

enrichment fuel would allow extended fuel irradiation and thus achieve longer fuel cycles in the future.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would allow the use of fuel having an initial composition of natural or slightly enriched uranium dioxide as fuel material, consistent with the limitation of NUREG-1432, "Standard Technical Specifications for Combustion Engineering Plants." In effect, the fuel would be limited to a maximum uranium-235 enrichment of 4.5 weight percent, as specified in TS 4.3.1.1 and 4.3.1.2, relating to the spent fuel pool limits for storing new and spent fuel. The safety considerations associated with the use of such fuel have been evaluated by the NRC staff. The staff has concluded that such a change would not adversely affect plant safety. The proposed change has no adverse effect on the probability of any accident. No change is being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for the Maine Yankee Atomic Power Station, because fuel burnup remains unchanged) were published and discussed in the staff assessment titled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the Federal Register on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Summary Table S-4 of 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with higher enrichment, the proposed action involves features located entirely within the restricted

area as defined in 10 CFR Part 20. The proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Maine Yankee Atomic Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on October 26, 1995, the staff consulted with the Maine State official, Mr. Patrick J. Dostie of the Department of Human Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 30, 1995, and January 15, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.
John A. Zwolinski,
*Deputy Director, Division of Reactor
Projects—I/II, Office of Nuclear Reactor
Regulation.*

[FR Doc. 96-4682 Filed 2-28-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50-336]

Northeast Nuclear Energy Company; Correction

The February 14, 1996, Federal Register contained a "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," for the Millstone Nuclear Power Station, Unit No. 2. This notice corrects the notice published in the Federal Register on February 14, 1996, (61 FR 5816). The "Date of amendment request: January 26, 1996" is corrected to January 16, 1996.

Dated at Rockville, Maryland, this 22nd day of February 1996.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

*Senior Project Manager, Northeast Utilities
Project Directorate, Division of Reactor
Projects—I/II, Office of Nuclear Reactor
Regulation.*

[FR Doc. 96-4685 Filed 2-28-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50-029]

Yankee Atomic Electric Company (License No. DPR-3); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with respect to a Petition, dated January 17, 1996, by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners). The Petitioners requested that the Nuclear Regulatory Commission (NRC) take action with regard to operation by Yankee Atomic Energy Company (YAEC or Licensee) of its Nuclear Power Station at Rowe, Massachusetts (Yankee Rowe).

Petitioners requested that the NRC comply with *Citizens Awareness Network Inc. v. United States Nuclear Regulatory Commission and Yankee Atomic Electric Company*, 59 F.3d 284 (1st Cir. 1995) (*CAN v. NRC*). Specifically, Petitioners requested that the Commission immediately order:

(1) YAEC not to undertake, and the NRC staff not to approve, further major

dismantling activities or other decommissioning activities, unless such activities are necessary to assure the protection of occupational and public health and safety; (2) YAEC to cease any such activities; and (3) NRC Region I to reinspect Yankee Rowe to determine whether there has been compliance with the Commission's Order of October 12, 1995 (CLI-95-14), and to issue a report within ten days of the requested order to Region I.

The Petitioners' request for emergency action to cease decommissioning activities was mooted in part by the Licensee's completion of activities evaluated by the NRC staff in a letter of November 2, 1995 to the licensee. Even if these activities have not been completed, they would have been permissible under the Commission's pre-1993 interpretation of its decommissioning regulations. By letter dated February 2, 1996, Petitioners' request that shipments of low-level radioactive be prohibited was denied, and Petitioners' request for reinspection of the Yankee Rowe facility to determine compliance with CLI-94-14 and to issue an inspection report was granted. The Director has determined to be moot the request that four other activities be prohibited. Additionally, he has granted the request for inspection of Yankee Rowe to determine compliance with CLI-95-14 and to issue an inspection report. The reasons for these decisions are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-96-01), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Greenfield Community College Library, 1 College Drive, Greenfield, Massachusetts, 01301.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 22nd day of February 1996.

For the Nuclear Regulatory Commission.
William T. Russell,
Director, Office of Nuclear Reactor Regulation.

Appendix A to This Document:
Director's Decision Under 10 CFR 2.206; Yankee Atomic Electric Company

I. Introduction

An "EMERGENCY MOTION FOR COMPLIANCE WITH CIRCUIT COURT OPINION" (Petition), dated January 17, 1996, was submitted by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners). Petitioners requested that the United States Nuclear Regulatory Commission (NRC or Commission) take action with respect to activities conducted by Yankee Atomic Electric Company (YAEC or Licensee) at the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe or the facility).

By an Order of the Commission dated January 23, 1996, the Emergency Motion was referred to the NRC staff for treatment as a petition pursuant to 10 CFR 2.206 of the Commission's regulations. The Commission ordered the staff to respond to the emergency aspects of the Petition in 10 days and to issue a decision on the Petition as a whole within 30 days.

Petitioners request that the NRC comply with *Citizens Awareness Network Inc. v. United States Nuclear Regulatory Commission and Yankee Atomic Electric Company*, 59 F.3d 284 (1st Cir. 1995) (*CAN v. NRC*). Specifically, Petitioners request that the Commission immediately order:

(A) YAEC not to undertake, and the NRC staff not to approve, further major dismantling activities or other decommissioning activities, unless such activities are necessary to assure the protection of occupational and public health and safety;

(B) YAEC to cease any such activities; and

(C) NRC Region I to reinspect the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe) to determine whether there has been compliance with the Commission's Order of October 12, 1995 (CLI-95-14), and to issue a report within ten days of the requested order to Region I.

