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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	Docket No. 50-029-LA
)	ASLBP No. 98-736-01-LA
YANKEE ATOMIC ELECTRIC COMPANY)	
)	
(Yankee Nuclear Power Station))	

CITIZENS AWARENESS NETWORK, INC. REPLY TO THE NUCLEAR
REGULATORY COMMISSION STAFF'S ANSWER TO AMENDED PETITION TO
INTERVENE

Citizens Awareness Network, Inc. (CAN), hereby replies to NRC's Staff's Answer to CAN's amended petition to intervene in the license amendment proceeding on YAEC's proposed License Termination Plan (LTP)

I. Reply to NRC STAFF's Answer.

On April 20, 1998, NRC Staff filed an answer to CAN's amended petition to intervene (henceforth, "Answer"). The Staff claims therein that CAN fails to establish standing to intervene. CAN's concerns are directly affected by the approval of the License Termination Plan (LTP). In its response, the Staff acknowledges that CAN's interests "fall within the zone of interests protected by the AEA and NEPA." However, the NRC staff states that these interests could not be affected by the outcome of the approval of the LTP. The remediation of the YAEC Rowe site and the transfer, casking, and creation of an ISFSI are addressed repeatedly in the LTP. These issues concern

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**U.S. NUCLEAR REGULATORY COMMISSION
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OFFICE OF THE SECRETARY
OF THE COMMISSION**

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members of CAN who live and recreate in the Deerfield River Valley, as supported by the declaration of Deborah. Katz, a representative member of CAN. The effluent released from Rowe for over thirty-one years has affected our community. The MA Department of Health acknowledged in a draft document, released in February, 1997, statistical significance in a number of cancers, and statistically significant incidence of children with Downs syndrome in the Deerfield River Valley. The health of our children, our community, and the environmental degradation of the Deerfield River and its environs, including the YAEC Rowe site are of primary concern to local residents its representing.

The Staff appears to argue that the LTP is a mere formality-a seemingly insignificant rubber stamp process, rather than a serious and significant approval process requiring the approval of the NRC. If plan approval is a formality what does plan "approval" constitute? This approval process in fact triggers certain requirements such as the offering of an opportunity for a hearing, protected under the AEA 10 CFR 50.82, 42 USC 22.39. The remediation of the site and the storage of irradiated fuel and Greater than Class-C (GTCC) radioactive waste on site for an undetermined period of time potentially spanning decades will directly affect our community.. The effects of decommissioning and "the adequacy" of YAEC's LTP are a vital interest to members of our community. If LTP approval, which is part of decommissioning and site remediation approval, does not entail the remediation of the site and "the adequacy" of the proposed clean up of the site, when and where can these vital health and safety issues be addressed? Refusal to address these issues is a violation of the AEA and the NEPA, as

authorized by Congress to protect the public health and safety and First Amendment rights under the Constitution's Bill of Rights.

The declaration by David Lochbaum, CAN's expert, raises health and safety issues that could seriously affect the health and well being of our community and CAN's declarant, Deborah Katz. . In addition, Mr. Lochbaum raises concerns about Yankee Rowe remaining under a Part 50 License rather than transferring to a Part 72. Although the NRC Staff question CAN's standing, it does not address the issue of NRC permitting YAEC to remain in a Part 50 license rather than requiring YAEC to change to a Part 72 license. NRC rules and regulations are not mutable and anomalous. YAEC cannot arbitrarily pick and choose from them at will and then decide how to proceed with decommissioning. The rules and regulations in both 10 CFR Part 50 and Part 72 were created to protect the public and the environment. NRC regulations under 10 CFR Part 72 were however, specifically intended to cover a circumstance which would exist with minimal licensee and NRC oversight when an ISFSI is set up and filled with irradiated fuel. When the NRC set out Part 72 regulations, it intended to comply with both the Nuclear Waste Policy Act and the National Environmental Policy Act by building necessary public and environmental protections into the regulatory scheme. See, e.g., 10CFR 51.23 (c) and compare it with sections 50.82, 72.1, 72.1, 72.212, 72.54, 72.218. That is why YAEC's failure to apply for a Part 72 license is disturbing. Unless an ISFSI is licensed under Part 72, the installation does not meet the requirements of the National Environmental Policy Act, the Nuclear Waste Policy Act, or NRC regulations under the Atomic Energy Act.

