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July 11, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

July 11, 2005 (3:42pm)

In the Matter of:)
)
YANKEE ATOMIC ELECTRIC)
COMPANY)
)
(Yankee Nuclear Power Station))
)
License Termination Plan)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 50-29

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND TERMINATION OF THE PROCEEDING

Pursuant to 10 C.F.R. §2.338(i), the Citizens Awareness Network ("CAN") and Yankee Atomic Electric Company ("Yankee") (collectively, "the Parties"), without objection by the Nuclear Regulatory Commission Staff ("Staff"), hereby move the Atomic Safety and Licensing Board ("Board") for approval of a Settlement Agreement agreed to by the Parties, and accordingly, termination of this proceeding. CAN has authorized counsel for Yankee to submit this Joint Motion on their behalf.

I. Background

A. Status of This Proceeding

This proceeding concerns Yankee's application for Nuclear Regulatory Commission ("NRC") approval of a License Termination Plan ("LTP") for the Yankee Nuclear Power Station ("YNPS"), located at Rowe, Massachusetts. NRC approval of an LTP or LTP amendment is in the form of a license amendment, and thus carries associated public hearing rights. The Citizens Awareness Network("CAN") filed six proposed contentions in connection with Revision 0 of Yankee's LTP. The Licensing Board, in a Memorandum and Order of

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November 22, 2004, admitted three contentions, all raising similar issues regarding the completeness of the radiological characterization at YNPS and the alleged lack of a groundwater remediation plan in the LTP.¹ Yankee appealed that decision pursuant to 10 C.F.R. § 2.311(c). The NRC Staff also appealed. Those appeals gave rise to the Commission decision of June 29, 2005, CLI-05-15. The Commission concluded that "we do not have grounds to vacate the [Licensing] Board's decision" on admissibility of the contentions.² However, the Commission provided clarification on its LTP regulations in 10 C.F.R. § 50.82 and further recognized "that this case may have become somewhat overtaken by events."³ In this regard, the Commission noted in particular Yankee's submittal of Revision 1 of the LTP and the Staff's completion of an Environmental Assessment ("EA").⁴

Following the Commission's decision on June 29, 2005, the Licensing Board on June 30, 2005 issued an Order requesting the Parties to file briefs addressing what genuine issues of material fact remain to be adjudicated in light of the Commissions' determinations in CLI-05-15. Briefs addressing this issue are due no later than July 14, 2005, with responses due no later than July 25, 2005.

¹ "Memorandum and Order (Granting Hearing Request)," LBP-04-27, 60 NRC 539 (2004) ("Memorandum and Order").

² CLI-05-15, slip op. at 17.

³ *Id.* at 18.

⁴ *Id.*

B. The Admitted Contentions

The three CAN contentions admitted by the Licensing Board were proposed as follows:

Contention 2

The LTP should not be approved at this time because Yankee Atomic has failed to provide documentation of the source, cause, and remediation of the current high levels of tritium contamination in the ground water or site, in violation of 10 C.F.R. Part 20, Subpart E, § 50.52, § 50.82. The samples collected in 2003 following the draining and emptying of the fuel pool still show an extremely high concentration of tritium (e.g., >45,000 pCi/L in monitoring well MW-107C). The LTP does not resolve the question as to whether this high level of contamination was previously overlooked or whether it relates to a new or recent release connected with work on the fuel pool in 2003. A supplemental Environmental Report and supplemental EIS should be prepared to explain the source and cause of the contamination, demonstrate that it is contained within the site, and provide a plan for cleaning up the contamination.

Contention 3

The LTP should not be approved at this time because Yankee Atomic has failed to adequately characterize several possible contaminated zones within the ground water under the site in violation of 10 C.F.R. Part 20, Subpart E and the requirements of 10 C.F.R. § 50.82. Without adequate characterization, there can be no assurance that the LTP will adequately safeguard public health by demonstrating compliance with 10 C.F.R. Part 20 standards.

Contention 4

The LTP should not be approved at this time because it does not completely characterize the vertical extent of subsurface soil contamination beneath facility structures in violation of 10 C.F.R. Part 20 and § 50.82. This is significant because without immediate characterization of the likely source area(s) of subsurface soil contamination beneath facility structures Yankee Atomic Electric Company cannot assure adequate protection of human health and that of nearby sensitive receptors under the LTP's site characterization as required by 10 C.F.R. Part 20 and § 50.82.

