

October 12, 1995

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

Karen D. Cyr  
General Counsel

John F. Cordes, Acting Director  
Office of Commission Appellate Adjudication

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION,  
3:30 P.M., THURSDAY, OCTOBER 12, 1995,  
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE  
FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO  
PUBLIC ATTENDANCE)

I. SECY-95-205 - Revisions to Regulatory Requirements for  
Reactor Pressure Vessel Integrity in 10 CFR Part 50

The Commission (Chairman Jackson, exercising delegated authority pursuant to a delegation from the Commission,<sup>1</sup> in accordance with NRC Reorganization Plan No. 1 of 1980) approved final revisions to 10 CFR Part 50 for reactor vessel integrity and adding a new rule on thermal annealing of reactor pressure vessels. The Commission requested additional changes, as noted in the attachment, which codify the role of public participation in the regulatory process covered by the rule and require the documentation of the NRC staff's review of the licensee's annealing report and implementation.

Following incorporation of the requested changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO) (SECY Suspense: 11/17/95)

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<sup>1</sup> This decision was made after consultation with Commissioner Rogers, who also stated his agreement with the results announced here.

II. SECY-95-243 - Georgia Institute of Technology -- Appeal of LBP-95-6

The Commission (Chairman Jackson, exercising delegated authority pursuant to a delegation from the Commission,<sup>2</sup> in accordance with NRC Reorganization Plan No. 1 of 1980) approved an order which denies the appeals by the Nuclear Regulatory Commission (NRC) staff and the Georgia Institute of Technology (Georgia Tech), and affirms the Atomic Safety and Licensing Board's order LBP-95-6, which granted the Georgians Against Nuclear Energy's (GANE) petition for hearing and request to intervene.

(Subsequently, on October 12, 1995, the Secretary signed the Order.)

III. COMSECY-95-038 - Application of CAN v. NRC to Decommissioning Activities at the Trojan and Yankee Facilities

The Commission (Chairman Jackson, exercising delegated authority pursuant to a delegation from the Commission,<sup>3</sup> in accordance with NRC Reorganization Plan No. 1 of 1980) approved orders regarding the decommissioning activities of Portland General Electric Co. (PGE) and Yankee Atomic Electric Company (YAEC). The orders state that further major dismantling actions are impermissible in light of the decision in the CAN v. NRC lawsuit. While allowing PGE to complete the nearly completed Large Component Removal Project, all further major decommissioning activities must be halted. The orders announce that the Commission will provide an opportunity for a hearing on the respective decommissioning plans prior to further dismantling activities.

(Subsequently, on October 12, 1995, the Secretary signed the Orders.)

Attachment:  
As stated

cc: Chairman Jackson  
Commissioner Rogers  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

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<sup>2</sup> This decision was made after consultation with Commissioner Rogers, who also stated his agreement with the order.

<sup>3</sup> This decision was made after consultation with Commissioner Rogers, who also stated his agreement with the orders.

PDR - Advance  
DCS - P1-24

**Changes to be Incorporated in Final Amendments  
Prior to Publication (SECY-95-205)**

The staff should revise the rule to provide explicitly for public participation in the regulatory process. The rule should incorporate a public meeting on the licensee's Thermal Annealing Report a minimum of 30 days prior to the start of thermal annealing. The process to be established should be similar to the one incorporated in the proposed rule on decommissioning of nuclear power plants.

An additional public meeting should be included in the rule to occur after the licensee completes annealing of its reactor pressure vessel, but before the reactor is restarted. The purpose of this meeting is for the licensee to explain to the NRC and the public the results of the reactor pressure vessel annealing. Additionally, at this public meeting, NRC would discuss its inspection of the reactor pressure vessel annealing process. The staff will also receive public comments following the meeting with the licensee.

The following sentence should be added at the end of 10 CFR 50.66(a) in the final rule:

Within three years of the submittal of the Thermal Annealing Report the NRC will review the report and place the results of its evaluation in its Public Document Room.

The Statements of Consideration should be supplemented along the following lines:

Section 50.66(a) requires that the NRC will within three years of submission of a licensee's annealing report, document its views for the record on whether the plan for conducting thermal annealing constitutes an unreviewed safety question. Such a determination is the threshold determination for whether agency approval is required before undertaking the activity. In the event the staff were to conclude, contrary to the licensee, that an unreviewed safety question was present, the staff would as a discretionary enforcement matter, issue an appropriate order to the licensee prohibiting annealing prior to issuance of a license amendment.