The Staff attempts to limit the proceeding by claiming that this is merely a license amendment. This license amendment requires the approval of a license Termination Plan that will affect the decommissioning and remediation of the seriously contaminated YEAC Rowe site and the removal and transfer of irradiated fuel and Greater than Class C (GTCC) waste to an ISFSI. License amendments are themselves a part of duly promulgated NRC regulation designed to assure that the operation and decommissioning of a nuclear power reactor protects the health and safety of the workers and public and the environment.

CAN asks the Panel to take note of the fact that NRC Staff offers no legal argument to deny CAN's standing in this proceeding.

CAN contends that the Staff is attempting to prejudice the Panel on issues going to the merits of this case before the Panel has made a decision on standing. In CAN's view the time to argue the merits of the case is after the Panel recognizes CAN's standing and after the intervenors submit contentions to the Panel. CAN asks that the Panel in this regard to strike all of the Staff's arguments on the merits as untimely and irrelevant to the Panel's decision of the standing issue.

If the Panel does not strike those portions of the Staff's Answer, CAN asks the Panel to take note of the following points.

Under the heading "Discussion": the Staff does not cite any law or regulations which give YAEC the right to exceed the stated 15 mrem/ year dose in its Site Release Plan. In YAEC's LTP, (Revision 0, May 1997), YAEC repeatedly uses a 15 mrem/year dose site release criteria. Yet, in the Staff's response, the agency claims that CAN is

creating “a worst case assumption.” However, the agency itself quotes that the critical group is “defined as the ‘group of individuals reasonably expected to receive the greatest exposure to the residual radioactivity for any applicable set of circumstances.” CAN did not argue for the worst case scenario; rather CAN referenced the standard which was described by the NRC repeatedly at NRC meetings on decommissioning in our community. This standard would, for example, protect a member of the public who operated a family farm and lived on site. If CAN had argued for the “worst-case” assumptions, we would have raised the question of the radiation exposure to a pregnant woman or young child, since pregnant women and children are acknowledged to be more vulnerable to the effects of exposure to low-level radiation. See general, BEIR V. Neither the 25 mrem/yr dose, nor the 100 mrem/yr dose, are mentioned in YAEC’s LTP. The only dose repeatedly referred to throughout the LTP is the 15 mrem/yr.. Such doses as the 25 mrem/yr or 100 mrem/yr were not mentioned at the NRC meeting held on January 13, 1998 in Buckland, or any previous public meetings. See LTP sections 2.1, 2.4.3, 2.4.4, 4.4.3. The LTP and YAEC’s presentation did refer to up to 10 micro-rad/hr. dose at some places on site. This remains unexplained. CAN contends that NRC must require Yankee Rowe’s LTP to adhere to a “no more than 15 mrem/yr” release criteria because it commenced decommissioning prior to the regulatory change in site release criteria.

As referenced in CAN’s Reply to YAEC’s Answer, in June, 1995 at a public meeting at Greenfield Community College between NRC and Yankee Atomic, NRC Representative Brian Grimes stated that the NRC would not permit even a teaspoon of

radiation in excess of the 15 mrem/year dose to remain on site after license termination.

He stated that YAEC would not be allowed to average the radiation remaining on site to meet the 15 mrem/year dose criteria. Despite the NRC Staff's argument in its Answer, the LTP contains no discussion of a "worst case" site release criteria. Rather, it only uses a 15 mrem/year dose criteria, with unexplained doses to some persons as high as 5 to 10 micro-rad/hr.

Addressing "Spent Fuel Management", the NRC Staff's answer states that CAN's spent fuel management concerns are not part of the LTP proceeding. CAN contends that the transfer, movement, and storage of irradiated fuel are highly dangerous and experimental processes. To date, nuclear reactor licensees have confronted systemic problems with cask loading and leaking casks. Moreover, as GTCC waste remains in the fuel pool during the loading and transfer of irradiated fuel to an Independent Spent Fuel Storage Installation (ISFSI), the NRC, pursuant to the Atomic Energy Act and the Nuclear Waste Policy Act, remains the agency Congress directed to regulate and oversee the dismantling the reactor and clean up of the site. Again, the NRC Staff attempts to argue for a limited focus, but the focus they propose is so limited as to render the proceeding meaningless. Compare LTP, section 3.4, 3.1, and the NRC Staff's arguments about what may be considered (and form the basis of standing) in this matter. The LTP states, in pertinent part, that the decommissioning phase involves the, "dismantlement and decontamination of the SFP and its supporting systems, structures, and components." LTP at section 3.1. NRC regulations in Part 50 and Part 72 also plainly require that the

licensee disclose and discuss these issues in the LTP. See 10 CFR 50.82, 72.218, and 51.23 (c).

