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**Jonathan M. Block**  
**ATTORNEY**

AT

'98 MAY 11 P3:10

**LAW**

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May 7, 1998

Mr. E. Julian, Esq., Rulemakings & Adjudications Staff  
Office of the Secretary  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Yankee Atomic Electric Company (Yankee Nuclear Power Station)  
Docket No. 50-029-LA; ASLBP No. 98-736-01-LA

Dear Mr. Julian,

Please find for filing and service the original and two copies of the within "New England Coalition on Nuclear Pollution, Inc.'s Opposition to Yankee Atomic Electric Company's Motions To Strike and for Conditional Leave to Reply, and a Proposed Order Relating to the Motions and Related Issues Before this Panel," and Certificate of Service for same in the above matter. Two exhibits are attached to the Opposition.

Thank you for your assistance in this matter.

Sincerely,



Jonathan M. Block, Attorney for NECNP

cc: Service List

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '98 MAY 11 P3:10

Before the

ATOMIC SAFETY AND LICENSING BOARD

Administrative Law Panel:  
James P. Gleason, Chairman  
Dr. Thomas S. Elleman  
Thomas D. Murphy

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No. 50-029-LA

ASLBP No. 98-736-01-LA

May 7, 1998

NEW ENGLAND COALITION ON NUCLEAR POLLUTION, INC.'S  
OPPOSITION TO YANKEE ATOMIC ELECTRIC COMPANY'S MOTIONS  
TO STRIKE AND FOR CONDITIONAL LEAVE TO REPLY, AND A  
PROPOSED ORDER RELATING TO THE MOTIONS AND RELATED ISSUES  
BEFORE THIS PANEL

NECNP hereby enters its opposition to YAEC's motions to strike and for conditional leave to reply (April 30, May 1, and May 5, 1998), pursuant to 10 CFR §2.730 and the law and facts set forth below and supported by the attached Declaration<sup>1</sup> of Jonathan M. Block, Esq., Attorney for New England Coalition on Nuclear Pollution, Inc., Exhibit 'A' attached hereto, which is hereby incorporated by reference. NECNP, also moves, pursuant to 10 CFR 2.730 and the facts and

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<sup>1</sup> The United States Code provides that declarations under penalty of perjury may be substituted for affidavits in proceedings such as this one. 28 U.S.C. § 1746.

**U.S. NUCLEAR REGULATORY COMMISSION  
RULEMAKINGS & ADJUDICATIONS STAFF  
OFFICE OF THE SECRETARY  
OF THE COMMISSION**

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law set forth below and in Exhibit 'A' attached hereto, that the Panel issue an Order denying YAEC's motions and clarifying the application of the NRC rules of procedure to the adjudication of this matter. A '(Proposed) Order' embodying the requested and suggested relief is attached hereto as Exhibit 'B'.

NECNP makes this motion, as it believes that YAEC has not properly placed any of its motions before the Panel in this matter. YAEC has failed to adhere to the rules governing motion practice in this proceeding. *See* 10 CFR 2.730 (motions shall be accompanied by any affidavits or evidence relied on, and, as appropriate, a proposed form of order). YAEC supplies no declaration, affidavit, or and other evidence in support of any of its allegations. In this way, YAEC relies in its arguments upon facts not properly in evidence before this Panel. YAEC also does not bother to supply any proposed form of order so the Panel may provide the relief YAEC requests.<sup>2</sup> This Panel will readily discern from the facts set forth in the attached Declaration and the remedies sought in the attached Proposed Order, that YAEC has not filed proper motions under the rules. Therefore, this Panel should deny YAEC's motions.

NRC rules governing motion practice in these proceedings, in pertinent part, state:

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<sup>2</sup> Perhaps YAEC is not really seeking relief; perhaps it seeks only to repeatedly dip into the proverbial well?