Section 50.66(c), which addresses restart of the facility following annealing, should also be modified to add provisions for documenting the results of the NRC's staff inspection. If the annealing was conducted in accordance with the Thermal Annealing Plan, the staff's analysis shall consist of a summary of the staff's inspection of the licensee's annealing process to confirm that the thermal annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program. The rule changes should include as

an objective, completion of NRC's documentation of satisfactory completion of the licensee's annealing process and the conduct of the inspection exit meeting described above within two weeks of the licensee's written confirmation that the annealing was completed in accordance with the Thermal Annealing Plan. The staff should briefly document confirmation of satisfactory completion of the licensee's annealing plan in summary form (e.g., 1 paragraph to 1 page) within two weeks of the licensee's written confirmation (following this documentation the licensee could restart the reactor). The staff should complete full documentation of the inspection report within 30 to 45 days following the licensee's written confirmation.

In addition, because of the importance of containment, the NRC staff should pay particular attention to the post-annealing effect on containment to ensure that post-annealing containment integrity and integrity of the biological shield have not been compromised.

The staff should provide the Commission, before the first annealing, their projected time line for events beginning with the licensee's submittal through issuance of the final NRC inspection report.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONER:

Shirley Ann Jackson<sup>4</sup>

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In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC CO.	)	Docket No. 50-344
	)	
(Trojan Nuclear Power Station)	)	
	)	
_____	)	

MEMORANDUM AND ORDER

CLI-95-\_\_

I. Introduction.

The Commission has before it the question whether the First Circuit's decision in Citizens Awareness Network v. NRC, 59 F.3d 284 (1st Cir. 1995), prevents further decommissioning activities at the Trojan reactor which is owned by the Portland General Electric Company ("PGE"). We recently solicited public comments on this question. See 60 Fed. Reg. 46315 (Sept. 6, 1995). The Don't Waste Oregon Council ("DWOC") and other groups opposed to PGE's current decommissioning activities ("Petitioners") have asked for a halt in these activities, pending NRC approval of a decommissioning plan for Trojan. PGE seeks to proceed with its decommissioning activities, including its Large Component Removal Project or "LCRP," which currently is nearing its end.

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<sup>4</sup> This decision was made by Chairman Jackson under delegated authority, as authorized by NRC Reorganization Plan No. 1 of 1980, after consultation with Commissioner Rogers. Commissioner Rogers has stated his agreement with this decision.

The Commission has decided that under Citizens Awareness Network PGE cannot conduct any further "major dismantling" of the Trojan facility until completion of the NRC's decommissioning plan approval process. The Commission has also decided not to interfere in PGE's completion of its LCRP, which is almost done and affects just 1% of (nonfuel) radioactivity from the plant. The LCRP "involves the removal of Trojan's four steam generators and the pressurizer from the containment building, preparing the components as transportation packages, and transporting the component packages from the Trojan site..." See PGE's Sept. 18, 1995, Comments, at 1.

## II. Background

As recounted in Citizens Awareness Network, prior to 1993 the Commission interpreted its regulations on decommissioning (10 C.F.R. §§ 50.82, 50.75, 51.53, 51.95) to require Commission approval before a licensee may in the course of decommissioning make "major structural changes to radioactive components of the facility or other major changes...." 53 Fed. Reg. 20418, 24025-24026 (1988).<sup>5</sup> In 1993 the Commission issued a Staff Requirements Memorandum altering this interpretation and permitting licensees to take any decommissioning action authorized under their licenses in advance of decommissioning

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<sup>5</sup>See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 73 n.5 (1991); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 61 n.7 (1992).

plan approval, including actions that could be justified under 10 C.F.R. §50.59. See Citizens Awareness Network, 59 F.3d at 289.

In Citizens Awareness Network, the First Circuit struck down the Commission's interpretive change as "arbitrary and capricious" because in the court's view it had not been adequately explained, it had not been preceded by notice-and-comment or any form of hearing, and it was "seemingly irrational." 59 F.3d at 291-92. The court's ruling has the effect of restoring the Commission's pre-1993 interpretation of its decommissioning rules.