As the bases for their requests, Petitioners state that:

(1) *CAN v. NRC* requires the cessation, and prohibits commencement, of decommissioning activities at Yankee Rowe, pending final approval of the licensee's decommissioning plan after opportunity for a hearing. CLI-95-14 forbids YAEC from conducting any further major dismantling or decommissioning activities until final approval of its decommissioning plan after completion of the hearing process;

(2) *CAN v. NRC* obliges the Commission and the staff to provide an opportunity to interested persons for a hearing to approve a decommissioning plan;

(3) *CAN v. NRC* requires the Commission to reinstate its pre-1993 interpretation of its decommissioning regulations, *General Requirements for Decommissioning Nuclear Facilities*, 53 FR 24,018, 24,025-26 (June 27,

1988), limiting the scope of permissible activities prior to approval of a decommissioning plan to decontamination, minor component disassembly, and shipment and storage of spent fuel, if permitted by the operating license and/or 10 CFR § 50.59. Under *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-90-08, 32 NRC 201, 207, n.3 (1990), this means that the licensee may not take any action that would materially affect the methods or options available for decommissioning, or that would substantially increase the costs of decommissioning, prior to approval of a decommissioning plan. Under CLI-91-2, 33 NRC at 73, n.5, and CLI-92-2, 35 NRC at 61, n.7, other decommissioning activities, in addition to major ones, are prohibited, including offsite shipments of low-level radioactive waste produced by decommissioning activities, until after approval of a decommissioning plan;

(4) Decommissioning activities permitted by NRC Inspection Manual, Chapter 2561, §06.06, "Modifications or Changes to the Facility", before approval of a decommissioning plan are limited to maintenance, removal of relatively small radioactive components or non-radioactive components, and characterization of the plant or site;

(5) YAEC is conducting decommissioning activities, with the approval of the NRC technical staff, in flagrant violation of *CAN v. NRC* and of CLI-95-14, thus threatening to render the decommissioning process nugatory and to deprive Petitioners of their hearing rights under Section 189a of the Atomic Energy Act;

(6) By letter dated October 19, 1995, YAEC described nine decommissioning activities in progress, and by letter dated October 24, 1995, interpreted permissible "major" dismantling as removal of non-radioactive material required to support safe storage of spent fuel and of those portions of the facilities which remain, or to support future dismantlement;

(7) By letter dated November 2, 1995, the NRC staff approved the activities described by the Licensee in its letter of October 19, 1995;

(8) Five of the nine activities approved by the NRC staff's letter of November 2, 1995, are major dismantling or other decommissioning activities, in the nature of Component Removal Project activities, prohibited, until after approval of a decommissioning plan, by *CAN v. NRC* and CLI-95-14. Petitioners object to: (a) Completing removal of the remainder of the Upper Neutron Shield Tank; (b) removal of Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (c) Fuel Chute isolation; (d) Spent Fuel Pool electrical conduit installation; and (e) radioactive waste shipments. Petitioners do not object to Waste Tank removal, Ion Exchange Pit clean-up, removal of Emergency Diesel Generators, or the Brookhaven National Laboratory Cable Sampling Project.

(9) Petitioners advocate the SAFSTOR decommissioning alternative because it allows levels of radioactivity and waste volumes to decrease, thus reducing

occupational and public radiation exposures, and lowering decommissioning costs;

(10) NRC Inspection Report No. 50-29/95-05 (December 16, 1995) concludes that the issue whether activities observed were in compliance with CLI-95-14 is unresolved, but approves YAEC's proposed activities, contrary to the requirements of NRC Inspection Manual, Chapter 2561, § 06.06, "Modifications or Changes to the Facility" (March 20, 1992); and

(11) YAEC's criterion for permissible decommissioning activities, that any activity involving less than 1 percent of the on-site radioactive inventory is not "major" and may take place before approval of a decommissioning plan, violates *CAN v. NRC* because it would allow completion of decommissioning before any decommissioning plan could be approved in hearing, and constitutes unlawful segmentation under the National Environmental Policy Act.

By letter dated January 29, 1996, Yankee Atomic Electric Company responded to the Petition. YAEC supplemented its response by letters dated February 15, 1996, February 21, 1996, and February 22, 1996, and by an E-mail message to the NRC staff on January 31, 1996.

By letter dated February 2, 1996, the NRC staff denied in part and granted in part Petitioners' requests for emergency action. The Petition was also found moot in part. Petitioners' requests that the NRC take emergency action to order (A) YAEC not to undertake and the NRC staff not to approve further major dismantling activities or other decommissioning activities, unless necessary to assure the protection of occupational and public health and safety and (B) YAEC to cease any such activities were found moot in part and denied in part. Petitioners' request for emergency action to require NRC Region I to reinspect Yankee Rowe to determine whether YAEC has complied with the Commission's Order of October 12, 1995 (CLI-95-14), and to issue a report within ten days after the Commission orders such an inspection, was granted.

Petitioners then requested the Commission to reverse the NRC staff's February 2, 1996, decision on the emergency aspects of the Petition. See "Citizens Awareness Network's and New England Coalition on Nuclear Pollution's Motion for Exercise of Plenary Commission Authority to Reverse NRC Staff 2.206 Decision, and Renewed Emergency Request for Compliance with Circuit Court Opinion." By Order dated February 15, 1996, the Commission declined to grant the emergency relief requested, as there was no showing that the Licensee would take any action before the issuance of a Director's Decision on February 22, 1996. The Commission directed the NRC staff to address the arguments advanced by Petitioners in their February 9 motion in this Decision, with the exception of the new issues raised on page 13 of the Motion, which are to be addressed in a supplementary 10 CFR § 2.206 decision.

For the reasons discussed below, Petitioners' requests that the NRC prohibit YAEC from undertaking or continuing five of the nine activities evaluated by the NRC

staff's letter of November 2, 1995, are moot in part and denied in part. Of the nine activities, all with the exception of radioactive waste shipments were completed before submission of the January 17, 1996, Petition. Accordingly, Petitioners' request for relief with respect to: (1) Completing removal of the remainder of the Upper Neutron Shield Tank; (2) removal of the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (3) Fuel Chute isolation; and (4) Spent Fuel Pool electrical conduit installation is moot. Petitioners' request for relief with respect to radioactive waste shipments is denied. As explained below, all five contested activities were permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations, and thus are in compliance with *CAN v. NRC* and CLI-95-14. Petitioners' request that the NRC inspect Yankee Rowe to determine compliance with CLI-95-14, and issue an inspection report, was granted.

II. Background

On February 27, 1992, YAEC announced its intention to cease operations permanently at Yankee Rowe. On August 5, 1992, the NRC issued a license amendment to limit the license to a Possession-Only-License. 57 FR 37558, 37579 (Aug. 19, 1992).

In late 1992, YAEC proposed to initiate a Component Removal Project (CRP). On December 20, 1993, YAEC submitted a decommissioning plan based on a phased approach, starting with DECON, then SAFSTOR, and then finally dismantlement. Notice of Receipt of Decommissioning Plan and Request for Comments was published in the Federal Register. (59 FR 14689 on March 29, 1994).

