

RAS 8359

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

August 18, 2004 (4:59PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED August 18, 2004

In the Matter of)
)
YANKEE ATOMIC ELECTRIC CO.)
)
(Yankee Nuclear Power Station))
_____)

Docket No. 50-29

ORDER

On June 22, 2004, the Nuclear Regulatory Commission (NRC) published in the *Federal Register* a notice of opportunity to request a hearing in connection with the pending application submitted by Yankee Atomic Electric Co. (Licensee) for a license amendment that would document the date of approval of the licensee's license termination plan (LTP) for its Yankee Nuclear Power Station (Yankee) and provide criteria to determine the need for NRC approval of changes to the approved LTP for Yankee. See 69 Fed. Reg. 34696, 34707-08 (June 22, 2004). The notice specified that any request for a hearing must be filed with the Secretary of the Commission within sixty days of the date of the publication of the notice, i.e., by August 23, 2004 (August 22 falling on a Sunday).

Two separate letters, responding to the notice of opportunity for a hearing, were sent to the NRC staff requesting an extension of time in which to file hearing requests. In contravention of the requirements set forth in the *Federal Register* Notice, neither extension request was filed with the Secretary of the Commission. The first, from Citizen's Awareness Network (CAN), was dated July 12, 2004, and sought clarification whether the earlier revisions of the amendment noted in the *Federal Register* were all incorporated in the final revision of the amendment applied for or whether each was a stand alone document. CAN noted that if the

latter alternative was the case it would make any understanding of Yankee's LTP "rather cumbersome and confusing." CAN also sought an extension of the time in which a response was to be filed so that the community and CAN could know results related to the licensee's examination of the extent of tritium contamination as well as other toxics.

The second and undated letter, from the Franklin Regional Council of Governments (FRCOG), was likewise addressed to the NRC staff, which apparently received it on July 22, 2004. It bore a large boldface heading: "Comments on the Yankee Rowe License Termination plan." While FRCOG requested in the body of the two page single-spaced letter that the period for seeking a hearing "be kept open until Yankee can attest that it has completed the preliminary stage of its investigation of the tritium spill and has identified the extent of the resultant plume", nothing in the heading would suggest to a person sorting mail that the letter was related to the Commission's adjudicatory process.

Due to the failures either to identify the CAN and FRCOG letters as requests to extend the deadline for requesting a hearing or to serve the requests directly on the Secretary as specifically directed by the *Federal Register* notice, neither letter reached the Office of the Secretary until very recently.

Notwithstanding CAN's and FRCOG's failures to address their hearing-related requests to the Secretary, a review of their requests reveals no basis for an extension of time other than the impermissible basis that they want to await indefinitely the development of further analyses. As the Commission has emphasized many times, strict adherence to time limits is necessary to avoid undue delay in the commencement and completion of hearings. Hearing petitions are to focus on the information submitted by the licensee in its application to the Commission, or otherwise available at the time the petition is to be filed. 10 C.F.R. 2.309(f)(2).¹ If the analysis

¹ Final Rule, "Changes to the Adjudicatory Process," 69 Fed. Reg. 2182, 2240 (Jan. 14, 2004).

of tritium or other contaminants “raises a legitimate question about the adequacy of the application, the petitioner is free to posit that issue as a new or amended contention, subject to complying with the late-filing standards...”. See *Baltimore Gas & Electric. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232, 243 (1998), *aff’d*, CLI-98-25, 48 NRC 325, 350-51 (1998), *pet. for review denied sub nom. National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000). 48 NRC at 243. See also 10 CFR §2.309(f)(2).²

In light of the foregoing, pursuant to my authority under 10 C.F.R. §2.346(b), the requests for an extension of time are denied.

IT IS SO ORDERED.



For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 18th day of August 2004

² Under the NRC’s Rules of Practice, “contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that --

- (i) The information upon which the amended contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.” 10 CFR §2.309(f)(2).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER DENYING EXTENSION REQUEST have been served upon the following persons by electronic mail this date, followed by deposit in the U.S. mail, first class, or through NRC internal distribution on August 19, 2004.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

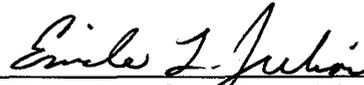
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of August 2004