All three contentions were supported by a declaration by Robert Ross, a hydrogeologist.

In admitting the contentions in LBP-04-27, the Licensing Board clarified their scope. The Licensing Board concluded that Contention 2 “is admissible insofar as it challenges the LTP on the ground that it does not fulfill the requirements of 10 C.F.R. § 50.82.”⁵ With respect to Contentions 3 and 4, the Licensing Board concluded:

Once again, what CAN is asserting is that there has not been the complete site characterization that it believes the regulations require be included in the LTP. We do not understand the Licensee to dispute that the characterization has not been completed. Nor could it. Apart from the emphasis in its response upon the ongoing nature of the characterization process, Part 2 of the LTP, entitled “Site Classification,” contains a mixture of historical and survey data and then identifies continuing activities, including in Section 2.8 “Continuing Characterization Activities.” That being so, the challenge to the now combined third and fourth contentions squarely presents the same issue that was raised by the second contention: namely, whether the LTP had to contain a full site characterization, combined with any plans for remediation that might be required as a result of the characterization.⁶

Accordingly, the Licensing Board combined and admitted Contentions 3 and 4.⁷

II. Overview of Settlement Agreement Terms and Conditions

Under the proposed Settlement Agreement CAN has agreed that the admitted contentions in this proceeding, Contentions 2, 3, and 4, regarding the completeness of the radiological characterization for YNPS and the alleged lack of a groundwater remediation plan in the LTP are moot and as a result, all the Parties agree, the proceeding should be terminated. Yankee has agreed to provide CAN with final hydrogeological reports developed to satisfy Federal and State law. Yankee has also agreed to maintain a CAN representative on its

⁵ Memorandum and Order, LBP-04-27, 60 NRC at 545 (footnote omitted).

⁶ *Id.* at 546.

⁷ *Id.* at 32,671.

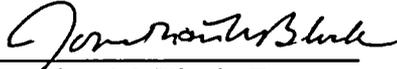
Community Advisory Board. With respect to well-monitoring, Yankee has agreed to perform offsite down gradient monitoring of the groundwater for tritium, and that such monitoring will be conducted to demonstrate that the Environmental Protection Agency's Maximum Contaminants Level standards are met, will resume following the completion of site demolition activities (anticipated to be completed this fall), and will continue for such period as required by Federal and State law.

III. Approval of Settlement Agreement by the Board and Termination of this Proceeding and if Necessary Tolling of Time to File Briefs in Response to Board Order of June 30, 2005

Accordingly, the Parties request that the Board approve the Settlement Agreement attached hereto as Exhibit 1, accept CAN's withdrawal from this proceeding, dismiss Contentions 2, 3, and 4 as moot, and terminate this proceeding. Approval of this Settlement Agreement is in the public interest because the matters required to be adjudicated have been resolved by the Settlement Agreement and Consent Order submitted by the Parties. Further, the Commission favors the "fair and reasonable settlement and resolution" of contested issues in its licensing proceedings. As required by 10 C.F.R. § 2.338(g), a proposed Consent Order is attached as Exhibit 2.

In the alternative, should the Board not have approved this Settlement Agreement by July 14, 2005, the Parties ask that the time to file briefs in response to the Board's directive set forth in the Order of June 30, 2005 be tolled pending the Board's ruling on this motion.

Respectfully submitted,

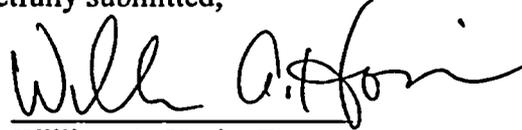


Jonathan M. Block, Esq.
94 Main Street
P.O. Box 566
Putney, VT 05346-0566

COUNSEL FOR CITIZENS
AWARENESS NETWORK

Dated in Putney, Vermont
This 8th day of July 2005

DC:424947.1



William A. Horin, Esq.
David A. Repka, Esq.
Amy C. Roma, Esq.
WINSTON & STRAWN LLP
1700 K Street, NW
Washington, D.C. 20006-3817

COUNSEL FOR YANKEE ATOMIC
ELECTRIC COMPANY

Dated in Washington, District of Columbia
This 11th day of July 2005

SETTLEMENT AGREEMENT

WHEREAS, Citizens Awareness Network ("CAN") has requested and been granted a hearing before the Atomic Safety and Licensing Board ("Board") relating to certain matters concerning Yankee Atomic Electric Company's ("Yankee") application for Nuclear Regulatory Commission ("NRC") approval of a License Termination Plan ("LTP") for the Yankee Nuclear Power Station ("YNPS"), located at Rowe, Massachusetts, Docket No. 50-29 ("NRC Proceeding");