On January 14, 1993, and on June 30, 1993, the Commission issued two Staff Requirements Memoranda which, in pertinent part, interpreted the Commission's regulations to permit many decommissioning activities prior to approval of a decommissioning plan, as long as the activities do not violate the terms of the existing license or 10 CFR § 50.59 with certain additional restrictions. See "Staff Requirements—Briefing by OGC on Regulatory Issues and Options for Decommissioning Proceedings (SECY-92-382), 10:00 A.M., Tuesday, November 24, 1992, Commissioner's Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance)" (January 14, 1993) and "SECY-92-382—Decommissioning—Lessons Learned" (June 30, 1993).

On several occasions between late 1992 and early 1994, CAN asked the NRC to offer an opportunity for an administrative hearing regarding decommissioning activities conducted by YAEC at Yankee Rowe. The Commission denied each such request. CAN sought judicial review and challenged the denials and the January 14, 1993, interpretation of the Commission's decommissioning regulations.

On July 20, 1995, the United States Court of Appeals held that the Commission had: (1) Failed to provide an opportunity for hearing

to CAN, as required by Section 189 of the Atomic Energy Act, in connection with the Commission's decision to permit the CRP decommissioning activities; (2) changed its pre-1993 interpretation of its decommissioning regulations without notice to the public and in violation of the Administrative Procedure Act; and (3) impermissibly allowed the licensee to conduct CRP decommissioning activities prior to compliance with the National Environmental Policy Act requirement to conduct an environmental analysis or environmental impact statement. *Citizens Awareness Network v. NRC and Yankee Atomic Electric Company*, 59 F. 3d 284, 291-2, 292-3, and 294-5 (1st Cir. 1995). The court remanded the matter to the Commission for proceedings consistent with the court's opinion.

In response, the Commission issued a Federal Register notice advising: (1) That the Commission did not intend to seek further review of *CAN v. NRC*; (2) that the Commission understood that decision to require a return to the interpretation of NRC decommissioning regulations that was in effect prior to January 14, 1993; and (3) that the Commission was requesting public comments on whether the Commission should order YAEC to cease ongoing decommissioning activities pending any required hearings and any other matters connected with that issue. See 60 FR 46,317 (September 6, 1995).

After consideration of comments filed in response to that notice, the Commission implemented *CAN v. NRC* by issuing Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-95-14, 42 NRC 130 (1995). In CLI-95-14, the Commission reinstated its pre-1993 interpretation of its decommissioning policy, required the issuance of a notice of opportunity for an adjudicatory hearing on the Yankee Rowe decommissioning plan, held that YAEC may not conduct further "major" decommissioning activities at Yankee Rowe until approval of a decommissioning plan after completion of any required hearing, and directed YAEC to inform the Commission within 14 days of the steps it is taking to come into compliance with the reinstated interpretation of the Commission's decommissioning regulations. Yankee Atomic Electric Company, CLI-95-14, 42 NRC 130 (1995).

Pursuant to CLI-95-14, a proceeding is now underway to offer an opportunity for hearing on the Licensee's decommissioning plan for Yankee Rowe. Petitioners have sought intervention and a hearing.

As of July 20, 1995, when the court issued *CAN v. NRC*, YAEC had completed its Component Removal Project. In response to CLI-95-14, by letters dated October 19 and 24, 1995, YAEC identified nine ongoing activities which YAEC believed were permissible under *CAN v. NRC* and CLI-95-14.

In its letter of November 2, 1995, the NRC staff evaluated those nine activities and found them permissible under the Commission's pre-1993 interpretation of its decommissioning regulations, and thus under *CAN v. NRC* and CLI-95-14. The staff

also identified certain activities, although not proposed by the Licensee, which may not be conducted before reapproval of a decommissioning plan. Those activities include dismantlement of systems such as the main reactor coolant system, the lower neutron shield tank, vessels that have significant radiological contamination, pipes, pumps and other such components and the vapor container (containment). The staff also identified segmentation or removal of the reactor vessel from its support structure as a major dismantlement not to be conducted until after the decommissioning plan is reapproved.

III. Discussion

A. The nine activities were permissible, prior to approval of a decommissioning plan, under the Commission's pre-1993 interpretation of its decommissioning regulations, and thus are permissible under *CAN v. NRC* and CLI-95-14.

Petitioners contend that five of the nine activities evaluated by the NRC staff's letter of November 2, 1995, are major dismantling or other decommissioning activities prohibited until after approval of a decommissioning plan, by *CAN v. NRC* and CLI-95-14. Specifically, Petitioners object to: (1) Completing removal of the remainder of the Upper Neutron Shield Tank; (2) removal of Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (3) Fuel Chute isolation; (4) Spent Fuel Pool electrical conduit installation; and (5) radioactive waste shipments. Petitioners do not object to Waste Tank removal, Ion Exchange Pit clean-up, removal of Emergency Diesel Generators, or the Brookhaven National Laboratory Cable Sampling Project. Petitioners acknowledge that completion of Waste Tank removal and Ion Exchange Pit clean-up are required for safety reasons. Petitioners also acknowledge that the removal of the Emergency Diesel Generators is permissible because they are not radioactive, and that the Brookhaven National Laboratory Cable Sampling Project is a research project unrelated to decommissioning. Of the nine activities, all with the exception of radioactive waste shipments were completed before submission of the January 17, 1996, Petition.

Under the Commission's pre-1993 interpretation of its decommissioning regulations, a licensee "may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if the activities are permitted by the operating license and/or § 50.59", prior to final approval of a licensee's decommissioning plan,¹ as long as the activity does not involve major structural or other major changes and does not materially and demonstrably affect the methods or options available for decommissioning or substantially increase the costs of decommissioning. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-90-8, 32 NRC 201, 207, n.3 (1990); Long Island Lighting Company

(Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 73, n.5 (1991); and Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 61, n. 7 (1992).

