later than September 12, 1995, unless the intervenor YAEC petitions for rehearing or obtains a stay of mandate pending a petition for Certiorari.

⁴The Commission has published for comment a proposed decommissioning rule that would introduce significant changes in the present regulations. See 60 FR 37374 (July 20, 1995). Because this new rulemaking is underway, the Commission does not intend to undertake procedures to reinstate the 1993 policy change.

⁵The NRC staff offered an opportunity for hearings on proposed orders approving the Shoreham, Fort St. Vrain, and Rancho Seco decommissioning plans, which were the only plans approved under the Commission's 1988 decommissioning regulations. See, e.g., 56 FR 66459 (December 23, 1991); 57 FR 8940 (Mar. 13, 1992); and 57 FR 9577 (Mar. 19, 1992). A hearing was requested on the Rancho Seco plan and was being conducted when the case was settled. A hearing was requested on the Shoreham plan, but the case was settled before the hearing opened.

¹ See 53 FR 24018 (June 27, 1988).

Washington, DC 20555, telephone (301) 415-1606.

Dated at Rockville, MD, this 30th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95-22035 Filed 9-5-95; 8:45 am]

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[Docket No.: 070-3073]

Consideration of Amendment Request for Decommissioning the Kerr-McGee Corp. Cushing Facility in Cushing, Okla., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Kerr-McGee Corporation Cushing Facility in Cushing, Oklahoma, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM-1999, issued to the Kerr-McGee Corporation (the Licensee), for the decommissioning of its former enriched uranium and thorium processing facility in Cushing, Oklahoma.

The Licensee requested the amendment in a letter dated May 9, 1995, requesting that License No. SNM-1999 be amended to incorporate the decommissioning plan (DP) for the Cushing facility submitted to NRC in April 1994. Radioactive contamination at the Cushing facility resulted from operations to convert uranium hexafluoride or other compounds and/or scrap to nuclear fuel materials, and operations to process thorium to produce thorium pellets. These operations were conducted from 1962 through mid-1966. The license amendment would authorize the Licensee to decommission the Cushing facility in accordance with the DP.

The NRC will require the Licensee to remediate the Cushing facility to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents and doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, Oklahoma City, OK, 73125, Attention: Mr. Jess Larsen, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Md., this 23rd day of August, 1995.

For the Nuclear Regulatory Commission,

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95-22038 Filed 9-5-95; 8:45 am]

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[Docket No. 50-271]

In the Matter of: Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Exemption

I

The Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes operation of the Vermont Yankee Nuclear Power Station (the facility) at power levels no greater than 1593 megawatts thermal. The facility is a single-unit boiling water reactor (BWR) located at the licensee's site in Windham County, Vermont.

The License provides, among other things, that the Vermont Yankee Nuclear Power Station is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Subsection III.J is the subject of the licensee's exemption request.

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III

By letter dated June 29, 1995, the licensee requested an exemption from Section III.J of Appendix R. In particular, the licensee stated that it cannot meet the requirements for emergency lighting units with at least an 8-hour battery power supply in the following areas:

(1) A portion of general yard areas for access and egress to the Intake