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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
YANKEE ATOMIC ELECTRIC COMPANY) Docket No. 50-029-LA
)
(Yankee Nuclear Power Station))

NRC STAFF'S RESPONSE TO CITIZENS AWARENESS
NETWORK'S AMENDED PETITION TO INTERVENE

INTRODUCTION

Pursuant to a "Memorandum and Order" of March 25, 1998, issued by the Atomic Safety and Licensing Board (Board) designated in the above-captioned proceeding, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to "Citizens Awareness Network's Amended Petition to Intervene in License Amendment Proceeding for the Yankee Nuclear Power Station License Termination Plan" (Amended Petition). As discussed below, Citizens Awareness Network (CAN) fails to establish standing to intervene in this proceeding; thus, its request for a hearing and petition for leave to intervene should be denied.

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BACKGROUND

On May 15, 1997, Yankee Atomic Electric Company (YAEC or Licensee) submitted a License Termination Plan (Plan) pursuant to 10 C.F.R. § 50.82(a)(9) for its Yankee Nuclear Power Station (YNPS). On August 14, 1997, pursuant to 10 C.F.R. § 50.82(a)(9)(iii), the Nuclear Regulatory Commission (Commission) published a notice of receipt of the Plan in the Federal Register. 62 Fed. Reg. 43559 (1997). On December 18, 1997, YAEC submitted a request for a license amendment approving the Plan. On January 28, 1998, the Commission published a Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration, and Opportunity for a Hearing (Notice). *Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts.* 63 Fed. Reg. 4308-09, 4328 (1998).

On February 26, 1998, CAN wrote the Chairman of the Commission a letter, requesting a hearing on the proposed amendment.¹ YAEC filed its "Answer to Petition to Intervene and Request for Hearing of Citizens Awareness Network, Inc." on March 11, 1998, and on March 16, 1998, the Staff filed its response. "NRC Staff's Response to Requests for Hearing" (Staff's Response). On March 25, 1998, the Board issued an Order directing that any petitioner

¹ New England Coalition on Nuclear Pollution, Inc. (NECNP), Nuclear Information and Resource Service (NIRS) and Franklin Regional Planning Board (FRPB) also wrote letters requesting a hearing on the proposed amendment. See Letter to the Secretary of the Commission from NECNP, February 24, 1998 (NECNP Letter). Letter to the Office of the Secretary from Nuclear Information and Resource Service, February 27, 1998, (NIRS Letter) and Letter to the Office of the Secretary from Franklin Regional Planning Board, February 27, 1998 (FRPB Letter).

intending to amend its petition should file such amendment within seven days of the receipt of the Order. Order at 1. The Board further provided YAEC and the Staff with five days after receipt of any amendment to file a response. *Id.* at 2. On April 6, 1998, in accordance with an extension of time granted by the Board on March 31, 1998,² CAN filed its Amended Petition requesting that a hearing be granted on the License Termination Plan and petitioning for leave to intervene.

DISCUSSION

A. CAN Fails to Establish Standing to Intervene.

The Commission's regulations provide that a petition to intervene, *inter alia*, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]." 10 C.F.R. § 2.714(a)(2). A petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." *Id.*

In determining whether a petitioner has established the requisite interest, the Commission applies judicial concepts of standing. *Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the Atomic Energy Act (AEA) or the National

² "Motion for Extension of Filing Deadline As to All Parties and Petitioners," granted April 1, 1998 (Motion). The Staff and Licensee were provided with a response time of eight days from receipt of any amendment. Motion; *see also* "Motion for Extension of Filing Deadline(s)," granted March 31, 1998.