(a) Presentation and disposition. All motions shall be addressed to the Commission or, when a proceeding is pending before a presiding officer, to the presiding officer. All written motions shall be filed with the Secretary, and served on all parties to the proceeding.

(b) Form and content. Unless made orally on the record during a hearing, or the presiding officer directs otherwise, a motion shall be in writing, shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) Answers to motions. Within ten (10) days after service of a written motion, or such other period as the Secretary or the Assistant Secretary or presiding officer may prescribe, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. However, the staff may file such an answer within fifteen (15) days after service of a written motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary.

10 CFR 2.730 (emphasis added). The regulations also specify margins of no less 1.25" all the way around, with double spaces between type lines (except for inset quotations). 10 CFR 2.708. YAEC has arbitrarily chosen to use only one and one-half (1 1/2) spaces between type lines, and its margins vary. Petitioners (including NECNP)--all far less seasoned in such matters than YAEC's learned counsel of long-standing--have on occasion strayed from the margin, double-space, and other technical pleading requirements. YAEC, as it has stated of others far less experienced, should know better.

YAEC has argued to the Panel in support of its motion that NECNP (and the Franklin Regional Planning Board (FRPB)) failed to follow the rules when they

filed replies to YAEC's second Answer to their respective amended petitions.<sup>3</sup> Again, as set forth in the attached supporting Declaration,<sup>4</sup> the NRC rules, as understood by NECNP, anticipate a request for a hearing/petition to intervene, an answer, and a reply. *See* 10 CFR §§2.705, 2.706, 2.714 (rules governing answer, reply, and petition to intervene). YAEC's attorneys, however, represent to this Panel that it is otherwise, i.e., that the rules permit YAEC (and, one must suppose, the NRC Staff) to have two answers to the request for hearing and amended petition, while petitioners are to have no reply to either. YAEC apparently takes the amended petition for the reply permitted under the NRC rules. *Compare* YAEC's Motion for Leave to Reply and Conditional Reply at 1-2 (same argument applied to NECNP and FRPB) *and* 10 CFR §§2.705, 2.706, 2.714. YAEC's attorneys, while ignoring those aspects of the rules (or attempting to twist the rules about to deny petitioners any replies), manage to attack FRPB for providing allegedly "new evidence" in its May 2, 1998, opposition to YAEC's screeds against FRPB's standing and right to reply. FRPB provided a declaration in support of its position. YAEC's learned counsel provided no support for its position. FRPB provided some legitimately filed, albeit cumulative, evidence

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<sup>3</sup> NECNP refers to this as the *second* Answer (April 13, 1998), so as to distinguish it from YAEC's *first* Answer (March 11, 1998). The NRC Staff filed its first Answer on March 16, 1998, making subsequent second Answers on April 14, 17, 20, 1998. Declaration of Jonathan M. Block at ¶ 2(c), (d), (g), Exhibit 'A' attached hereto.

<sup>4</sup> *Id.* at ¶ 3.

demonstrating that what it had previously stated about its right to appear before this Panel was, in fact, correct, and recently re-affirmed. YAEC provided "evidence" no less cumulative--but, once again, "evidence" in the form of one of its attorney's unsworn/declared "testimony" on the matter.

Unless all commonly accepted notions of properly proffered evidence are to be tossed aside in this proceeding, all of YAEC's motions attempting to strike petitioners' replies and its "conditional" replies must be denied for complete lack of proper factual/evidentiary basis. In order to avoid such situations in the rest of this proceeding, NECNP urges this Panel to take a forthright position specifically disavowing any use of these filings in the determination of the issues in this case. Further, NECNP also urges this Panel to set forth specific ground rules governing motion practice. (Proposed) Order, Exhibit 'A' attached hereto.