WHEREAS CAN and Yankee have determined that it is in the public interest to seek dismissal of the admitted CAN contentions (Contentions 2, 3, and 4), regarding the completeness of the NRC required radiological characterization for YNPS and the alleged lack of a groundwater remediation plan in the LTP, because these contentions are now moot;

WHEREAS CAN and Yankee have agreed that because all the admitted contentions are now moot, this proceeding should be terminated;

THEREFORE, IT IS STIPULATED AND AGREED by CAN and Yankee that:

1. CAN and Yankee admit that the NRC has jurisdiction over the parties and the subject matter of this Settlement Agreement.
2. CAN agrees that CAN's Contentions 2, 3, and 4, as admitted by the Board, regarding the completeness of the characterization for YNPS and the alleged lack of a groundwater remediation plan in the LTP, are now moot and all matters

otherwise required to be adjudicated have been resolved by this Settlement Agreement and the Consent Order issued by the Board.

3. CAN further agrees that as a result of this agreement the NRC proceeding on the contentions should be terminated.

4. Yankee agrees to provide CAN, CAN's attorney, Jonathan Block, and expert, Robert Ross, all hydrogeological reports developed to satisfy Federal and State requirements. Draft reports will not be provided unless necessary for understanding the final reports. Yankee also agrees to provide reimbursement for any work done for CAN by Mr. Ross, up to, but not exceeding, \$1000.00 in the aggregate in fees related to providing CAN with an expert assessment of the hydrogeological issues in the EA and documents Yankee provides to CAN in performing this agreement. Mr. Ross will invoice Yankee directly for reimbursement of such fees.

5. Yankee agrees that a CAN representative will maintain its seat on the Community Advisory Board ("CAB") as long as it stays in existence.

6. Yankee hereby provides assurance to CAN that Yankee will perform down gradient offsite monitoring of the groundwater for tritium which will be conducted off the YNPS industrial site; specifically employing monitoring wells as necessary to meet Federal and State requirements. The offsite monitoring wells currently being used are described in Attachment A to this Exhibit 1. Attachment B to this Exhibit 1 provides the location of these wells.

7. Yankee hereby provides assurance to CAN that this monitoring will continue for such period as mandated by Federal and State requirements.

8. Yankee hereby provides assurance to CAN that the down gradient offsite monitoring of the groundwater for tritium will be conducted to demonstrate that the Environmental Protection Agency's Maximum Contaminants Level ("EPA MCL") standards are met, as is consistent with the YNPS LTP.

9. Yankee hereby provides assurance to CAN that this down gradient offsite monitoring will resume following completion of site demolition activities, anticipated to be completed in the fall of 2005.

10. All parties hereto agree to exercise due diligence in the performance of their various responsibilities under this Settlement Agreement and to cooperate with each other in carrying out its intent.

11. This Settlement Agreement supersedes all prior representations, negotiations, and understandings of the parties hereto, whether oral or written, and constitutes the entire agreement between the parties with respect to the matter hereof.

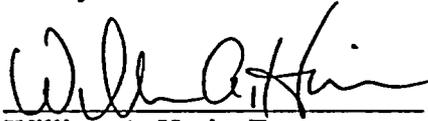
12. This Settlement Agreement shall not be effective, final and binding on the parties hereto unless this Settlement Agreement is approved in its entirety by the Board or the Commission and the proceeding terminated. If the Board or the Commission does not approve this Settlement Agreement in its entirety, then this Settlement Agreement shall not take effect and shall be deemed null and void. The parties agree that if the Board or the Commission does not approve this Settlement Agreement, they will negotiate in good faith to resolve any outstanding issues necessary to obtain its approval by the Board or the Commission.

13. In the event this Settlement Agreement becomes binding upon the parties in accordance with the terms herein, the Settlement Agreement shall be binding upon the parties successors, assigns, representatives, employees, agents, partners, subsidiaries, and affiliates.

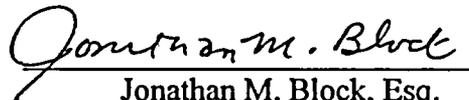
14. Yankee and CAN expressly waive the right to challenge, contest the validity of, or seek judicial review of any order entered as a result of this Settlement Agreement so long as such order is fully consistent with each provision of this Settlement Agreement.

