REPLY: CONTENTION S (Decommissioning)

The NRC Staff does not oppose admission of Contention S as stated in basis 1, 2, 4, 5 and 10. Staff Response at 49.

The Applicant argues that the standards established in Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1 (1996) (hereinafter Yankee I), Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61 (1996) (hereinafter Yankee II), and Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235 (1996) (hereinafter Yankee III) are applicable to "many if not all of the State's eleven decommissioning subcontentions." Applicant's Answer at 238 - 39. Contention S challenges the Applicant's ability to provide

sufficient funding for decommissioning and questions the Applicant's cost estimates. The status of Yankee Nuclear Power Station (Yankee Rowe facility) is entirely different from that of this Applicant, which is a newly formed limited liability company with no track record. The Yankee Rowe facility had existing rate based contracts. These firm contractual agreements had been a matter of public record for many years. Yankee III, 43, NRC at 259. Thus, the ability to raise funds was not the issue in the Yankee cases. In Contention S the State has shown the comprehensive failure in the Applicant's decommissioning funding, both with respect to estimates and ability to raise funds. The Applicant has not shown the reasonable likelihood of having the money it needs for decommissioning, so the estimates are relevant. Clearly, health and safety are jeopardized when the Applicant does not have sufficient money set aside to meet the costs of decommissioning.

The Applicant's response to the State's assertion that the decommissioning plan must include contingency costs in the event that the ISFSI cannot be decommissioned at the end of the license term due to the unavailability of disposal or alternate storage, is that it is barred as a matter of law. Applicant's Answer at 224, *citing* 10 CFR § 51.23(a). The fact that fuel may be stored on site beyond the license term is a distinct possibility. According to a 1993 GAO report Yucca Mountain may not open until between 2015 and 2023. Yankee II, 43 NRC at 72. Assuming the license is issued to PFS in 2000 and Yucca Mountain begins to accept fuel in 2020, not all fuel would be

interred at Yucca Mountain even by the end of the initial license term plus a 20 year renewal (*i.e.*, by 2040). DOE's prognosis for spent fuel acceptance for the first ten years is 8,200 MTU.[1] The Transportation of Spent Nuclear Fuel and High Level Waste, Nevada Nuclear Waste Project Office (September 10, 1996) at 15, attached to OGD's Contentions as Exhibit 4. After acceptance year ten, the rate would be 3,000 MTU annually. Id. Thus, by 2040 DOE would have accepted a total of 38,200 MTU. However, unlike other interim storage facilities authorized under the Nuclear Waste Policy Act, which by statute must have spent fuel removed no later than three years following fuel acceptance at a permanent repository or MRS, the PFS ISFSI is de-linked from Yucca Mountain. 42 USC § 10,155(e). It is probable that fuel from the PFS ISFSI will not have priority of receipt at Yucca Mountain. Therefore, it is reasonable to require this yet to be constructed facility to include contingent costs in the realistic event the ISFSI cannot be decommissioned at the end of the license term.

The Applicant also argues that an admissible contention "must allege more than mere uncertainty" and that "[i]t is unreasonable to require as much precision of an applicant's proposed decommissioning procedures at the time of licensing as will be required of its final procedures at the time of decommissioning." Applicant's Answer at 239, *citing* Yankee I, 43 NRC at 8. Another argument by the Applicant is that "[c]hallenges to the reasonableness of an applicant's decommissioning cost estimates are

---

[1] The 8,200 MTU is computed as follows: In acceptance year one, 400 MTU; in acceptance year two, 600 MTU; then 900 MTU in years three through ten.

not admissible unless the petitioner shows that 'there is no reasonable assurance that the amount will be paid," and "[w]ithout such a showing, the only relief available would be the 'formalistic redraft of the plan with a new estimate.'" Applicant's Answer at 239-240, *quoting* Yankee I at 9.

Contrary to the Applicant's argument, the State has made this showing. First, as more fully discussed in State's Reply, Contention E, (Financial Assurance), *supra*, the Applicant is not an established electric utility company but a newly formed limited liability company. Clearly, the Applicant, devoid of any financial history or assets, cannot rely on its own unsubstantiated statements of promised funding, whether through a letter of credit or other means, to demonstrate reasonable assurance of providing funding. The Applicant further argues that assurance of obtaining funds need not be an "ironclad" one. Applicant's Answer at 240, *citing* Yankee III at 260. The State is not asserting that the Applicant provide "ironclad" assurance; it is asserting, however, that the Applicant be required reasonably to demonstrate its ability to secure the selected financial mechanism – in this case, a letter of credit, as required by the regulations. This it has not done.

Second, the Applicant argues that "[s]hort of an allegation of 'gross discrepancy' in the decommissioning cost estimate" the contention is inadmissible. Applicant's Answer at 240. The State's contention describes apparent contradictions and discrepancies in cost estimates, as well as unsubstantiated figures to the extent that

there is anything of substance to analyze in the application. *See* State Contentions at 126. The accumulation of potential discrepancies hidden in unsubstantiated statements and cost estimates could result in gross discrepancies, but without additional information it is an unreasonable burden to require specific claims beyond the examples that State has already cited in Contention S. For example, in Contention S, the State points to a $4 per square foot discrepancy in the Applicant's cost to decontaminate cask surfaces. This gross disparity could result in underestimating costs by 500% in 1997 dollars. Id.

Finally, unlike the Yankee cases, redrafting of a plan is not the only relief available to the State. Also, the Commission's policy that it considers decommissioning of an existing nuclear power plant to be a foregone conclusion in not applicable here.[2] As stated in Yankee II "[i]n contrast to the construction permit and operating licensing actions that brought Yankee Rowe into existence, there is not a 'no action' alternative in connection with facility decommissioning." Yankee II, 43 NRC at 82, n 6. In this case the proposed ISFSI is still seeking a license and decommissioning is not a foregone conclusion. Alternative relief may be granted by denying the license for failure to accurately estimate and provide reasonable assurance that the amount necessary for decommissioning will be available as required by 10 CFR § 72.30(b).

Response to Applicant's Rephrasing of Contention S:

---

[2] "It clearly is Commission policy that all commercial nuclear facilities will be decommissioned." Id., citing 10 CFR § 50.82(f).

The State objects to the rephrasing of Contention S.