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INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January – March 1996

U.S. NUCLEAR REGULATORY COMMISSION

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Prepared by the
Division of Freedom of Information and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301/415-6844)

Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM) are presented in this document. These digests and indexes are intended to serve as a guide to the issuances.

Information elements common to the cases heard and ruled upon are:

- Case name (owner(s) of facility)
- Full text reference (volume and pagination)
- Issuance number
- Issues raised by appellants
- Legal citations (cases, regulations, and statutes)
- Name of facility, Docket number
- Subject matter of issues and/or rulings
- Type of hearing (operating license, operating license amendment, etc.)
- Type of issuance (memorandum, order, decision, etc.)

These information elements are displayed in one or more of five separate formats arranged as follows:

1. Case Name Index

The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

2. Headers and Digests

The headers and digests are presented in issuance number order as follows: the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM).

The header identifies the issuance by issuance number, case name, facility name, docket number, type of hearing, date of issuance, and type of issuance.

The digest is a brief narrative of an issue followed by the resolution of the issue and any legal references used in resolving the issue. If a given issuance covers more than one issue, then separate digests are used for each issue and are designated alphabetically.

3. Legal Citations Index

This index is divided into four parts and consists of alphabetical or alpha-numerical arrangements of Cases, Regulations, Statutes, and Others. These citations are listed as given in the issuances. Changes in regulations and statutes may have occurred to cause changes in the number or name and/or applicability of the citation. It is therefore important to consider the date of the issuance.

The references to cases, regulations, statutes, and others are generally followed by phrases that show the application of the citation in the particular issuance. These phrases are followed by the issuance number and the full text reference.

4. Subject Index

Subject words and/or phrases, arranged alphabetically, indicate the issues and subjects covered in the issuances. The subject headings are followed by phrases that give specific information about the subject, as discussed in the issuances being indexed. These phrases are followed by the issuance number and the full text reference.

5. Facility Index

This index consists of an alphabetical arrangement of facility names from the issuance. The name is followed by docket number, type of hearing, date, type of issuance, issuance number, and full text reference.

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CLI-96-1 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029;
DECOMMISSIONING; January 16, 1996; MEMORANDUM AND ORDER

- A The Commission refers to the Atomic Safety and Licensing Board, for a ruling on standing and contentions and with guidance on several novel issues and a suggested expedited schedule, pleadings filed regarding Petitioners' intervention in a proceeding to consider approval of a plan to decommission the Yankee Nuclear Power Station ("Yankee NPS").
- B The matter now before the Commission follows the Commission's recent reinstatement, in light of a decision by the First Circuit Court of Appeals, of its pre-1993 policy of providing an opportunity for an adjudicatory hearing on nuclear power reactor decommissioning plans.
- C Where a petitioner has not expressly requested a hearing on its petition, but where it seems clear from the petition as a whole that a hearing is what the petitioner desires, the Commission will not dismiss that petition solely on the basis of such a technical pleading defect.
- D In order to establish standing to intervene in a proceeding, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.
- E As the Commission has noted on other occasions, a prospective intervenor may not derive standing to participate in a proceeding from another person who is not a party to the action or is not a member of its organization.
- F Once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing.
- G The Commission construes the provision in 10 C.F.R. § 2.714(g), in accordance with the relevant case law, i.e., that an intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing.
- H A fair reading of the Commission's decommissioning rules at 10 C.F.R. § 50.82 is that it is for the licensee in the first instance to choose the decommissioning option and that neither the DECON nor the SAFSTOR option can be deemed unacceptable a priori.
- I The principal criterion for judging a decommissioning alternative is the proposed time required for decommissioning completion. 10 C.F.R. § 50.82(b)(1)(i). Both the SAFSTOR and the DECON alternatives would, in general, meet the criterion in that section and in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (GEIS).
- J In addition to meeting the "time" requirement in 10 C.F.R. § 50.82(b)(1)(i), decommissioning plans must also meet other applicable NRC regulations, including the "as low as is reasonably achievable" (ALARA) requirement in 10 C.F.R. § 20.1101(b).
- K One of the purposes of revising 10 C.F.R. Part 20 was to change the status of ALARA from the hortatory suggestion in old 10 C.F.R. § 20.1(c) to the mandatory requirement in the current 10 C.F.R. § 20.1101(b); thus, ALARA is an essential part of Federal Radiation Protection Guidance.
- L While a licensee's choice of decommissioning options is not beyond all challenge, such a challenge to a licensee's choice of alternative decommissioning procedures cannot be based solely on differences in estimated collective occupational doses on the order of magnitude of the estimates in the GEIS.
- M A licensee's actions do not violate the ALARA principle simply because some way can be identified to reduce radiation exposures further. The practicality and the cost of the measures required to achieve these

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reductions as well as "other societal and socioeconomic considerations" must also be taken into account. See 10 C.F.R. § 20.1003 (definition of ALARA).