NECNP does not know what to make of YAEC's omissions and misrepresentations to the Panel. On the one hand, YAEC's attorneys complain bitterly to this Panel that rules are not being followed, and icily point out alleged deficiencies in the practice of NECNP's counsel and others. On the other hand, as it suits their fancy, YAEC's attorneys do not follow the rules. YAEC's motions and conditional replies do not provide this Panel with an iota of "information" (as what is provided cannot stand as proper evidence) that is not cumulative and could easily have been provided at the outset of this matter, e.g., YAEC's recent

comments inviting this Panel to enforce Massachusetts law against the FRPB, and raising the issue of the FRPB lack of an attorney. Nor are YAEC's filings "necessary" responses to some party's expansion of the existing line of argument. Without some good cause shown to this Panel, YAEC's motions to strike and for reply and conditional replies should all be denied.<sup>5</sup> There is no basis for permitting YAEC's replies; certainly there is no basis for permitting its sur- and sur-sur-replies dressed up as motions.

NECNP's bottom line in this matter is one of reasonableness. NECNP only asks that these proceedings be conducted with the maximum degree of fairness and evenhandedness NRC rules and regulations will allow. All persons involved should exercise best efforts to follow the procedural rules or request permission to deviate from them before doing so.. Additionally, parties represented by attorneys should treat filings of *pro se* petitioners which fail to comply with the rules with some forbearance. Such conduct is no more or less than the common practice of most courts of law and administrative tribunals in this country.

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<sup>5</sup> Without getting into all of YAEC's re-hash in its flurry of filings, their position on the Decommissioning Plan as some new kind of free, perpetual license to do whatever they like is a patent absurdity without any basis in law or fact. Thus, YAEC provides no relevant supporting law or facts. So, too, their attempt to mislead this panel on the plain language meaning of 10 CFR Part 72 which speaks of § 50.82 as within the same "chapter." NECNP only asks that the Panel carefully examine the cases and regulations already before it. NECNP is confident YAEC's legal/factual fantasy will dissolve in the light of reasoned examination of the actual facts and law.

There need be no rush to judgment in this matter. The NRC Staff already approved the LTP under No Significant Hazards Consideration. There is absolutely no reason why the instant proceeding cannot be allowed to unfold at a reasonable pace, upon reasonable terms, and with a degree of mutuality in dealing with the tasks at hand. The purpose of the proceeding, as NECNP understands it, is to have reasoned and rational discourse in the examination of the LTP--not a school-yard brawl. At this point, unless the Panel declares it needs more information on the issue of standing and aspects of the proceeding, surely more than enough has been provided by way of the NRC Staff's and YAEC's two answers to the petitions and amended petitions, and the replies of each petitioner.

NECNP asks this Panel to delimit future motion practice in this matter under 10 CFR 2.730. (Proposed) Order at ¶ 3, Exhibit 'B' attached hereto. NECNP suggests that this Panel direct the parties that none may submit "conditional" replies. *Id.* If a reply be permitted, NECNP urges that this Panel make a finding that the proponent of the motion provided good cause for granting the motion, and such a motion for leave to reply must be granted before any form of reply is filed with the Panel. *Id.* When a party has already filed a motion for leave to reply, NECNP suggests that subsequent motions be scrutinized to ascertain if the party is trying to avoid waiting for a proper ruling on the initial motion. *Id.*

Therefore, NECNP requests that this panel issue a clarifying Order on how the rules will be applied to assure a more rational discourse in this matter, and guarantee that there be fairness and evenhandedness for petitioners not represented by counsel. (Proposed) Order, attached hereto as Exhibit 'B'. NECNP also proposes in the Order, for the foregoing reasons of law and fact, that YAEC's motions be denied. *Id.* While the proposed Order is probably not as inclusive and well-crafted as NECNP would like, it is hoped that, under the circumstances, it will at least provide the Panel with a clear signpost to granting the appropriate form of relief.