### III. Analysis and Discussion.

The petitioners, including DWOC, have stated their opposition to further decommissioning at Trojan in court filings and comments to the agency. In their view the Commission should order an immediate halt to the LCRP. If the LCRP presented a significant safety problem the Commission would clearly have the authority to issue such an order and would unquestionably exercise it. However, both the licensee and the NRC staff have prepared safety analyses which conclude that the LCRP presents no undue risk to public health and safety. DWOC has not shown any flaws in these analyses.<sup>6</sup>

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<sup>6</sup>Petitioners allege that the NRC has not prepared an EA or an EIS for the LCRP in compliance with the National Environmental Policy Act and that the LCRP must be halted for this reason alone. See Citizens Awareness Network, 59 F.3d at 292-93. While it is true that the NRC has not prepared either document for the LCRP, the NRC will prepare the appropriate document for the



DWOC does say that Citizens Awareness Network renders further work on the LCRP in violation of the Commission's pre-1993 rule interpretation. But that is not obviously correct. PGE argues that there are significant differences between the Trojan LCRP and the Yankee Atomic Electric Plant removal program at issue in Citizens Awareness Network. PGE points out that the LCRP affects less than 1% of nonfuel residual radioactivity from the plant, in contrast to the 90% affected by the program at Yankee. PGE argues that the Trojan program therefore does not violate the Commission's pre-1993 decommissioning rules.

The Commission finds this question a close one. Removal of the four Trojan steam generators and the pressurizer undoubtedly has to be characterized as a "major structural change," and these components do contain some residual radioactivity. On the other hand, PGE is correct that the radioactivity involved in the LCRP is only a minuscule part (1%) of Trojan's total (nonfuel) radioactivity. In this sense it could be concluded that the Trojan LCRP is not a "major" segment of the decommissioning process to which the Commission's decommissioning regulations should be strictly and literally applied.

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decommissioning plan. In addition, PGE prepared an environmental review ("ER") of the LCRP which found that the impacts of the LCRP were within the EIS issued in connection with the operation of Trojan and the GEIS issued by the NRC in connection with decommissioning in general. The NRC Staff reviewed this ER and found it to be accurate and acceptable. This NRC review of the ER is adequate for purposes of NEPA compliance at this point. See Friends of the River v. FERC, 720 F.2d 93, 106-08 (D.C. Cir. 1983).

The Commission need not resolve this question definitively, however, because there are several additional reasons why the Commission should not interfere with the LCRP. PGE entered upon the program in reliance upon the NRC's assurance, given prior to the Citizens Awareness Network decision, that it complied with the Commission's regulations. In contrast to the component removal program at the Yankee Atomic Electric Plant that led to the Citizens Awareness Network litigation, no parties requested an NRC hearing on the Trojan LCRP. While PGE continued its implementation, DWO and the other petitioners participated in a state-law process for review of the LCRP and made no effort, until September 25, to seek any relief from the NRC. PGE in the meantime incurred substantial costs and now faces the prospect of losing favorable contracts, incurring additional costs and idling its trained work force, should the program be summarily halted.

In addition, the Citizens Awareness Network court itself did not direct the halt of preliminary removal and transport operations already under way. Here, PGE reports that the program to remove and transport offsite the Trojan steam generators and pressurizer is about 70% complete and, if not stopped by the Commission, will be finished by late October or early November, 1995. Because the LCRP remains in compliance with all NRC safety requirements, the Commission believes that fairness and the public interest will best be served by not taking any action to interrupt this program on the eve of its completion. See Heckler v. Chaney, 470 U.S. 821, 831-32 (1985); Union of Concerned

Scientists v. NRC, 711 F.2d 370, 383 (D.C. Cir. 1983).

Any further significant decommissioning activities beyond the LCRP must await completion of the NRC approval process for the Trojan decommissioning plan. This restores effect to the Commission's original interpretation of its decommissioning rules, as required by Citizens Awareness Network, and the Commission expects PGE to comply with that interpretation. When (and if) the NRC Staff is prepared to issue an order approving the Trojan decommissioning plan, the Commission intends to follow its pre-1993 practice of giving notice of an opportunity for an adjudicatory hearing on the plan. The Commission intends to order an expedited hearing process.

The Commission believes that, with 99% of Trojan's nonfuel radioactive contamination still in place, halting further major dismantling at Trojan pending final decommissioning plan approval gives ample effect to the concern of the Citizens Awareness Network court that the "decommissioning plan approval process" be followed before "the actual decommissioning activities are already completed[]" 59 F.3d at 292.