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

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

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

CLI-96-2 KERR-McGEE CHEMICAL CORPORATION (West Chicago Rare Earths Facility), Docket No. 40-2061-ML; CLI-96-2, 43 NRC 13 (1996)

A The Commission considers a request by the Licensee to terminate this proceeding as moot and to vacate the proceeding's underlying decisions. Because this proceeding solely concerns the Licensee's request for onsite disposal of mill tailings, and all parties concur that the Licensee no longer seeks onsite disposal, the Commission terminates the proceeding as moot. The Commission chooses as a policy matter to vacate and thereby eliminate as precedent all three underlying decisions in this proceeding.

B The Commission is not bound by judicial practice and need not follow judicial standards of vacatur.

CLI-96-3 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site), Docket No. 40-8027-EA (Decontamination and Decommissioning Funding); ENFORCEMENT ACTION; February 27, 1996; MEMORANDUM AND ORDER

A The Commission grants the Intervenor's petition for review of the Atomic Safety and Licensing Board's Memorandum and Order approving a joint settlement agreement between the Licensee, Sequoyah Fuels Corp., and the NRC Staff. The Commission also permits the State of Oklahoma to file a brief amicus curiae to aid the Commission in its review of the Board's order.

B A state that does not seek party status or to participate as an "interested state" in the proceedings below is not permitted to file a petition for Commission review of a licensing board ruling. If the Commission takes review, the Commission may permit a person who is not a party, including a state, to file a brief amicus curiae. 10 C.F.R. § 2.715(d).

CLI-96-4 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440-OLA-3; OPERATING LICENSE AMENDMENT; March 7, 1996; ORDER

A The Commission grants the Cleveland Electric Illuminating Company's petition for review of the Atomic Safety and Licensing Board order, LBP-95-17, 42 NRC 137 (1995). The Board's order granted the Intervenor's motion for summary disposition and terminated the proceeding.

CLI-96-5 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM; DECOMMISSIONING; March 7, 1996; MEMORANDUM AND ORDER

A The Commission declines to disqualify two Commissioners or the NRC Staff from participating in the case; indicates that it plans to review the Licensing Board's March 1 decision (LBP-96-2, 43 NRC 61 (1996)); suggests appropriate areas of inquiry for the parties' briefs; and keeps in place the current stay of the Board decision, pending Commission review of LBP-96-2.

B It is Commission practice that the Commissioners who are subject to a recusal motion will decide that motion themselves, and may do so by issuing a joint decision.

C A prohibited communication is not a concern if it does not reach the ultimate decision maker.

D Where a prohibited communication is not incorporated into advice to the Commission, never reaches the Commission, and has no impact on the Commission's decision, it provides no grounds for the recusal of Commissioners.

E Commission guidance does not constitute factual prejudgment where the guidance is based on regulatory interpretations, policy judgments, and tentative observations about dose estimates that are derived from the public record.

F Where there are no facts from which the Commission can reasonably conclude that a prohibited communication was made with any corrupt motive or was other than a simple mistake, and where a Report of the Office of the Inspector General confirms that an innocent mistake was made and that the Staff was

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not guilty of any actual wrongdoing, and where the mistake did not ultimately affect the proceeding, the Commission will not dismiss the Staff from the proceeding as a sanction for having made the prohibited communication.

- G** Where the Commission issues a stay wholly as a matter of its own discretion, it does not need to address the factors listed in 10 C.F.R. § 2.788.

