



November 18, 2003

Mr. John T. Greeves, Director
NMSS/DWM
U.S. Nuclear Regulatory Commission
TWFN, 7J8
Washington, DC 20555-0001

Dear Mr. Greeves:

SUBJECT: Initial Comments on *U.S. Nuclear Regulatory Commission Implementation Plan for the Final Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project at the West Valley Site, May 2003*

The New York State Energy Research and Development Authority (NYSERDA) is writing to request a modification of the *U.S. Nuclear Regulatory Commission Implementation Plan for the Final Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project at the West Valley Site, May 2003* (Implementation Plan). Specifically, NYSERDA is requesting that the Implementation Plan and the overall West Valley site decommissioning process be revised to reflect the fact that NYSERDA's NRC Part 50 License is not in abeyance and thus NRC is not precluded from performing a licensing action as set forth in the Implementation Plan.

A review of historical records shows that the technical specifications of License No. CSF-1 were put in abeyance via Change No. 31, which added Condition No. 7 to the license. NRC issued Change No. 31 on September 30, 1981, in response to an application filed by NYSERDA, joined by the U.S. Department of Energy (DOE). The language in Condition No. 7, as excerpted below, clearly indicates that the license, as a whole, was not put into abeyance; only portions of the license were suspended or put in abeyance.

- "7.B.(1)(b) Neither licensee shall have further responsibility under subparagraph 5 (B) or (C) of this license to develop, maintain, or submit records or reports pertaining to events occurring or conditions prevailing at the facility during the time the facility is in DOE's possession;"
- "7.B.(2) Commencing on the date of transfer of the facility, the technical specifications referenced in subparagraph 5(A) of this license, and the conditions contained in the amendment to this license for special nuclear materials safeguards, shall be held in abeyance."

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- “7.D. Except as provided in subparagraphs (A), (B), and (C) of this paragraph 7, the responsibilities of the licensees under this license, as their respective interests under this license appear, shall continue in effect,”

In addition, NRC conducted a licensing action (i.e., Change No. 32 added Condition 8 to the license) six months after the technical specifications and other provisions of License No. CSF-1 were put in abeyance. (Change No. 32 terminated the authority and responsibility of Nuclear Fuel Services under the license.)

Given that the NRC license for the Western New York Nuclear Service Center is still in effect and that the Implementation Plan expressly provides that it is a “living document” that may be changed, NYSERDA requests that the Implementation Plan be revised to reflect a process where decommissioning decisions and actions as well as licensing decisions and actions be implemented concurrently for both the WVDP portion and the non-WVDP portion of the Western New York Nuclear Service Center property.

NYSERDA requests the opportunity to discuss the details of such a concurrent process with NRC staff and I will be contacting you to make appropriate arrangements. If, in the interim, you wish to discuss the above, please do not hesitate to call me or Colleen Gerwitz at (716) 942-4378 or 4435, respectively.

Sincerely,

WEST VALLEY SITE MANAGEMENT PROGRAM



Paul L. Piciulo, Ph.D.
Director

PLP/amd

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