Under the pre-1993 interpretation of the Commission's decommissioning regulations, examples of activities which were considered permissible and which were conducted at various facilities under a Possession-Only license before approval of a decommissioning plan included:

Shoreham²

- Core borings in biological shield wall
- Core borings of the reactor pressure vessel
- Regenerative heat exchanger removal and disassembly
- Various sections of reactor water clean-up system piping cut out and removed to determine effectiveness of chemical decontamination processes being used
- Removal of approximately half of reactor pressure vessel insulation and preparation for disposal
- Removal of fuel support castings and peripheral pieces removed and shipment offsite for disposal at Barnwell, South Carolina
- Reactor water clean-up system recirculation holding pump removed and shipped to James A. FitzPatrick Nuclear Power Plant
- Control rod drive pump shipped to Brunswick Nuclear Station
- One full set of control rod blade guides sold to Carolina Power and Light Company
- Control rod drives removed, cleaned, and stored in boxes for salvage
- Process initiated for segmenting and removing reactor pressure vessel cavity shield blocks
- Process initiated for removal of instrument racks, tubing, conduits, walkways, and pipe insulation presenting interferences for decommissioning activities and/or removal of salvageable equipment

Fort St. Vrain³

- Control rod drive and orifice assemblies and control rods removed from core during defueling and shipped offsite for processing or disposal as low-level waste
- All helium circulators removed and shipped offsite for disposal
- Core region constraint devices (internals) removed and approximately one-half shipped offsite for disposal
- About 50 core metal-clad reflector blocks (top layer of core) removed and stored in fuel storage wells
- Removal of remaining hexagonal graphite reflector elements, defueling elements, and metal-clad reflector blocks begun
- Pre-stressed concrete reactor vessel (PCRV) top crossed tendons and some circumferential tendons detensioned
- Some detensioned tendons removed from PCRV

² See letter dated December 11, 1991 from John D. Leonard, Jr., Long Island Lighting Company, to U.S. Nuclear Regulatory Commission, Docket No. 50-322.

³ See letter dated September 4, 1992 from Donald M. Warembourg, Public Service Company of Colorado, to the U.S. Nuclear Regulatory Commission, Docket No. 50-267.

- Work initiated to cut and remove PCRV liner cooling system piping presenting interferences to detensioning of PCRV tendons, and
- Asbestos insulation completely removed from piping under PCRV

Activities such as normal maintenance and repairs, removal of small radioactive components for storage or shipment, and removal of components similar to that for maintenance and repair also were permitted prior to approval of a decommissioning plan under the Commission's pre-1993 interpretation of the Commission's decommissioning regulations. See NRC Inspection Manual, Chapter 2561, Section 06.06. (Issue Date: 03/20/92).⁴

Of course, licensees are also permitted to complete or to conduct activities required for compliance with safety requirements before approval of a decommissioning plan. In addition, special consideration must be given to activities required to comply with other federal and state safety requirements. See Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration, "Worker Protection at NRC-licensed Facilities" (October 21, 1988), 53 FR 43950 (October 31, 1988). See also NRC Inspection Manual, Chapter 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA". Petitioners concede that completion of activities already underway is permissible if completion is required for immediate safety purposes.

The staff's November 2, 1995 letter evaluated the nine activities identified in YAEC's letter of October 19, 1995, based on the Commission's pre-1993 interpretation of its decommissioning regulations,⁵ and determined that the nine activities were permissible before approval of a decommissioning plan.

Upon review of the Petition and its supplement of February 9, 1996, the staff took a fresh look at the nine activities and again found them to be permissible before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations, and thus under *CAN v. NRC* and CLI-95-14:

⁴ "Examples of modifications and activities, that are allowed during the post-operational phase [the interval between permanent shutdown and the NRC's approval of the licensee's decommissioning plan] are (1) those that could be performed under normal maintenance and repair activities, (2) removal of certain, relatively small radioactive components, such as control rod drive mechanism, control rods, and core internals for disassembly, and storage or shipment, (3) removal of non-radioactive components and structures not required for safety in the post-operational phase, (5) shipment of reactor fuel offsite, and (6) activities related to site and equipment radiation and contamination characterization."

⁵ Petitioners claim that YAEC's "1 percent" criterion for determining what constitutes major structural or other major change (and thus what activities are permissible before approval of a decommissioning plan) would allow completion of decommissioning before any decommissioning plan could be approved in hearing. The staff does not accept or approve, and has not used this criterion to determine whether any YAEC activities, including the nine activities, are permissible before approval of a decommissioning plan.

¹ Statement of Consideration, "General Requirements for Decommissioning Nuclear Facilities", 53 FR 24018, 24025-26 (June 27, 1988).

(1) Completion of Removal of the Remaining Portions of the Upper Neutron Shield Tank

As stated in the NRC staff's letter of November 2, 1995, completion of this activity was necessary to avoid a significant lead hazard to plant personnel due to lead dust or powder deposits on surfaces of the structure (particularly if the plant were to go into an extended SAFSTOR configuration, as desired by Petitioners). That contamination, if disturbed during licensee maintenance activities or NRC inspections would pose a significant health hazard to Licensee and NRC personnel.

Petitioners object that this safety rationale is unsupported by factual information regarding actual lead levels in the tank and whether the lead levels violated OSHA standards.

Dismantlement of the Upper Neutron Shield Tank required cutting sections of the tank that had lead shielding. Cutting was completed before November 2, 1995 and lead cleanup was completed by November 8, 1995. Lead dust was created by dismantlement of the tank, already underway and completed before issuance of the November 2, 1995 staff letter. Surface lead residue measurements in those areas ranged between 13,000 micrograms/ft² and 390,000 micrograms/ft².

The Licensee's operating procedures require the Licensee to implement industrial hygiene control methods as specified by the Occupational Safety and Health Administration in areas where there is potential for employee exposure to lead. Procedure No. AP-0713, "Lead Control Program", Revision 1 Major, Section C ("Discussion"), p. 3. The target for removable lead contamination is 200 micrograms/ft². Id., "Discussion", Section C., "Decontamination", p. 4.

Lead dust resulting from dismantlement of the Upper Neutron Shield Tank was at a concentration such that surface lead contamination exceeded the target for removable lead contamination.⁶ Licensee personnel were and are required to enter the area in order to conduct surveillances to monitor radioactive contamination and for compliance with fire protection requirements.

In view of the above, this activity was permissible for safety reasons, and, therefore,

⁶The use of respiratory protection by workers would not have satisfied the Licensee's operating procedures. Until a determination is made that any employee working with lead will not be exposed to lead at the action level, respiratory protection is required. Procedure No. AP-0713, "Procedure", Section C ("Lead Work Practices"), p. 11. The action level is employee exposure, without regard to use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air calculated as an 8-hour time-weighted average, and the permissible exposure limit is 50 micrograms per cubic meter of air over an 8-hour time weighted average, and 30 micrograms per cubic meter of air over a 10-hour time weighted average. Id., "Definitions", p. 1. Between October 5, 1995 and October 11, 1995, airborne lead concentrations in the areas affected ranged between 3 micrograms/m³ and 2500 micrograms/m³. Between October 12, 1995 and October 26, 1995, airborne lead concentrations ranged between 1 microgram/m³ and 250 micrograms/m³.

would have been allowed in a comparable situation before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(2) Waste Tank Removal (Activity Decay and Dilution Tank)

Petitioners concede that completion of this activity was required for safety reasons.

