

September 7, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
 )  
YANKEE ATOMIC ELECTRIC COMPANY ) Docket No. 50-29  
 )  
(Yankee Nuclear Power Station) )  
 )  
License Termination Plan )

OPPOSITION OF NRC STAFF TO  
CITIZENS AWARENESS NETWORK'S MOTION TO DISMISS

INTRODUCTION

On August 20, 2004, the Citizens Awareness Network (CAN) filed a "Motion to Dismiss Proceedings as Improperly Noticed or Clarify and Re-Notice the Proceeding," (Motion to Dismiss) in connection with a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing (Notice of Opportunity for a Hearing) for the Yankee (Rowe) Nuclear Power Station (Yankee-Rowe) published in the *Federal Register* on June 22, 2004. On August 27, 2004, the licensee for Yankee-Rowe, Yankee Atomic Electric Company (Licensee), filed its "Opposition of Yankee Atomic Electric Company to Motion to Dismiss" (Opposition). CAN, on September 1, 2004, filed "CAN's Points in Reply to [the Licensee's] Opposition to CAN's Motion to Dismiss Proceedings" (Points in Reply). The NRC staff (Staff) hereby files its opposition to CAN's Motion to Dismiss.

BACKGROUND

Yankee-Rowe was permanently shut down in 1992 and is currently undergoing dismantlement under 10 C.F.R. § 50.59. See 69 Fed. Reg. 24,695 (May 4, 2004). In accordance with 50.82(a)(9), all power reactor licensees must submit an application for termination of their

license for facilities undergoing dismantlement and decommissioning. The application for termination must be accompanied by or preceded by a license termination plan (LTP). *Id.* The Licensee filed an LTP for Yankee-Rowe on November 24, 2004.<sup>1</sup> On May 4, 2004, the Staff published a "Notice of Receipt and Availability for Comment of License Termination Plan" (Notice of Receipt) for Yankee-Rowe in the *Federal Register*. 69 Fed. Reg. 24,695 (May 4, 2004). The Notice of Receipt explained that if "found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary." *Id.*

On June 22, 2004, the Staff published in the *Federal Register* a Notice of Opportunity for a Hearing for Yankee-Rowe. 69 Fed. Reg. 34,696, 34,707-08 (June 22, 2004). The Notice of Opportunity for a Hearing described the proposed amendment:

The licensee has proposed to amend its license to incorporate a new license condition addressing the license termination plan (LTP). The new license condition would document the date of NRC approval of the LTP and provide criteria to determine the need for NRC approval of changes to the approved LTP.

*Id.* at 34,707.

On August 20, 2004, CAN filed with the Secretary of the Commission and the attorney of record for the Licensee a Motion to Dismiss and a "Request for Hearing, Demonstration of Standing, Discussion of Scope of Proceeding and Contentions" (Request for Hearing).<sup>2</sup> On

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<sup>1</sup> Yankee supplemented its LTP on December 10, 2003; December 16, 2003; January 19, 2004; January 20, 2004; February 2, 2004; February 10, 2004; and March 4, 2004. See 69 Fed. Reg. 24,695 (May 4, 2004).

<sup>2</sup> The Staff replies only to the Motion to Dismiss herein and will file an answer to the Request for Hearing within the period provided by the regulations. Also, it should be noted that in response to the Notice of Opportunity for a Hearing, CAN and the Franklin Regional Council of Governments on July 12, 2004, and July 22, 2004, respectively, filed requests for extensions of time in which to file hearing requests. Both requests were denied by the Commission. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), Docket No. 50-29 (Aug. 18, 2004).

August 27, 2004, the licensee filed its Opposition to CAN's Motion to Dismiss. CAN filed its Points in Reply on September 1, 2004.<sup>3</sup>

#### DISCUSSION

CAN requests that the Commission dismiss the instant proceeding "for lack of proper notice" and "issue a new notice in plain-English that clearly sets forth the terms and conditions for approval of the LTP and whatever else by way of license amendment the licensee is seeking in this case." Motion to Dismiss at 7. In the alternative, CAN seeks an order from the Commission stating that any proceeding held pursuant to the instant Notice of Opportunity for a Hearing "must be held *after* approval of the License Termination Plan." *Id.* at 1. In support of the Motion to Dismiss, CAN argues that the Notice of Opportunity for a Hearing is insufficient because it is unclear from the Notice whether a hearing, if granted, would encompass the Staff's approval of the LTP.

Neither course of action proposed by CAN is necessary because, on its face, the Notice of Opportunity for a Hearing complies with the NRC's statutory and regulatory notice obligations and is sufficient to put any interested party on notice that a hearing, if granted, will encompass the Staff's approval of the LTP. Under Section 189 of the Atomic Energy Act (AEA), the Staff is required to "publish notice of any amendments issued, or proposed to be issued. . . . Such notice shall, with respect to each amendment . . . (i) identify the facility involved; and (ii) provide a brief description of such amendment." 42 U.S.C. § 2239(a)(2)(B). In addition, the NRC's regulations provide that a notice of a proposed action for an amendment to an operating license shall be

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<sup>3</sup> The Staff notes that the Biweekly Notice within which the Notice of Opportunity for a Hearing was published specifically stated that all requests for a hearing and petitions for leave to intervene must be filed with the Office of the Secretary and the Office of the General Counsel. 69 Fed. Reg. 34,697 (June 22, 2004). CAN did not file any of its three pleadings with the Office of the General Counsel. In addition, the Points in Reply appears to be a response to the Licensee's Opposition to CAN's Motion to Dismiss. The moving party has no right to reply unless otherwise granted by the presiding officer, the Secretary of the Commission or the Assistant Secretary. 10 C.F.R. § 2.323(c). CAN did not seek permission to file a reply, nor has permission been granted.

published in the *Federal Register*. 10 C.F.R. § 2.105(a). Such notice “will set forth: (1) [t]he nature of the action proposed; [and] (2) [t]he manner in which a copy of the safety analysis and of the ACRS report, if any, may be obtained or examined.” 10 C.F.R. § 2.105(b). The notice must also specify that “[any] person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested.” 10 C.F.R. § 2.105(d)(2). As discussed below, in the instant proceeding, the Staff has complied with the notice requirements of both the AEA and the NRC’s regulations.