#### IV. Summary.

In summary, the Commission will not require PGE to halt its LCRP, which is slated to be completed within the next few weeks. However, the Commission expects PGE to adhere to current NRC decommissioning rules and to take no further decommissioning actions involving major dismantling at Trojan until final NRC

approval of the Trojan decommissioning plan. The Commission directs PGE to inform the Commission promptly, within no more than fourteen calendar days, of the steps it is taking to come into compliance with the reinstated rule interpretation announced in this decision.

It is so ORDERED.

For the Commission,

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John C. Hoyle  
Secretary of the Commission

Dated at Rockville, Maryland,  
this \_\_\_\_ day of October, 1995.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONER:

Shirley Ann Jackson<sup>7</sup>

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In the Matter of	)	
	)	
YANKEE ATOMIC ELECTRIC COMPANY	)	Docket No. 50-029
	)	
Yankee Nuclear Power Station	)	

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CLI-95-\_\_

MEMORANDUM AND ORDER

I. Introduction.

This matter is before the Commission on a remand from the United States Court of Appeals for the First Circuit. See Citizens Awareness Network v. NRC, 59 F.3d 284 (1st Cir. 1995). The Commission issued a Federal Register notice soliciting public comments on how it should implement the remand order. See 60 Fed. Reg. 46317 (Sept. 6, 1995). The Citizens Awareness Network ("CAN") has filed comments asking for a hearing on the decommissioning plan for the Yankee Nuclear Power Station ("Yankee NPS"), which is owned and operated by the Yankee Atomic Electric Company ("YAEC"). However, that decommissioning plan has already been approved by the NRC Staff -- albeit without an adjudicatory hearing. In its comments, YAEC argues that the

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<sup>7</sup>This decision was made by Chairman Jackson under delegated authority, as authorized by NRC Reorganization Plan No. 1 of 1980, after consultation with Commissioner Rogers. Commissioner Rogers has stated his agreement with this decision.

Commission should not hold such a hearing.

In light of the First Circuit's decision, the Commission has decided that it must reinstate its pre-1993 interpretation of its decommissioning regulations. See generally 60 Fed. Reg. 46317 (Sept. 6, 1995). Pursuant to this interpretation, and for the reasons stated below, the Commission will issue a Notice of Opportunity for an adjudicatory hearing on the Yankee NPS decommissioning plan. The Commission intends to order an expedited hearing process. In the meantime, in accordance with the pre-1993 interpretation, the Commission expects YAEC not to conduct any further "major" dismantling or decommissioning activities until final approval of its plan after completion of the hearing process.<sup>8</sup> See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 73 n.5. (1991); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 61 n.7. (1992).

## II. Background.

Briefly, on several occasions from late 1992 through early 1994, the Citizens Awareness Network ("CAN") asked the NRC to offer an opportunity for an administrative hearing regarding decommissioning activities being conducted by the Yankee Atomic Electric Company ("YAEC") at the Yankee Nuclear Power Station ("Yankee NPS"). These activities were known as the Component

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<sup>8</sup>As explained in the statement of considerations accompanying the NRC's 1988 decommissioning rule, "major dismantling" means "major structural changes to radioactive components of the facility or other major changes ...." 53 Fed. Reg. 24018, 24025 (1988).

Removal Project or "CRP."

The Commission denied each of CAN's requests, based upon a new interpretation of its decommissioning regulations, issued on January 14, 1993, and CAN sought review of the last denial before the First Circuit. On July 20, 1995, the First Circuit issued a decision which held that the Commission had improperly changed its interpretation of its decommissioning regulations. Citizens Awareness Network, 59 F.3d at 292. The First Circuit remanded the case to the Commission after finding illegal the Commission's 1993 shift in policy and its failure (1) to hold a hearing on the CRP activities and (2) to issue either an Environmental Assessment ("EA") or an Environmental Impact Statement ("EIS") on the CRP. Citizens Awareness Network, 59 F.3d at 291-92; 292-93; and 294-95.

In response to the First Circuit's decision, the Commission issued a Federal Register notice (1) advising the parties and the general public that it did not intend to seek further review of the Citizens Awareness Network decision; (2) advising the public that it understood the decision to require a return to the interpretation of NRC decommissioning regulations that were in effect prior to January 14, 1993; and (3) asking for public comments on whether the Commission should order Yankee Atomic to cease ongoing decommissioning activities pending any required hearings, and any other matters connected with this issue.