(3) Removal of Component Cooling Water System Pipes and Components and Spent Fuel Cooling System Pipes and Components

Contrary to Petitioners' assertions, the staff's February 2, 1996, letter did not "abandon" the November 2, 1995, rationale for finding this activity permissible. The staff's February 2 letter repeated the November 2 rationale and provided a more detailed explanation for the staff's conclusion that this activity is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

The Licensee had installed a self-contained spent fuel pool cooling system, isolated from the fluid components and installed conduit to allow future electrical isolation from other systems, in order to enhance safety and integrity of the spent fuel pool for prolonged storage of fuel. As a result, the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components were rendered redundant and were no longer useful.

Removal of the no-longer useful pipes and components was not decommissioning, but maintenance that would have been allowed, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.⁷ Petitioners erroneously contend that removal of this equipment is not maintenance. Removal of replaced equipment (as opposed to removal of dismantled equipment not intended to be replaced) is a normal maintenance activity.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(4) Ion Exchange Pit Clean-up

Petitioners concede that completion of this activity was required for safety reasons.

(5) Fuel Chute Isolation

The Licensee made a commitment to NRC to complete a Fuel Chute isolation project, needed to enhance spent fuel pool integrity and long-term reliability, in response to NRC Bulletin 94-01, "Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit 1" (April 14, 1994). NRC Bulletin 94-01 explicitly identified potential siphon or drainage paths and freezing failures as hazards that could lead to drainage of the

⁷Petitioners assert that the staff provided no factual support for its conclusion that leaving the Component Cooling Water System and Spent Fuel Cooling System pipes and components in place would pose a safety hazard. Upon further review, the staff has determined that removal was not necessary to prevent a safety hazard.

spent fuel pool.⁸ NRC Bulletin 94-01 required licensees to identify which of the suggested actions that the licensees would take to prevent such hazards, or to identify an alternative course of action, if the licensees needed to take such measures to bring themselves into compliance as described in NRC Bulletin 94-01.

YAEC's Fuel Chute isolation project eliminated a potential freezing threat and siphon path that could lead to drainage of the spent fuel pool. The NRC staff determined actions taken to prevent potential siphon paths and freezing hazards connected with the Fuel Chute to be adequate. NRC Inspection Report No. 50-029/94-80 (December 9, 1994).

Petitioners erroneously maintain that isolation of the upper Fuel Chute is not necessary to prevent a risk of siphoning or freezing, because the upper Fuel Chute lies above the fuel pool and cannot serve as a siphon for liquid in the pool. The fuel chute pipe originally ran from the lower lock valve at the outside wall at the bottom of the spent fuel pit (SFP) on a diagonal path to the outer shell of the vapor container (VC), through the shell and into the VC. During former plant operations a blank flange was inserted in the pipe, outside the VC shell, in order to maintain VC leak tight integrity.

As part of the NRC Bulletin 94-01 project, one 8-foot length of this 12 inch diameter fuel chute pipe was removed from the top of the lower lock valve and a blank flange placed over the lower lock valve so that the valve could be encased in concrete. This, in effect, made the valve part of the SFP wall. The removal of this section of pipe also eliminated a potential leak path through the pipe out of the SFP wall.

Isolation of the Fuel Chute, accomplished by removing the lowest flanged pipe section and sealing the lower portion of the Fuel Chute with concrete, eliminated a freezing and siphon hazard. Sealing the Fuel Chute with concrete prevents accumulation of water in the Fuel Chute. Accumulated water could freeze during severe winter weather and possibly damage the lower lock valve outside the spent fuel pool wall, thus opening a leak path near the bottom of the spent fuel pool.

Petitioners incorrectly maintain that the Licensee did not need to remove the upper Fuel Chute in order to comply with NRC Bulletin 94-01. The licensee did not remove the upper fuel chute. The licensee has fastened a blank flange at the wall of the VC by wedging open a flanged joint. This was a maintenance activity. This blank flange is normally in place and was removed, in the past, when fuel transfer operations took place. These transfers are now prohibited by the POL. The Fuel Chute isolation project was necessary to prevent potential siphon

⁸Requested action number 2 was: "Ensure that systems for essential area heating and ventilation are adequate and appropriate maintenance so that potential freezing failures that could cause loss of SFP water inventory are precluded." Requested action number 3 was: "Ensure that piping or hoses in or attached to the SFP cannot serve as siphon or drainage paths in the event of piping or hose degradation or failure or the mispositioning of system valves."

and freezing risks, was one of the actions determined to be an adequate response to NRC Bulletin 94-01, and brought the Licensee into compliance with NRC requirements.

In any event, this activity is not decommissioning, but maintenance and a safety upgrade that would have been allowed under the pre-1993 interpretation of the Commission's decommissioning regulations.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(6) Removal of Emergency Diesel Generators

Petitioners acknowledge that removal of the emergency diesel generators is a permissible activity prior to final approval of a decommissioning plan.

(7) Spent Fuel Pool Electrical Conduit Installation

This activity involved underground installation of a power cable and its protective covering and did not involve the removal of radioactive material. The modification also enhanced the integrity and long-term safe storage of spent fuel in the Spent Fuel Pool, by isolating Spent Fuel Pool power supplies from potential problems that could be caused by power circuits in other systems or heavy load impacts at the plant. The activity was part of the Licensee's overall project to enhance the safety of the Spent Fuel Pool by establishing independent systems dedicated to Spent Fuel Pool reliability.

The conduit installation was also consistent with NRC Bulletin 94-01, specifically the first requested action, which involves ensuring the integrity of structures and systems, necessarily including electrical systems, required for containing, cooling, cleaning, level monitoring and makeup of water in the Spent Fuel Pool. The conduit installation project enhanced integrity of the spent fuel pool by ensuring operability and adequacy of structures and systems required for spent fuel pool integrity, specifically the electrical system.

Petitioners object that the November 2, 1995 letter implies that this activity is a decommissioning activity because it will provide a separate power supply for future decommissioning activities. Petitioners contend that there is no present threat to the integrity of the spent fuel pool, and that as long as the Licensee performs no major dismantlement activities, there is no immediate need for conduit installation.