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LBP-96-1 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245-OLA (ASLBP No. 96-711-01-OLA); OPERATING LICENSE AMENDMENT; February 7, 1996; MEMORANDUM AND ORDER (Ruling on Intervention Petition)

LBP-96-2 YANKEE ATOMIC ELECTRIC COMPANY (Yankee Nuclear Power Station), Docket No. 50-029-DCOM (ASLBP No. 96-713-01-DCOM); DECOMMISSIONING; March 1, 1996; MEMORANDUM AND ORDER (Denying Petition to Intervene)

A In this proceeding concerning challenges to various aspects of the decommissioning plan for the Yankee Nuclear Power Station, based on guidance furnished by the Commission in CLI-96-1, 43 NRC 1 (1996), the Licensing Board concludes that the citizen groups petitioning to intervene have established their standing but have failed to present a litigable contention, which requires that the proceeding be dismissed.

B To comply with the basic standing requirements, a petitioner must demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. See CLI-96-1, 43 NRC at 6.

C When an organization seeks to intervene on behalf of its members, that entity must show that it has an individual member who can fulfill the necessary elements to establish standing and who has authorized the organization to represent his or her interests. See CLI-96-1, 43 NRC at 6.

D Intervenor organizations established their standing to intervene and seek relief regarding alleged health and safety or environmental injuries that may be visited upon their members who reside and engage in various activities in the area within 10 miles of a nuclear facility to be decommissioned. Because some, even if minor, public exposures can be anticipated from the decommissioning process, the Licensing Board is not "in a position at this threshold stage to rule out as a matter of certainty the existence of a reasonable possibility" that decommissioning might have an adverse impact to those, such as petitioners members, who live or recreate in such close proximity to the facility, or use local waste transportation routes. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

E Petitioners who have established their standing to present a contention that seeks modification or rejection of a nuclear facility decommissioning plan so as to avoid health and safety or environmental injury to the public also can pursue any contention alleging such modification/rejection relief based on circumstances such as purported occupational exposure to facility workers from decommissioning activities. See CLI-96-1, 43 NRC at 6.

F Under 10 C.F.R. § 2.714(b)(2)(ii)-(iii), to be admissible a contention must contain a specific statement of an issue of fact or law raised or controverted in a proceeding that is supported by a "basis" of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or opinions. The basis must be sufficient to show that a genuine dispute exists with the applicant on a material issue of fact or law. Moreover, while the intervenor need not prove its case at the contention stage or present factual support in affidavit or evidentiary form sufficient to withstand a summary disposition motion, it nonetheless must make a minimal showing that material facts are in dispute such that a further inquiry is appropriate. And, of course, any contention must fall within the scope of the issues set forth in the notice of opportunity for hearing on the proposed licensing action. See Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 117-18 (1995).

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- G** In challenging the contents of a decommissioning plan fashioned pursuant to 10 C.F.R. § 50.82(b)(1), (2), a contention not only must allege some content deficiency in the decommissioning plan, but that this purported deficiency has some health and safety significance for the decommissioning process as a whole. Put another way, to craft a litigable contention faulting a decommissioning plan for a deficiency in content, besides providing a basis sufficient to question the plans accuracy, there must also be a showing that a genuine disputed material issue of fact or law exists about whether the purported shortcoming has some tangible negative impact on the overall ability of the decommissioning process outlined in the plan to protect the public health and safety. Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 414 (1990) (contention that purported emergency planning exercise deficiency precludes a finding of reasonable assurance that protective measures can and will be taken must show that exercise revealed more than minor or isolated flaw in plan and that plan flaw can only be remedied through significant plan revision).
- H** A litigable contention asserting that a reactor decommissioning plan does not comply with the funding requirements of 10 C.F.R. § 50.82(b)(4) and (c), must show not only that one or more of a plans cost estimate provisions are in error, "but that there is not reasonable assurance that the amount will be paid." CLI-96-1, 43 NRC at 9. A petitioner must establish that some reasonable ground exists for concluding that the licensee will not have sufficient funds to cover decommissioning costs for the facility.
- I** A petitioner should be permitted to respond to challenges to a contention before the contention is dismissed. See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979).
- J** The "rule of reason" governing National Environmental Policy Act (NEPA) interpretation provides that an agency need not consider "remote and speculative risks." Limerick Ecology Action v. NRC, 869 F.2d 719, 739 (3d Cir. 1989).
- K** A contention basis concerning a transportation cask accident that relies on a report postulating an accident scenario with conditions that fall within the parameters of 10 C.F.R. § 71.73(c) governing cask accident test conditions is not subject to dismissal under 10 C.F.R. § 2.758 as improperly challenging that accident test condition regulation.
- L** A document put forth by an intervenor as supporting the basis for a contention is subject to scrutiny both for what it does and does not show. When a report is the central support for a contentions basis, the contents of that report are what are before the Board and, as such, is subject to Board scrutiny, both as to those portions of the report that support an intervenors assertions and those portions that do not.
- M** Because only accident scenarios that are not "remote and speculative" need be the subject of a NEPA analysis, if the information in any intervenor-proffered document regarding such a scenario fails to indicate that this threshold has been crossed, then a contention challenging NEPA compliance based on a failure to analyze that scenario need not be admitted. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44-47 (1989), remanded for additional findings, CLI-90-4, 31 NRC 333 (1990).
- LBP-96-3 ONCOLOGY SERVICES CORPORATION** (Harrisburg, Pennsylvania), Docket No. 030-31765-CivP (ASLBP No. 95-708-01-CivP) (EA 94-006) (Byproduct Materials License No. 37-28540-01); CIVIL PENALTY; March 28, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement and Dismissing Proceeding)
- LBP-96-4 RADIATION ONCOLOGY CENTER AT MARLTON (ROCM)** (Marlton, New Jersey), Docket No. 30-32493-CivP (ASLBP No. 95-709-02-CivP) (EA 93-072) (Byproduct Materials License No. 29-28685-01); CIVIL PENALTY; March 28, 1996; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)
- A** The Licensing Board approves a joint settlement agreement governing both this civil penalty proceeding and a related proceeding and terminates this proceeding. (Simultaneously, the Licensing Board in the other civil penalty proceeding approved the joint agreement with respect to that proceeding. See LBP-96-3, 43 NRC 93 (1996).