### III. Public Comments.

The Commission has received numerous comments from both



members of the public and industry organizations, including CAN and YAEC, the two parties to the Citizens Awareness Network lawsuit. In its comments, CAN argues that the NRC should hold formal adjudicatory hearings on the Yankee decommissioning plan based upon the language in the First Circuit decision and on its own generalized concerns about the alleged hazards associated with decommissioning.

YAEC, on the other hand, argues that the First Circuit's requirement of a hearing on remand is moot, because the CRP has been completed, and that the First Circuit's NEPA remand is moot because the NRC Staff issued an EA when it approved the Yankee NPS decommissioning plan, which included a review of the activities conducted under the CRP.<sup>9</sup> Moreover, YAEC points out that the NRC Staff has already approved its decommissioning plan, see 60 Fed. Reg. 9870 (Feb. 22, 1995), and argues that nothing in the First Circuit's decision invalidates that approval. Finally,

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<sup>9</sup>The First Circuit issued the Citizens Awareness decision on July 20, 1995, exactly four months after the day that YAEC now informs us the "last scheduled CRP activity initiated during the last phase of the CRP" was completed. See YAEC "Response to Request For Additional Information" (Sept. 25, 1995) (Filed in this docket). But YAEC never claimed before the First Circuit that its March completion of the CRP rendered CAN's grievance moot or informed the Court of the CRP's completion. Therefore, YAEC is ill-positioned to claim mootness now, after the First Circuit has issued its decision and with additional decommissioning work remaining to be done. See 59 F.3d at 293 n.8.

The Commission agrees with YAEC, however, that the claimed lack of a NEPA review has been rendered moot by the subsequent preparation of the EA associated with the NRC Staff's review of the Yankee decommissioning plan. But CAN may still raise NEPA issues in any hearing request it files.

YAEC argues that "no useful safety or environmental purpose would be served" by halting decommissioning pending a hearing and that such a halt would "greatly increase the costs to the ratepayer."

#### IV. Analysis.

The question before the Commission on remand is not whether YAEC's current decommissioning activities are safe or environmentally benign but whether they are legal. Under the Commission's pre-1993 interpretation of its regulations, now-reinstated, YAEC may not conduct "major" decommissioning activities prior to final NRC approval of a decommissioning plan. And under the Commission's consistent pre-1993 practice, final decommissioning plan approval came only after an opportunity for an adjudicatory hearing. In this case, the NRC approval of YAEC's plan was not preceded by an adjudicatory hearing -- a fact which CAN stressed at the "informal public hearing" conducted on August 16, 1994, at Greenfield, Massachusetts. See generally Transcript of August 16, 1994. Thus, the NRC's approval of the Yankee NPS decommissioning plan cannot be accorded further legal effect, pending a hearing opportunity.

We now turn to YAEC's principal arguments why the Commission should not hold hearings on the decommissioning plan. First, YAEC maintains that "[t]his matter could be remedied if the NRC were to publish a full explanation of the policy change ...." Yankee Atomic Comments (Sept. 15, 1995) at 2-3. However, that option is unworkable. The First Circuit not only found the new rule interpretation unexplained, but also "seemingly irrational"

and incapable of cure without a full hearing or rulemaking proceeding. See 59 F.3d at 291-92. Whether or not the First Circuit was correct in its view, its decision is the law that the Commission must follow on remand in this case. Therefore, the Commission could not simply reinstate the 1993 policy, certainly not any time soon, and certainly not fast enough to avoid a decision whether to halt YAEC's current decommissioning activities at Yankee NPS.<sup>10</sup> In fact, it is quite possible that the Commission's currently-pending proposed rule change on decommissioning will be ready for issuance before a rulemaking on the old policy could be perfected. Thus, the Commission declines YAEC's invitation to attempt to comply with the First Circuit decision by codifying through rulemaking the now-invalidated 1993 policy.