15. When approved by the Board, the order entered as a result of this Settlement Agreement has the same force and effect as an order made after full hearing.

IN WITNESS WHEREOF CAN and Yankee have caused this Settlement Agreement to be executed by their duly authorized representatives on this 8th day of July 2005.



William A. Horin, Esq.
David A. Repka, Esq.
Amy C. Roma, Esq.
Counsel for Yankee Atomic Electric Company



Jonathan M. Block, Esq.
Counsel for Citizens Awareness Network

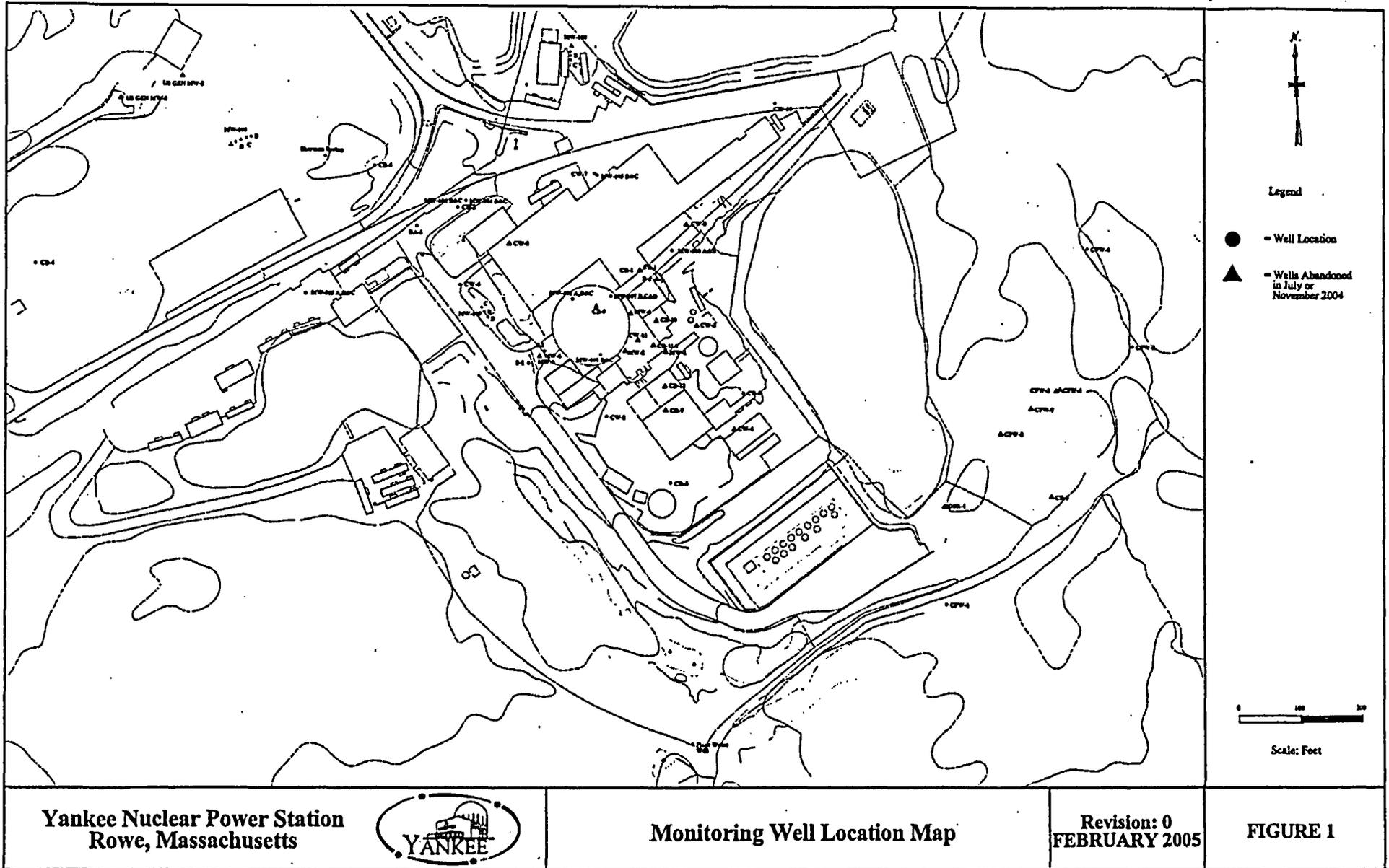
EXHIBIT 1 - ATTACHMENT A

Tritium in Ground Water from Off Site Monitoring Wells
 Yankee Nuclear Power Station
 Rowe, Massachusetts

