

**New York State
Energy Research and Development Authority**

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May 27, 1982



Mr. Richard E. Cunningham
Director
Division of Fuel Cycle and
Material Safety
Office of Nuclear Material
Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Docket No. 50-201

Dear Mr. Cunningham:

I am writing in response to your request for the Authority's views on the Sierra Club's "show cause petition" in this docket, which you are treating as a petition for reconsideration of Change No. 32 to License No. CSF-1. Change No. 32 would terminate the authority and responsibility of Nuclear Fuel Services, Inc. ("NFS") upon the occurrence of certain events, including a comprehensive settlement of the litigation among the Authority, NFS, and Getty Oil Company ("Getty") in the United States District Court for the Western District of New York ("District Court"). The Sierra Club's petition ("S.C. Petition") provides no legitimate reason for reconsidering or rescinding Change No. 32.

First, the Sierra Club asserts that amending License No. CSF-1 to provide for potential termination of NFS's authority and responsibility is not necessary at this time, and that the matter could be put off for up to 20 years, whenever the West Valley Demonstration Project ("Project") being carried out by the Department of Energy ("DOE") is completed (S.C. Petition at 4). The Sierra Club does not provide any substantial reason why this matter should be put off, however, or explain why Commission action now was improper. The issuance of Change No. 32 at this time was entirely consistent with what the license for the facility at West Valley has always contemplated. Termination of NFS's responsibilities pursuant to Change No. 32 will occur only if a comprehensive settlement of the pending contractual disputes in the District Court litigation between the Authority and NFS and Getty

becomes effective.^{1/} If comprehensive settlement occurs in accordance with the established framework, then the parties' contractual disputes will be resolved; NFS and Getty will make certain additional payments to aid the Authority in meeting license responsibilities, if any, that remain upon completion of the Project; and the Authority will have reserved certain claims against NFS and Getty related to those responsibilities. In that way, the comprehensive settlement will clear the way for Change No. 32's redefinition for the future of the respective authorities and responsibilities of the co-licensees, NFS and the Authority, as contemplated by Paragraph 4.A. of the license. Thus, there was nothing improper or inappropriate in issuing Change No. 32 now.

Second, the Sierra Club argues that the Commission staff should have held a hearing on the financial and technical qualifications of the Authority to assume responsibility for the long-term care of the facility site upon completion of the DOE Project. (S.C. Petition at 4-5.) Such an inquiry is unnecessary with respect to Change No. 32. The financial and technical qualifications of the Authority, as a state agency, to take responsibility for the long-term care of the facility site after required decommissioning were evaluated and determined in the process of originally issuing the operating license. DOE will decommission the licensed facility to Commission requirements as part of the Project. Thus, upon completion of the Project, the Authority will be assuming no more licensing responsibility, if any, than the license contemplated for the Authority when originally issued (i.e., long-term maintenance, if any, necessary for any remaining high-level storage facilities). Moreover, because termination of NFS's responsibility pursuant to Change No. 32 will occur only upon the effectiveness of the comprehensive settlement with NFS and Getty, the Authority would also have received additional compensation from NFS and Getty to apply toward meeting any such remaining responsibility.

The Sierra Club suggests also that the State evidently lacks adequate financial qualifications because it sought federal government assistance for solidification of the high-level wastes at the facility. (S.C. Petition at 5.) This suggestion is based upon an incorrect assumption. The State sought federal assistance for solidification, not because the State's financial resources are insufficient, but because the federal government bore a high degree of responsibility for solidification of the high-level wastes at West Valley. Thus, the State's call for substantial federal participation in solidification was a matter of equity and justice, and unrelated to the adequacy of the State's financial resources.

^{1/} The Sierra Club Petition asserts (at 2) that NFS applied for Change No. 32 by letter of October 6, 1981. That assertion is wrong. The October 6th NFS letter proposed an entirely different amendment, which, unlike Change No. 32, did not depend on resolution of the pending contractual disputes. The October 6th proposal would thus have prematurely terminated NFS's license responsibilities and prejudiced the Authority's interests.

Third, the Sierra Club speculates that solid wastes may have been buried in the Commission-licensed burial grounds in violation of the license. Besides being speculative and unsupported, this concern has no bearing on Change No. 32. Nothing in Change No. 32 affects any public health or safety requirements with respect to the NPC-licensed burial ground. If comprehensive settlement between NFS and the Authority does not become effective, NFS will remain responsible under the license for any violations related to that burial ground and meeting public health and safety requirements. If comprehensive settlement does become effective, Section 9 of the Settlement Agreement, Stipulation, and Order entered in the District Court will still preserve to the Authority claims against NFS and Getty for violations, if any, related to the Commission-licensed burial ground. In addition, the comprehensive settlement would result in additional payments to the Authority from NFS and Getty, which the Authority could use to help meet the costs of future maintenance of the licensed burial ground that might be required upon completion of the Project. For these reasons, the Sierra Club's concern over the Commission-licensed burial ground is immaterial to Change No. 32.