While it is true that conduit installation will isolate the spent fuel power supply from potential problems associated with future decommissioning of other systems, conduit installation also serves the larger purpose of isolating spent fuel pool power supplies from potential problems that could be caused by power circuits in other systems at the plant, wholly apart from the conduct of any decommissioning activities. This activity represents a safety enhancement.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993

interpretation of the Commission's decommissioning regulations.

(8) Brookhaven National Laboratory Cable Sampling Project

Petitioners acknowledge that this activity is a research project unrelated to decommissioning.

(9) Radioactive Materials Shipments

Under the pre-1993 interpretation of the Commission's decommissioning regulations and 10 CFR § 50.59, the NRC has permitted shipment of radioactive waste and contaminated components prior to approval of a decommissioning plan, as long as it does not materially and demonstrably affect the methods or options available for decommissioning or substantially increase the cost of decommissioning, and because such shipments do not constitute a "major" activity.

NRC staff practice prior to 1993 permitted activities such as shipment of waste or contaminated components at a permanently defueled facility pursuing decommissioning. Prior to approval of a decommissioning plan, the licensee may dismantle and dispose of nonradioactive components and structures not required for safety in the shutdown condition. After issuance of a possession-only license, the licensee also may dismantle and dispose of radioactive components not required for safety in the shutdown condition, provided that such activity does not involve major structural or other major changes and does not foreclose alternative decommissioning methods or materially affect the cost of decommissioning. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-91-08, 33 NRC 461, 471 (1991), approving staff recommendations in SECY-91-129, "Status and Developments at the Shoreham Nuclear Power Station" (May 13, 1991). See also NRC Inspection Manual, Chapter 2561, §§ 06.06 and 06.07 (March 20, 1992); Fort St. Vrain Nuclear Generating Station Amendment No. 82 to Facility Operating License No. DPR-34 (Possession-Only License, May 21, 1991); and Rancho Seco Nuclear Generating Station Amendment No. 117 to Facility Operating License No. DPR-54 (Possession-Only License, March 17, 1992).

Petitioners contend that the February 2, 1996, letter of the NRC staff applied the post-1993 interpretation of the Commission's decommissioning regulations to determine that shipment of low-level radioactive waste is permissible,⁹ based on the staff's citation

⁹ Petitioners incorrectly contend that the staff's conclusion, that the methods or options available for decommissioning will not be materially or demonstrably affected because the Licensee's activities involve approximately 2.3 curies of residual activity, constitutes application of the Licensee's one percent criterion. The Licensee had proposed in its letter of October 24, 1995, that decommissioning activities involving less than one percent of the total curies of non-fuel components not including greater than Class C components, are not "major" decommissioning activities and thus are permissible under the pre-1993 interpretation of the Commission's decommissioning regulations. As previously stated, the NRC staff does not accept or approve, and did not use, this criterion in its February 2, 1996 (or its November 2, 1995) letter

to SECY 92-382 and the associated June 30, 1993 SRM. The particular language Petitioners point to is:

Shipment of contaminated reactor internals needed for operation could proceed after issuance of a possession-only license because such components are not "major": i.e., they are not needed to maintain safety in the defueled condition. See SECY 92-382, "Decommissioning—Lessons Learned" (November 10, 1992) and Staff Requirements Memorandum, "SECY-92-382—Decommissioning—Lessons Learned" (June 30, 1993).

The staff's February 2, 1996, letter derived this language from a discussion at pages 22-24 of SECY-92-382, "Decommissioning—Lessons Learned".

The Commission had in fact permitted shipment of low-level waste prior to approval of a decommissioning plan under its pre-1993 interpretation of its decommissioning regulations, as explained above. SECY 92-382 accurately stated that the Commission had in fact permitted shipment of not only low-level radioactive waste and some components, but also some reactor internals, before approval of a decommissioning plan.¹⁰ The particular reference to "major" components in SECY 92-382 was in the context of permissible shipment of waste; that language did not define "major" for the purpose of determining what components may be dismantled or removed prior to approval of a decommissioning plan. No component can be shipped unless it is first removed or dismantled, and authority to ship a component already removed or dismantled does not *ipso facto* constitute authority to remove or dismantle the component in the first place. Likewise, the citation in the NRC staff's February 2, 1996, letter to Petitioners was not intended to define "major" for the purpose of determining what components could be dismantled or removed prior to approval of a decommissioning plan, but referred to what could be shipped. The staff's reference to SECY 92-382 was made in the context of permissible shipments only, not permissible component dismantling or removal. Regrettably, the staff's February 2, 1995, reference to SECY 92-382 may have been insufficiently detailed to make the purpose of the reference clear.

In the case at hand, the Licensee's proposal was to ship low-level radioactive waste.¹¹

to determine whether activities proposed by the Licensee, including shipping, are "major" activities for purposes of permissible decommissioning before approval of a decommissioning plan. See, e.g., note 5, *supra*. The staff in fact stated that since the Licensee's activities involve only 2.3 curies out of a total 4448 curies residual activity which must be decommissioned, shipment of low-level radioactive waste will not demonstrably affect the methods or options available for decommissioning.

¹⁰ See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 471 (1991). See also SECY-91-129, "Status and Developments at the Shoreham Nuclear Power Station (SNPS)", p. 3 (May 13, 1991) (contaminated fuel support castings and peripheral pieces).

¹¹ Petitioners contend that there is no basis to determine the accuracy of the Licensee's estimate that it will make 54 shipments of low-level radioactive waste between October 1995 and July 1996. Petitioners, however, fail to set forth any facts

The NRC staff's conclusion that the Licensee's proposal to ship radioactive waste¹² is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations was based on the understanding that the proposal was to ship low-level radioactive waste, and was not intended to be and was not a determination that the removal or dismantling of major components was permissible under the pre-1993 interpretation of the Commission's decommissioning regulations,¹³ under *CAN v. NRC*, or under CLI-94-14.

The Commission's decisions in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-92-1, 33 NRC 61, 73, n. 5 (1991) and Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 61, n. 7 (1992) do not, as Petitioners contend, prohibit shipment of low-level radioactive waste. No issue concerning such shipments was addressed in those decisions. The language cited by Petitioners paraphrases the general guideline, that "major dismantling and other activities that constitute decommissioning under the NRC's regulations must await NRC approval of a decommissioning plan", and is derived from the 1988 Statement of Consideration, "General Requirements for Decommissioning Nuclear Facilities", *supra*. As explained above, it was agency practice before 1993 to permit shipment of low-level radioactive waste and contaminated components before approval of a decommissioning plan.