The Staff claims that the decommissioning and site remediation do not constitute a “major federal action. See Staff’s Answer at p. 7, n. 19. The First Circuit Appellate court in *CAN v NRC* held that decommissioning constitutes a major federal action for NEPA purposes. Therefore, NEPA requires the NRC to adhere to its guidelines when planning for decommissioning and site remediation. In this regard, CAN asks the Panel to take note of the facts: (1) activities that YAEC undertakes during this stage of decommissioning will effect CAN’s members and their community, and (2) the way YAEC’s LTP approval process takes place will set precedents for the decommissioning of other sites. The NRC Staff’s Answer implies that this proceeding is just a formality and does not need to address the adequacy of the LTP. If the adequacy of the LTP is not in question, what is there to approve? Is it the job of the NRC to approve whatever YAEC puts in the LTP whether it is adequate or not? In CAN’s view, this entire process remains a controversial one.

The NRC Staff claim that CAN argues that “spent fuel is the responsibility of the NRC, not the DOE.” CAN’s argument is that as long as GTCC waste and site remediation remain to be accomplished (including the decontamination of the ion exchange pit and irradiated fuel pool), the NRC may not abdicate its responsibility and authority over this process, nor may the NRC delegate this responsibility to YAEC.

The NRC Staff states in its Answer that CAN has not “explained how this matter relates to the LTP”. Since the LTP specifies YAEC’s intentions and actions for the remediation of the YAEC Rowe site, YAEC’s lack of thoroughness and accountability in addressing the extensive tritium contamination is irresponsible. Tritium has been classified as a dangerous enviro-toxin by the Canadian government because of its mutagenic, carcinogenic, and teratogenic properties. If there is a tritium plume which has migrated to Sherman Pond, off site, such a situation affects the well-being of Deerfield River Valley residents.. CAN contends that YAEC’s LTP (as was its decommissioning plan) is inadequate in description to such an extent that the information contained in it renders any meaningful democratic participation in the approval process highly unlikely. It is the NCR’s job to control site remediation and make YAEC accountable for the extensive contamination on and off site. As public servants, this should be the NRC Staff’s position-in addition to it being a position which NRC regulations require

II Conclusion:

For the foregoing reasons of law, regulations, and fact: (1) the NRC Staff’s statements on the merits of this case should be stricken from their Answers: and (2) This Panel should recognize CAN’s standing to go forward and file contentions in this proceeding.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Deborah B Katz". The signature is written in a cursive style with a horizontal line underneath the name.

Deborah B Katz, pro se for CAN.

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

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In the Matter of)
YANKEE ATOMIC ELECTRIC COMPANY)
(Yankee Nuclear Power Station))

Docket No. 50-029)
ASLBP No. 98-736-01-LA)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Certificate of Service

I, Deborah Katz, pro se representative of the Citizens Awareness Network Inc., do hereby certify under penalty of perjury that copies of the within documents have on this day 4/11 of May 1998, been served pursuant to 10 CFR 2.701 upon the following persons:

James P. Gleason, Chairman
Atomic Safety and Licensing Board Panel
U.S.N.R.C.
Washington, DC 20555

Thomas D. Murphy
Atomic Safety and Licensing Board Panel
U.S.N.R.C.
Washington, DC 20555

Dr. Thomas Ellman
704 Davidson Street
Raleigh, North Carolina

Thomas G. Dignan, Jr. And Robert K. Gad III
Ropes & Gray
One International Place
Boston, MA 02110-2624

Jonathan M. Block, Attorney for
NECNP
PO Box 566
Putney, Vermont

Mr. Adam Laipson, Chairman
Franklin Regional Planning Board
425 Main Street
Greenfield, MA 01301

Ann B. Hodgdon, and Martin L. Zobler
Office of the General Counsel
U.S. N.R.C.
Washington, DC 20555

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

Office of the Secretary
Rulemakings and Adjudications Staff
U.S. NRC
Washington, DC 20555

Adjudications File
Atomic Safety and Licensing Board Panel
USNRC
Washington, DC 20555


D.B. Katz, pro se for CAN