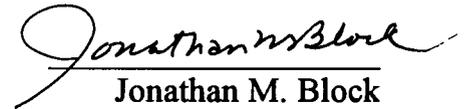
#### CONCLUSION

NECNP has provided this Panel with sufficient grounds in law and fact (above and in its attachment hereto) to deny YAEC's pending motions in this matter. NECNP has also provided this Panel with a (Proposed) Order taking action consistent with the law and facts by supplying ground-rules which will assist this Panel in arriving at a fair and efficient resolution of the matters before it.

WHEREFORE, NECNP respectfully requests that the relief herein prayed

be granted, and the (Proposed) Order, or one containing such additional relief as the Panel deems equitable to fashion, issue as an Order of this Panel forthwith.

Respectfully submitted:



Jonathan M. Block  
Attorney for NECNP  
Main Street  
P.O. Box 566  
Putney, VT 05346-0566  
802-387-2646(voice)  
-2776 (fax)

May 7, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
Before the  
ATOMIC SAFETY AND LICENSING BOARD  
Administrative Law Panel:  
James P. Gleason, Chairman  
Dr. Thomas S. Elleman  
Thomas D. Murphy

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

Docket No. 50-029-LA

ASLBP No. 98-736-01-LA

May 7, 1998

DECLARATION OF JONATHAN M. BLOCK, ESQ., COUNSEL FOR NEW  
ENGLAND COALITION ON NUCLEAR POLLUTION, INC.

I, Jonathan M. Block, state as follows:

1. My name is Jonathan M. Block. I am counsel for New England Coalition on Nuclear Pollution in the above captioned matter.
2. My understanding of the order of filings of relevant documents before the Panel in this matter is as follows: (a) on or prior to February 27, 1998, all the current petitioners in this matter filed requests for a hearing with the United States Nuclear Regulatory Commission (NRC); (b) on or about March 11, 1998, the NRC referred the hearing requests to the Atomic Safety and Licensing Board, which referral resulted in the institution of the current Panel listed in the above heading; (c) on or about March 11, 1998, Yankee Atomic Electric Company filed

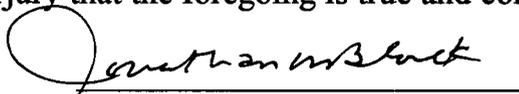
an answer to the requests for a hearing (petitions to intervene); (d) on or about March 16, 1998, the NRC Staff filed an answer to the requests for a hearing (petitions to intervene); (e) on or about March 25, 1998, the Panel in this matter issued an Order directing would-be petitioners to amend their petitions (requests for a hearing) within 7 days, and permitting YAEC and the NRC staff to respond to such amendments (i.e., make answer to the amended petitions); the Order was subsequently modified to enlarge the time for filings amended petitions and responses; (f) on or about April 6, 1998, all persons who had requested a hearing (except Nuclear Information and Resource Service) filed amended petitions to intervene; (g) on or about April 13, 1998, YAEC filed its response to the amended petitions (i.e., second answer); subsequently, on or about April 14, 17, and 20, the NRC Staff filed its second answers to the petitions; (h) on or about April 22, 1998, Citizens Awareness Network, Inc. (CAN) filed its reply to YAEC's second answer and to the NRC Staff's second answer to the Franklin Regional Planning Board (FRPB); on or about April 28, 1998, NECNP and filed replies to YAEC's and the NRC Staff's second answers; (i) on or about April 30, 1998, YAEC filed motions to strike and for a conditional reply to the FRPB's reply; (j) on or about May 1, 1998, after 4 p.m., YAEC filed motions to strike and for a conditional reply to the NECNP's reply; (k) on or about May 2, 1998, FRPB filed its opposition to YAEC's motions; (l) on May 5, 1998, YAEC filed yet another reply, this time to

FRPB's May 2, 1998, filing in opposition to YAEC's motion to strike FRPB's reply; (m) on or about May 7, 1998, NECNP filed its opposition to YAEC's motions, and a proposed Order in this matter.