Rather than store low-level radioactive waste on-site for extended periods, it has long been agency policy that such waste should be shipped to disposal sites if the

or rationale which raise a question as to the reasonableness of the Licensee's estimate of the number of shipments.

¹² Petitioners state that neither YAEC nor the NRC staff provided any information about the radioactivity levels in the 54 shipments that YAEC estimates it shipped and will ship between October 1995 and July 1996, and that the Licensee's January 29, 1996, estimate of 2.3 curies involved in activities already completed does not provide information about radioactivity levels of the 54 shipments that YAEC estimates it will have shipped before the end of July 1996. The Licensee has now provided that information and estimates the total radioactivity involved in the packaging and shipment of low-level radioactive waste between November 1, 1995 and July 1996, to be 1817 curies. See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC. The four contested activities, other than shipping, amounted to only approximately 8.2001 curies of residual radioactivity.

¹³ Petitioners assert that the NRC staff's February 2, 1996, letter states that the shipment of low-level radioactive waste is permitted under the pre-1993 criteria because the radioactivity of the shipments amounts to 2.3 curies or less out of the remaining 4448 curies of residual radioactivity to be decommissioned in the form of Class C or less waste. What the staff said was that because the Licensee's activities involve approximately 2.3 curies of the remaining 4448 curies of residual radioactivity to be decommissioned in the form of Class C or less waste, shipment of low-level radioactive waste produced by the activities evaluated in the staff's November 2, 1995 letter will not materially or demonstrably affect the methods or options available for decommissioning the Yankee Rowe site.

ability to dispose of waste at a licensed disposal site exists. Shipping of waste at the earliest practicable time minimizes the need for eventual waste reprocessing due to possibly changing burial ground requirements and reduces occupational and non-occupational exposures and potential accident consequences. NRC Generic Letter 81-38, "Storage of Low-Level Radioactive Wastes at Power Reactor Sites" (November 10, 1981).

Petitioners contend that YAEC may not ship low-level radioactive waste because the Yankee Rowe Possession-Only-License does not permit it.¹⁴ Although Petitioners are correct that no language in the Yankee Rowe POL explicitly states that shipment of low-level radioactive waste is authorized, the Yankee Rowe POL does authorize that activity. Section 1.H. of the POL, issued August 5, 1992, authorizes Yankee Rowe to receive, possess and use byproduct, source and special nuclear materials in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70. Authority to ship low-level radioactive waste is conferred upon all byproduct material, source material and special nuclear material licensees by NRC regulations at 10 CFR Parts 30, 40 and 70. Byproduct materials licensees, source materials licensees, and special nuclear materials licensees, including Yankee Rowe, are authorized to transfer such material, as long as the recipient is authorized, see 10 CFR §§ 30.41, 40.51, and 70.42, and as long as preparation for shipment and transport is in accordance with the requirements of 10 CFR Part 71. See 10 CFR §§ 30.34(c), 40.41(c), 70.41(a). In particular, Section 2.C. of the Yankee Rowe POL states that the POL is deemed to contain and is subject to 10 CFR §§ 30.34 and 40.41. Accordingly, the POL authorizes the transport of low-level radioactive waste from Yankee Rowe.

Petitioners state that the "cardinal consideration" which determines whether a decommissioning activity is "major" should be the radiation dose it yields, not the radioactivity of the component involved¹⁵, and thus the NRC staff's February 2, 1996,

¹⁴ Petitioners claim that the Commission's decommissioning regulations prohibit low-level radioactive waste shipments that are not authorized by YAEC's license, citing the 1988 Statement of Consideration. See "General Requirements for Decommissioning Nuclear Facilities", 53 FR 24025-26 (June 27, 1988). The Statement of Consideration makes no mention of shipment of low-level radioactive waste. The language cited gives examples of activities which licensees may conduct before approval of a decommissioning plan, but does not state or imply that the list is inclusive: "Although the Commission must approve the decommissioning alternative and major structural changes to radioactive components of the facility or other major changes, the licensee may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if these activities are permitted by the operating license and/or § 50.59". (Emphasis added)

¹⁵ The Commission has not articulated as a criterion, for determining what constitutes a "major" decommissioning activity, the radiation dose yielded by the activity, and Petitioners cite no authority for this argument. Nor has the Commission articulated the radioactivity involved as a criterion for determining what constitutes "major" decommissioning activity.

letter erroneously relied upon the number of curies shipped rather than the radioactive doses involved in shipping low-level waste to determine whether the activity is permissible.¹⁶

The criteria for determining whether shipments of low-level radioactive waste will demonstrably affect the methods or options available for decommissioning have not been well-defined. During review of the Petition and its supplement, the NRC staff has continued to examine the question of whether the Licensee's shipments of low-level radioactive waste will demonstrably affect the methods or options available for decommissioning. In this case, the staff has now also compared the radiation dose involved in the packaging and shipping of the low-level radioactive waste with the radiation dose estimated for decommissioning of the Licensee's facility. This is because, under Petitioners' theory regarding the choice of the decommissioning option, as we understand it, it seems that adoption of a different decommissioning option would most likely be required to reduce dose. The Licensee estimates that the radiation dose involved in the packaging and shipment of low-level radioactive waste between November 1, 1995 and July 1996 to be 17 person-rem.¹⁷ The estimated total radiation exposure for decommissioning the facility is 755 person-rem.¹⁸ The estimated dose from packaging and shipping is approximately 2% of the total dose from decommissioning. As can be seen, most of the dose will be incurred in activities other than shipment of low-level radioactive waste. As the Commission has previously held in this case, even potential dose reductions on the order of 900 person-rem, unless there is some extraordinary aspect to the case not apparent, cannot have ALARA significance such that one decommissioning option

¹⁶ The staff mistakenly understood the Licensee's letter of January 29, 1996 to mean that the activities evaluated by the staff's November 2, 1995 letter involved 2.3 curies. The radioactivity involved in the four contested activities, other than shipping of low-level radioactive waste, amounted to approximately 8.2001 curies of residual radioactivity. (Removal of the Upper Neutron Shield Tank involved less than 5 curies, and removal of the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components involved 1.2001 curies. See letter dated October 19, 1995, from Russell A. Mellor, YAEC, to Morton B. Fairtile, NRC. Fuel Chute Isolation involved 2 curies, and spent fuel pool electrical conduit installation involved no curies. See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC.) In addition, the Licensee estimated that since completion of the activities described in the NRC letter, activities have been authorized by the Licensee's Manager of Operations which remove components containing a total of 2.3 curies of radioactive material. See letter dated January 29, 1996, from Andrew C. Kadak, YAEC, to William T. Russell, NRC.