Fourth, the Sierra Club argues that Change No. 32 constitutes a transfer of license from NFS to the Authority pursuant to 10 CFR §50.80 and also that NFS failed to meet the requirements of 10 CFR §50.82 for an application to surrender a license voluntarily and dismantle a licensed facility. (S.C. Petition at 6-7.) These arguments are not well taken. Change No. 32 does not involve a transfer of License No. CSF-1 from a licensee to a non-licensee, as contemplated by Section 50.82 of the regulations. Rather, it involves the potential redefinition of the respective license authorities and responsibilities of the existing co-licensees, as expressly contemplated by the terms of Paragraph 4.A of the license as originally issued.

Nor is Section 50.82 of the Commission's regulations applicable to Change No. 32. In the context of comprehensive settlement of the pending contractual litigation among the Authority, NFS, and Getty, NFS's request for Change No. 32 did not constitute an application by NFS to independently surrender the license and dismantle the facility within the scope of Section 50.82. Change No. 32 is contingent upon NFS (with its parent, Getty) undertaking, through a comprehensive settlement agreement, responsibilities for participation in meeting the requirements of the Project, including dismantling of the licensed facility (as well as post-Project Commission requirements, if any). Thus, Change No. 32 simply recognizes that the potential comprehensive settlement of the contractual disputes between NFS and the Authority will provide for NFS participation in the decommissioning scheme for the facility entailed in the Project, thus obviating any need for the Commission to determine any independent responsibilities of NFS for decommissioning. (The decommissioning under the Project, of course, must be performed in accordance with Commission requirements, as provided by Pub. L. No. 96-368, thus ensuring the Project will meet the public health and safety and defense and security objectives of Section 50.82 of the regulations.) By the same token, Change No. 32 ensures that the State's contractual rights against NFS with respect to decommissioning the licensed facility will not be prejudiced.


Fifth, the Sierra Club contends that Change No. 32 sets a "dangerous" precedent for future license terminations, by relieving NFS of responsibility for decommissioning the licensed facility. (S.C. Petition at 7.) Change No. 32 will not have such an effect, however. To the contrary, because it is contingent upon comprehensive settlement of the District Court litigation, Change No. 32 will ensure that, pursuant to the terms of that settlement, NFS will contribute toward the decommissioning to be carried out as part of the Project, as well as toward meeting post-Project requirements, if any, that might remain after DOE completes its work. (Moreover, DOE could not, as the Sierra Club suggests (S.C. Petition at 7), on its own "assume decommissioning responsibility" for nuclear reactor licensees in the future. Any such "relief" of licensees would require an act of Congress.)

Finally, the Sierra Club argues that the issuance of Change No. 32 occurred without adequate notice and opportunity for public review. That position, too, is untenable. The Commission made a proper determination, upon thorough analysis, that Change No. 32 does not entail a significant hazards consideration. Thus, no prior notice of the amendment was required and notice of issuance was properly published in the Federal Register pursuant to 10 CFR §§2.106 and 50.91. Moreover, the Commission had issued notice of NFS's earlier (October 6, 1981) proposal to terminate its license authority and responsibility two months before Change No. 32 was issued. The earlier NFS proposal would have terminated NFS's responsibility upon DOE takeover of the facility (i.e., earlier than Change No. 32 would) and without resolution of the pending District Court litigation. Thus, the Sierra Club and the public were on notice of a proposed termination amendment much broader than Change No. 32, but did not raise any objection or comment on that possibility.

The Sierra Club also relies on its former status as a party to the long-dead proceeding on NFS's early 1970's application to modify and expand the facility as warranting prior notice of Change No. 32. That earlier proceeding is irrelevant here. The proceeding on Change No. 32 was separate from and unrelated to the proceeding on the expansion plan amendment. Moreover, NFS had notified the Commission in 1976, and the Sierra Club has long had actual knowledge, that NFS would no longer prosecute its expansion plan; and in 1977 the Commission terminated that proceeding as part of its decision in Mixed Oxide Fuels, CL-77-33, 6 NRC 861, 862 (1977). Whether or not the Sierra Club received a copy of the order terminating that proceeding, the proceeding is still long terminated and still immaterial to Change No. 32.

For the reasons set forth above, the Sierra Club's petition is without merit and the Authority therefore respectfully urges that the petition be denied.

Sincerely,



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First Deputy Counsel

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