In addition, YAEC argues that the Rancho Seco decommissioning proceeding (the only proceeding in which a hearing was actually initiated) constitutes merely a "precedent of one" for the proposition that decommissioning plan approval requires a prior hearing. YAEC argues that its decommissioning plan can be distinguished from the only other plans that were subject to the previous opportunities for a hearing, namely the Ft. St. Vrain and Shoreham plans, because unlike those plans the Yankee plan does not require the NRC to grant any amendments to

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<sup>10</sup>The Commission ordinarily is not free to issue a new rule months from now and give it nunc pro tunc or retroactive effect. See Bowen v. Georgetown University Hospital, 488 U.S. 204, 208-09 (1993).

the Yankee NPS license. See Section 189a of the Atomic Energy Act, 42 U.S.C. §2239(a) (requiring hearings on license amendments).

These arguments are unpersuasive. First, YAEC essentially concedes that its case is indistinguishable from Rancho Seco, where the Commission did not allow major dismantling prior to a hearing on the proposed decommissioning plan. See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Plant), CLI-93-12, 37 NRC 355 (1993). Second, the Commission did not offer the Shoreham and Ft. St. Vrain plans for public hearing on the basis of any amendments they might have involved. Rather, those plans (like Rancho Seco's) were offered for hearing for the purpose of approving the licensee's overall plan for decommissioning. Approval of any amendments (or changes to the plant's technical specifications) was incidental to the approval of the process and goals contained in each plan. Third, YAEC's facts are incorrect: the Shoreham decommissioning plan, like the Yankee NPS plan, did not involve the issuance of any license amendments.

Finally, YAEC points out that the First Circuit did not address the Yankee NPS decommissioning plan, as such, in Citizens Awareness Network because that issue was not before the Court. Moreover, argues YAEC, the NRC has already approved the Yankee decommissioning plan, which places it beyond review now. But the Commission cannot accept the rather formalistic response to Citizens Awareness Network that YAEC urges because, with the

completion of the CRP, YAEAC's position would result in no remedy at all for CAN on remand and would require the Commission to ignore the First Circuit's clearly expressed view that CAN should receive a hearing opportunity prior to further major dismantling at Yankee NPS. See Citizens Awareness Network, 59 F.3d at 292 ("Why offer the public an opportunity to be heard on the decommissioning plan if the actual decommissioning activities are already completed?").

The First Circuit was fully aware that the CRP was virtually complete, but nonetheless expected the Commission to offer CAN some relief on remand:

We recognize that this holding comes too late to prevent much of the CRP activity. There remains, however, a significant amount of radioactive material and structures at the Yankee NPS site, the removal of which will continue to affect CAN members. This continued removal will undoubtedly continue to pose health, safety, and environmental questions, thereby requiring NRC oversight and NEPA compliance.

59 F.3d at 293 n.8. The Commission can only understand this statement to mean that CAN remained entitled to whatever process it was still possible for the Commission to offer. While it is true that YAEAC's activities until now have proceeded according to the NRC's own view of its regulations, that view has now been struck down by the First Circuit. The Commission considers itself duty bound to take the only action available to it that gives meaning to the Court's decision: provide an adjudicatory hearing on YAEAC's decommissioning plan in accordance with the

pre-1993 interpretation of our regulations.

Understandably, YAEK expresses some frustration that it may suffer financially if hearings on its decommissioning plan result in decommissioning delays.<sup>11</sup> Much of what YAEK alleges seems tied to a speculative fear that South Carolina authorities may again close the Barnwell waste disposal facility. Nonetheless, because of the Commission's court-directed change of course and YAEK's claim of financial hardship, the Commission in its hearing notice will direct an expedited hearing process in this case.

The long and short of this situation is that the Commission and YAEK lost this lawsuit in the First Circuit. Possible delay and financial impacts flowing from that defeat cannot excuse the Commission from providing CAN a meaningful remedy to effectuate the court's decision.

#### V. Conclusion.

In summary, the Commission holds that Citizens Awareness Network's reinstatement of the pre-1993 decommissioning policy requires issuance of a notice of opportunity for an adjudicatory hearing on the Yankee NPS decommissioning plan. Until that plan gains approval after the completion of the hearing, NRC regulations do not allow YAEK to conduct further "major" decommissioning activities at the Yankee NPS facility. The Commission directs YAEK to inform it promptly, but within no more

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<sup>11</sup>Other commenters, including the states of Massachusetts, Vermont, and Rhode Island, have expressed similar cost-based concerns.

than fourteen calendar days, of the steps it is taking to come into compliance with the reinstated rule interpretation announced in this decision.

It is so ORDERED.

For the Commission

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John C. Hoyle  
Secretary of the Commission

Dated at Rockville, Maryland  
this \_\_ day of October, 1995.