3. My understanding of the NRC rules governing the filings in this matter is that persons submitting petitions have the right to amend the petitions per 10 CFR § 2.714(a)(3); furthermore, NRC rules provide for a licensee and the NRC staff to make an answer to the petition, and for the petitioners to make a reply. 10 CFR §§ 2.705, 2.706; and, finally, motion practice, per 10 CFR 2.730, unless modified by specific Order of a Panel or the Commission, takes the form of submission of a motion, party submission of opposition or support, with each filing accompanied by supporting affidavits or evidence, and an appropriate proposed form of order. In motion practice, as distinct from the process of Petition/Answer/Reply, replies are solely by permission of the Panel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 7, 1998

  
Jonathan M. Block  
Attorney for NECNP  
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802-387-2646 (voice)  
802-387-2776 (fax)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
Before the  
ATOMIC SAFETY AND LICENSING BOARD  
Administrative Law Panel:  
James P. Gleason, Chairman  
Dr. Thomas S. Elleman  
Thomas D. Murphy

In the matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No. 50-029-LA

ASLBP No. 98-736-01-LA

May 7, 1998

(Proposed) ORDER

WHEREAS Yankee Atomic Electric Company's (YAEC's) motions to strike and for conditional leave to reply have failed to comply with applicable rules of practice governing the conduct of United States Nuclear Regulatory Commission (NRC) proceedings under 10 CFR Part 2; and

WHEREAS YAEC's motions do not advance this Panel's understanding of the facts or law in this case, they neither contain any basis in law or fact for permitting them to be considered by this Panel, nor do they contain any matters which would in any way assist in this Panel's determination of the issues before it; and

WHEREAS the petitioners, NRC Staff, and YAEC have continued to deviate from various procedural and formal rules governing this matter,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

(1) YAEC's motions are dismissed.

(2) The petitioners, NRC Staff, and YAEC are henceforth directed to follow the NRC rules governing use of double-spaced pleadings with 1 1/4" margins all the way around the type comprising the body and footnotes of the motion. Additionally, this Panel requests that no filings utilize type sizes below 12 point in body text or footnotes. This Panel will not strike pleadings for failure to follow this particular rule. It issues this ORDER for the sake of uniformity and ease of reading filings. This rule does not apply to service certificates.

(3) In any subsequent motion practice before this Panel, unless modified by an Order of this panel, the NRC rule governing motion practice at 10 CFR §2.730 shall apply. Under this Panel's interpretation of the rule, parties may make a motion upon good cause shown by declaration or evidence, and upon legal argument based on such declaration or evidence, for leave to reply. No replies of any kind may be filed until a proper motion for leave to reply has been granted. When a party files any additional motion while the panel is still considering the initial motion for leave to reply, such a motion will be scrutinized to see if it offers cumulative evidence to support it. If that be the case, it will be denied. If that is

not the case, a ruling on the subsequent motion will be made after a ruling upon the initial motion. Sur-reply will be available solely on the same basis.

(4) The attorneys in this matter are instructed to act with proper forbearance toward persons not represented by counsel.

IT IS SO ORDERED.

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1998

\_\_\_\_\_  
James P. Gleason, Chairman  
Atomic Safety and Licensing Board Panel

cc: Service list

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '98 MAY 11 P3:10  
Before the  
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

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

CERTIFICATE OF SERVICE

I, Jonathan M. Block, counsel for New England Coalition on Nuclear Pollution, hereby certify that on this 7th day of May, 1998, the documents listed in the cover letter to the Office of the Secretary have been served pursuant to 10 C.F.R. 2.701 upon the following:

James P. Gleason, Chairman  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas D. Murphy  
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U.S. Nuclear Regulatory Commission  
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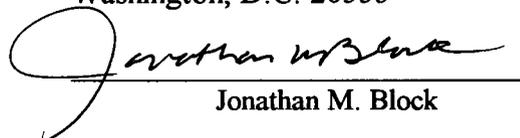
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Jonathan M. Block