Environmental Policy Act (NEPA). *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985). The alleged interest must be concrete and particularized, fairly traceable to the challenged action, and likely to be redressed by a favorable decision. *Georgia Power Company* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). An organization may establish standing either by demonstrating an injury to its organizational interests or through one of its members who has individual standing and has authorized the organization to represent his or her interest. See *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

In its Amended Petition, CAN seeks to establish representational standing on the basis of the declaration of one of its members, Deborah B. Katz, who has authorized CAN to represent her interests. Declaration of Deborah Katz, Member of the Citizens Awareness Network, Inc., Supporting Organization Standing (Katz Declaration) at 1, ¶ 3. Ms. Katz, who lives within six miles of YNPS, states that, if the amendment were granted, she would suffer adverse consequences due to the release of radiation from the site during the accidents described by David Lochbaum, CAN's expert, in Mr. Lochbaum's declaration. See CAN Amended Petition at 12; Katz Declaration ¶ 9. Mr. Lochbaum's concerns relate to heavy load drops in the spent fuel pit, loss of coolant in the spent fuel pit and the accidents that might ensue from such events. Declaration of David A. Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Concerning Technical Issues and Safety Matters Involved in the Approval of the Yankee Nuclear Power Station License Termination Plan (Lochbaum Declaration) at 3-5, ¶ 8. Mr. Lochbaum

correctly notes that the Plan does not describe how irradiated fuel can or will be removed from the spent fuel pit. *Id.*

Ms. Katz also identifies a concern about the long term effects of low level radiation and states that “[t]he notion that the final site condition projected under the License Termination Plan will satisfy the NRC’s criteria for general release is troublesome to me.” Katz Declaration at 2-3, ¶8, 10.

It appears that Ms. Katz’s interests fall within the zone of interests protected by the AEA and NEPA. These interests, however, are not interests that could be affected by the outcome of this proceeding, and, thus, do not constitute injury in fact. The scope of this proceeding is limited to whether the License Termination Plan should be approved. *See Florida Power & Light Co (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989)*. Thus, any interest must be fairly traceable to the approval of the Plan and must be able to be addressed by a favorable decision in this proceeding. Interests that cannot be affected by the approval of the Plan are insufficient to provide standing in the proceeding. As discussed below, none of the interests expressed in the Amended Petition are fairly traceable to the approval of the Plan and cannot be addressed by a favorable decision. Thus, CAN and its member fail to establishing standing.

YAEC’S authorization to move and otherwise manage spent fuel is not affected by the granting or denial of the proposed amendment, as YAEC’S Part 50 license gives it the authority to manage spent fuel and, in fact, gives it the authority under a general license to construct and operate an Independent Spent Fuel Storage Installation (ISFSI). *See 10 C.F.R. § 72.210*. Thus, the granting or denial of the License Termination Plan will not affect YAEC’s authority under

Part 50 to manage spent fuel. Accordingly, Ms. Katz's interest in spent fuel management cannot be redressed by a favorable decision, as the proposed amendment does not concern the management of spent fuel.

Although it is not entirely clear what Ms. Katz means by her statement that the notion that the final site condition projected under the License Termination Plan will satisfy the NRC's criteria for general release troubles her, it appears that her challenge is not to the License Termination Plan but rather to what she perceives to be the Licensee's performance in execution of the plan or perhaps with the NRC's criteria themselves, neither of which would be affected by the outcome of the proceeding. Since the scope of the proceeding is limited to whether or not the Plan should be approved, Ms. Katz has failed to identify an interest that could be affected by the outcome of the proceeding. Thus, Ms. Katz had failed to identify an injury-in-fact.

B. Aspects

As noted above, the Commission's regulations in 10 C.F.R. § 2.714 (a)(2) require a petitioner for intervention to set forth the specific aspect of the proceeding with respect to which he wishes to intervene. CAN devotes fifteen pages of its thirty-two page Amended Petition to "aspects." CAN devotes five pages to the Table of Contents of the License Termination Plan, introducing each topic with "adequacy of." Amended Petition, at 17-21. In other words, CAN questions the adequacy of the License Termination Plan.