¹⁷ See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC.

¹⁸ Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility (Yankee Nuclear Power Station), "Environmental Assessment by the U.S. Nuclear Regulatory Commission Related to the Request to Authorize Facility Decommissioning", p. 22.

would be preferable to another.¹⁹ Accordingly, the staff concludes that the Licensee's shipment of low-level radioactive waste will not demonstrably affect the methods and options available for decommissioning.

In view of the above, the shipments of low-level radioactive waste between October 1995 and July 1996, before approval of a decommissioning plan, is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

B. The five contested activities will neither individually nor collectively substantially increase the costs of decommissioning.

YAEC estimates the cost of shipment and disposal of all low-level radioactive waste between the October 1995 issuance of CLI-95-14 and the scheduled date of completion of the hearing in mid-July 1996, to be \$6.5 million, or approximately 1.75 percent of the estimated \$368.8 million total decommissioning cost. It would be speculative to conclude that the decommissioning method proposed by Petitioners, SAFSTOR, would be less expensive. There is no evidence that the Licensee's shipments will increase decommissioning costs or that continued storage of the waste will decrease the ultimate costs. Thus, the staff concludes that YAEC's shipment of low-level radioactive waste will not substantially increase the costs of decommissioning.

Petitioners erroneously contend that the cost of shipments of low-level radioactive waste could be reduced by postponing the packaging and shipment of low-level waste, presumably because some waste may decay to levels such that the volume of waste which will require shipment would decrease. Delay will not significantly reduce the volume of waste shipped because the waste is not segregated by the radioactive isotope involved, and some of the radioactive isotopes involved have very long half-lives, i.e., nickel-63 has a half-life of 100 years. Cobalt-60, which has a half-life of 5.27 years, was the isotope selected by the Petitioners to postulate a reduction in waste volume. Moreover, delay could possibly increase decommissioning costs because shipping and burial costs may increase.

The Licensee estimates costs for the five activities contested by Petitioners to be \$6.5 million for shipments of low-level waste between October 1995 and July 1996 and \$2.4 million for the four other contested activities,²⁰ for a total of \$8.9 million, or 2.1% of the \$368.8 million estimated total decommissioning costs. There is no evidence that these activities will give rise to consequences that will increase the total cost of decommissioning. Accordingly, the five contested activities will not substantially increase decommissioning costs, either individually or collectively.

C. Petitioners' Request for an Inspection and Inspection Report Was Granted.

Petitioners' request for reinspection of Yankee Rowe to determine compliance with CLI-95-14 and for issuance of an inspection report was granted. NRC Region I inspected the Yankee Rowe facility for a second time on December 5-18, 1995, to determine compliance with CLI-95-14. NRC Inspection Report No. 50-029/95-07 was issued January 31, 1996. The Inspection Report concludes that the Licensee's activities were conducted in accord with the specifications of the staff's November 2, 1995 letter. The first inspection was conducted in October 1995, before the provision of technical guidance or criteria to assist the Region in determining compliance with CLI-95-14. Subsequently, the NRC staff issued its letter of November 2, 1995, evaluating the nine activities, all of which are permitted by *CAN v. NRC* and CLI-95-14, as explained above.

Petitioners claim that the January 31, 1996 Inspection Report merely repeats the staff's erroneous interpretation of the Commission's decommissioning standards, and thus constitutes no relief. The inspection report explicitly states that the nine activities evaluated by the staff's November 2, 1995 letter were inspected and that the Licensee limited the scope of its work to those activities. Petitioners' disagreement with the staff's conclusion that the nine activities are in compliance with *CAN v. NRC* and CLI-95-14 does not constitute denial of Petitioners' request for an inspection and an inspection report to determine compliance with *CAN v. NRC* and CLI-95-14.

IV. Conclusion

For the reasons given above, Petitioner's request that shipments of low-level radioactive waste be prohibited is denied, and Petitioners' request that four other activities be prohibited is moot.²¹ Additionally, Petitioners' request for an inspection of Yankee Rowe to determine compliance with CLI-95-14 and an inspection report was granted.

As provided by 10 CFR § 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the

²¹ Petitioners claim that the NRC erroneously found on February 2, 1996, that the request for emergency relief was moot in part. Petitioners assert that the Licensee continues to unlawfully ship low-level radioactive waste and that on January 29, 1996, the Licensee stated that it is considering whether to conduct seven activities, in addition to the nine evaluated by the staff's November 2, 1995, letter. The February 2, 1996, letter of the staff and this Decision explicitly denied Petitioner's request to prohibit shipment of low-level radioactive waste, and made no finding that this request is moot. The February 2, 1996, letter and this Decision explicitly state that Petitioners' request for emergency relief regarding the remaining four contested activities was moot because those activities had been completed before the submission of the Petition. Nonetheless, both the February 2, 1996 letter and this Decision found that those four activities were permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Neither the staff's February 2, 1996, letter, nor this decision address the seven activities which the Licensee states it is now considering. The staff will address those activities in a supplemental Director's Decision, as required by the Commission's order of February 15, 1996.

¹⁹ Yankee Atomic Electric Company, CLI-96-01 (January 16, 1996).

²⁰ The Licensee spent \$610,000 on the four activities in the fourth quarter of 1995, which is approximately 25 percent of the estimated total cost for these four activities. See Letter dated February 15, 1996, from Russell A. Mellor to Morton B. Fairtile.

Commission's review. The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland this 22nd of February, 1996.

For the Nuclear Regulatory Commission.
William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96-4683 Filed 2-28-96; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

[Docket No. A96-11; Order No. 1103]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued February 23, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.

In the Matter of: Oquossoc, Maine 04964 (William Cummings, Petitioner).

DOCKET NUMBER: A96-11

NAME OF AFFECTED POST OFFICE:

Oquossoc, Maine 04964

NAME(S) OF PETITIONER(S): William Cummings

TYPE OF DETERMINATION:

Consolidation

DATE OF FILING OF APPEAL PAPERS:

February 20, 1996

CATEGORIES OF ISSUES

APPARENTLY RAISED:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it