Well No.	Aquifer Completion	Well Depth (feet)	Tritium (pCi/l)
CB-6	Shallow	25	
	July-03		not detected
	November-03		430
	March-04		279
	May-04		not detected
	August-04		750
	November-04		750
	November-04		760
Sherman Spring (SP-1)	Spring	0	
	August-03		not detected
	November-03		not detected
	March-04		210
	May-04		890
	September-04		not detected
	November-04		323
MW-106A	Shallow	22	
	November-04		620
MW-106B	Bedrock	261	
	November-04		not detected
MW-106C	Intermediate	95	
	November-04		not detected
MW-106D	Intermediate	154	
	November-04		not detected
MW-108A	Shallow	25	
	September-04		not detected
	November-04		not detected
MW-108B	Bedrock	215	
	September-04		not detected
	November-04		not detected
	November-04		not detected
MW-108C	Intermediate	65	
	September-04		not detected
	November-04		not detected

Note: EPA MCL for tritium is 20,000 pCi/l.

EXHIBIT 1 - ATTACHMENT B



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY
(Yankee Nuclear Power Station LTP)

Docket No. 50-29-OLA

ASLBP No. 04-831-01-OLA

ORDER

(Approving Settlement Agreement and Terminating the Proceeding)

On July 11, 2005, Citizens Awareness Network ("CAN") and Yankee Atomic Electric Company ("Yankee") (collectively, "the Parties") moved for an order approving the Settlement Agreement attached as Exhibit 1 to the Joint Motion for Approval of Settlement Agreement also filed July 11, 2005.

Consistent with the Commission's policy to encourage the settlement and resolution of contested issues in NRC licensing proceedings, we find the Settlement Agreement to be in the public interest. Pursuant to our authority under 10 C.F.R. § 2.338(i), we grant the Parties motion to approve the Settlement Agreement, dismiss Contentions 2, 3, and 4, and

terminate this proceeding. The Settlement Agreement hereby has the same force and effect as an order made after a full hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Rockville, Maryland
July __, 2005

DC:424954.1

*Copies of this order were sent this date by Internet electronic mail transmission to the counsel for the parties.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND TERMINATION OF THE PROCEEDING" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 11th day of July, 2005. Additional e-mail service, designated by *, has been made this same day, as shown below.

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

Administrative Judge*
Richard E. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: rfcl@nrc.gov

Office of General Counsel
Attn: Associate General Counsel
for Hearings, Enforcement
and Administration
Marian L. Zabler, Esq.*
Shelly D. Cole, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
E-mail: mlz@nrc.gov; sdcl@nrc.gov
OGCMailCenter@nrc.gov

Administrative Judge*
Alan S. Rosenthal, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rsnthl@comcast.net

Administrative Judge*
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ckelber@att.net

Deborah B. Katz*
P.O. Box 3023
Charlemont, MA 01339-3023
E-mail: deb@nukebusters.org

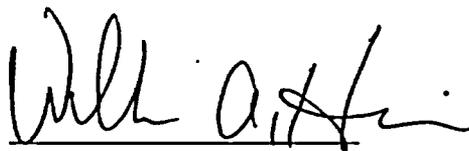
Office of the Secretary*
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop - D-16 C1
Washington, D.C. 20555-0001
(original and two copies)
E-mail: HEARINGDOCKET@nrc.gov

Bill Perlman, Chair*
Franklin Regional Council
of Governments Executive Committee
425 Main Street
Greenfield, MA 01301-3313
E-mail: topcat@graypanther.com

Linda Dunlavy*
Executive Director
Franklin Regional Council
of Governments
425 Main Street
Greenfield, MA 01301-3313
Email: lindad@frcog.org

Gerald Garfield, Esq.*
Day, Berry & Howard
City Place 1
Hartford, CT 06103
Email: ggarfield@dbh.com

Jonathan M. Block, Esq.*
94 Main Street
P.O. Box 566
Putney, VT 05346-0566
E-mail: johb@sover.net



William A. Horin, Esq.
Counsel for Yankee Atomic Electric
Company