Under "B. Descriptive Aspects of the Proceeding on the LTP in which CAN intends to intervene," CAN identifies eight "aspects": "site release;" "soil remediation;" "NRC oversight and abdication of authority;" "security;" "monetary security;" "waste issues;" "investigation of illegal handling of rad waste;" and "waste contamination investigation: groundwater, soil, and

river sediment contamination.” Amended Petition at 22-32. Under “site release,” CAN purports to question YAEC’s calculations; however, it appears that it is not YAEC’s calculations with which CAN disagrees but rather with the criteria themselves. Under “soil remediation,” CAN argues against the assumptions used by YAEC in the License Termination Plan. However, the standards for which CAN argues are different from those incorporated in 10 C.F.R Part 20, subpart E. For example, CAN would have 500,000 24-hour-a-day recreational users of Deerfield River included as the “critical group” whose “average member” receives the total effective dose equivalent (TEDE) under the rule. *See* 10 C.F.R §§ 20.1402 and 20.1003, where “critical group” is defined as “the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.” CAN seems to argue for the use of “worst-case” assumptions. As discussed above, the Commission’s regulations do not require the use of such assumptions. Under “NRC oversight and abdication of authority,” CAN argues that spent fuel is the responsibility of the NRC, not the DOE. However, the point is not when spent fuel becomes the responsibility of the DOE; rather, it is whether the proposed amendment would result in any authorization regarding spent fuel. As discussed above, it would not. “Security” and “monetary security” similarly concern dry cask storage. As discussed above, these matters are beyond the scope of the proceeding. Under “waste issues,” CAN argues for an environmental impact statement without explaining why it believes the action proposed under the amendment request constitutes a major federal action. It is difficult to understand CAN’s point under “illegal handling of rad waste,” which seems to be that YAEC’s dumping of construction fill onsite was “illegal.” The “illegality” of the dumping is not at issue here, where the sole matter in the proceeding is whether the Plan should be approved. Under “waste

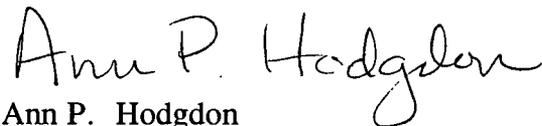
contamination investigation: groundwater, soil, and river sediment contamination,” CAN argues that the possibility of the existence of a tritium plume must be investigated; CAN has not explained how this matter relates to the License Termination Plan.

Some of the broad topics that CAN labels as “aspects” might arguably be appropriate aspects of the proceeding; however, as discussed above, the details are not.

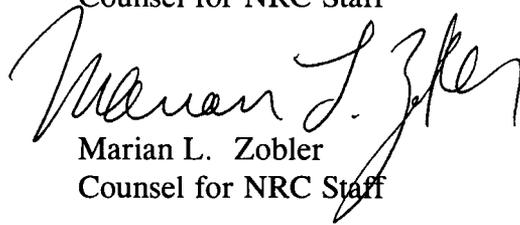
CONCLUSION

CAN has not shown that its member, Ms. Katz, might suffer injury-in-fact if the proposed action is granted as proposed. Further, CAN has not identified an aspect, as required by 10 C.F.R § 2.714 (a) (2). Thus, CAN has failed to show that it has standing through its member, Ms Katz, to intervene in a hearing concerning the proposed action. CAN’s request for a hearing and petition for leave to intervene should be denied.

Respectfully submitted,



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Dated at Rockville, Maryland
this 20th day of April, 1998.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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YANKEE ATOMIC ELECTRIC COMPANY) Docket No. 50-029-LA
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(Yankee Nuclear Power Plant))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO CITIZENS AWARENESS NETWORK'S AMENDED PETITION TO INTERVENE" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 20th day of April, 1998:

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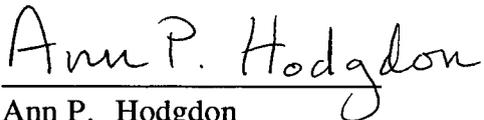
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