In accordance with the AEA, the Notice of Opportunity for a Hearing identifies the facility involved and briefly describes the requested amendment. 69 Fed. Reg. 34,707. As required by 10 C.F.R. § 2.105, the Notice describes the nature of the action proposed, includes instructions on how additional information on the proposed amendment can be obtained by the public, and explains the process through which an interested party may request a hearing; both in the section of the Notice specifically devoted to Yankee-Rowe and in the introductory section that applies to all notices published in the *Federal Register* on the same date as the Yankee-Rowe Notice of Opportunity for a Hearing. The introductory information explains the deadline and process for filing a request for a hearing. 69 Fed. Reg. 34,696-97. It also explains how further information on the amendment request can be retrieved from the NRC’s public document room (PDR) or electronically through the Agencywide Documents Access and Management System (ADAMS). *Id.* at 34,697. The information in the Notice of Opportunity for a Hearing specific to Yankee-Rowe includes the docket number for the instant proceeding and the dates that the original amendment request and subsequent supplements to the amendment request were submitted. *Id.* at 34,707. Such information is useful in retrieving related documents from the PDR and ADAMS and ensures that any person has access to substantive information related to the action being considered that may be necessary to support its request to participate in any proceeding. The Yankee-Rowe-specific information, as discussed above, also describes the proposed amendment. *Id.* at 34,707-08.

Therefore, the Notice of Opportunity for a Hearing meets the Staff's statutory and regulatory notice obligations.

The information provided in the Notice of Opportunity for a Hearing also gives any interested party enough information, on its face, to determine the scope of the hearing, if one is granted. As discussed above, the description of the amendment request in the Notice of Opportunity for a Hearing explicitly mentions the application for the LTP and the relationship between the LTP and the proposed amendment.<sup>4</sup> *Id.* The Notice of Opportunity for a Hearing also includes enough information for an interested party to retrieve documents related to the proposed amendment from ADAMS or the NRC's PDR. *Id.* Thus, on its face, the Notice of Opportunity for a Hearing will alert any interested party that a hearing, if granted, would encompass the LTP.

In addition, CAN should have been aware of both the earlier Notice of Receipt and the Licensee's original license amendment request, entitled "Submission of Yankee Nuclear Power Station's *License Termination Plan* and Proposed Revision to Possession Only License" (LTP Submission). Letter from B. Wood, Yankee Atomic Electric Co., to NRC, Nov. 24, 2004 (ML033450398) (emphasis added). The Notice of Receipt was published in the *Federal Register* on May 4, 2004. 69 Fed. Reg. 24,695. Publication of information in the *Federal Register* is sufficient to provide notice of the published information to any resident of the United States. See Federal Register Act, 44 U.S.C. § 1508 (2004); *Public Service Co. of New Hampshire*

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<sup>4</sup> In addition, the Notice of Opportunity for a Hearing included a proposed determination that the amendment request involves no significant hazards consideration. *Id.* at 34,708. The discussion of the Staff's proposed determination in the Notice of Opportunity for a Hearing included an excerpt from the Licensee's analysis of the issue of no significant hazards consideration, which stated that the proposed change to the license does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different accident from any previously evaluated; and (3) involve a significant reduction in the margin of safety. *Id.* at 34,708. In support of the third finding, the Licensee's analysis discussed the LTP. *Id.* In making its proposed determination of no significant hazards consideration, the Staff reviewed the Licensee's analysis, including the above reference to the LTP, and found it acceptable. *Id.*

(Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1085 (1982) (Notice in the *Federal Register* is "notice to the world."). The location of the LTP Submission in ADAMS was included in the Notice of Receipt. 69 Fed. Reg. 24,695. Both the LTP Submission and the Notice of Receipt provide information on the scope of the proceeding. These documents, in addition to explaining the process for approving the LTP through a license amendment, include a citation to 10 C.F.R. § 50.82, the license termination rule. The license termination rule clearly states that if, after review, the Staff finds the LTP acceptable, the LTP will be approved by license amendment. 10 C.F.R. § 50.82(a)(10). Therefore, although the Staff believes the Notice of Opportunity for a Hearing is clear on its face, even if it were not, a reading of the referenced and associated documents and regulations would put any interested party on notice that a hearing, if granted, would encompass approval of the LTP for Yankee-Rowe.

CONCLUSION

For the foregoing reasons, the Staff submits that CAN's Motion to Dismiss should be denied.

Respectfully submitted,



Margaret J. Bupp  
Counsel for NRC Staff

Dated in Rockville, Maryland  
this 7<sup>th</sup> day of September, 2004

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Respectfully submitted,



Margaret J. Bupp  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 7<sup>th</sup> day of September 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NOTICE OF APPEARANCE" for Margaret J. Bupp and "OPPOSITION OF NRC STAFF TO CITIZEN AWARENESS NETWORK'S MOTION TO DISMISS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (\*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (\*\*), this 7<sup>th</sup> day of September, 2004.

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