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DD-96-1 **YANKEE ATOMIC ELECTRIC COMPANY** (Yankee Nuclear Power Station), Docket No. 50-029 (License No. DPR-3); REQUEST FOR ACTION; February 22, 1996; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies in part and grants in part a petition dated January 17, 1996, submitted to the Nuclear Regulatory Commission (NRC) by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners), requesting that the NRC take action with respect to five activities conducted by Yankee Atomic Electric Company (YAEC or Licensee) at the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe or the facility). The petition was also moot in part. The petition requests that the NRC comply with *Citizens Awareness Network Inc. v. United States Nuclear Regulatory Commission and Yankee Atomic Electric Co.*, 59 F.3d 284 (1st Cir. 1995) and 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 ensure the protection of occupational and public health and safety; (B) YAEC to cease any such activities; and (C) NRC Region I to reinspect Yankee Rowe to determine whether there has been compliance with the Commission's Order in CLI-95-14, 42 NRC 130 (1995), and to issue a report within 10 days of the requested order to Region I.

B The Petitioners' request that shipments of low-level radioactive waste be prohibited is denied because that activity is permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Petitioners' request that four other activities be prohibited is moot, although the activities would have been permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Additionally, Petitioners' request for an inspection of Yankee Rowe to determine compliance with CLI-94-14 and an inspection report was granted.

DD-96-2 **YANKEE ATOMIC ELECTRIC COMPANY** (Yankee Nuclear Power Station), Docket No. 50-029; REQUEST FOR ACTION; March 18, 1996; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a supplemental petition dated February 9, 1996, filed with the Nuclear Regulatory Commission by Citizens Awareness Network and New England Coalition on Nuclear Pollution. The supplemental petition requests that the Commission: (1) reverse the February 2, 1996 decision of the NRC Staff on the emergency aspects of a January 17, 1996 petition filed pursuant to 10 C.F.R. § 2.206, and (2) require Yankee Atomic Electric Company to cease six unlawful decommissioning activities and to direct the Staff to cease approving or acquiescing to such unlawful decommissioning activities. By Order dated February 15, 1996, the Commission declined to reverse the February 2, 1996 decision of the NRC Staff on the emergency aspects of the January 17, 1996 petition, and directed the NRC Staff to address the arguments advanced by Petitioners at page 13 of the supplemental petition in a supplementary section 2.206 decision.

B The Director denied the request to prohibit the conduct of six activities identified at page 13 of the supplemental petition because they are permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the NRC's decommissioning regulations, and thus under *Citizens Awareness Network Inc. v. U.S. Nuclear Regulatory Commission and Yankee Atomic Electric Co.*, 59 F.3d 284 (1st Cir. 1995).

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