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United States of America
Nuclear Regulatory Commission
before the
Atomic Safety and Licensing Board

'98 MAY 11 P3:02

OFFICE OF SECRETARY
RULEMAKINGS 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

MOTION OF
YANKEE ATOMIC ELECTRIC COMPANY
FOR LEAVE TO REPLY TO
NEW PLANNING BOARD EVIDENCE

Under date of May 2, 1998, and the guise of doing something else, the Planning Board seeks to bolster its standing to seek "interested state" status by offering what is not only new evidence but, indeed, an entirely new fact that did not exist when its petition was originally filed. Yankee moves for leave to submit the within short reply:

Insofar as the Planning Board seeks to intervene as a party, it is a firm rule that a party seeking to intervene in an NRC contested proceeding must have standing at the time its petition is submitted. See *Washington Public Power Supply System (WPPSS Nuclear Project No. 1)*, LBP-83-16, 17 N.R.C. 479, 483 (1983).¹ The Planning Board

¹"Nor does the Caldwell affidavit, executed by someone who became a member after the due date for filing a timely petition, satisfy the timeliness requirements for filing without leave of the Board. Petitioner's argument that 10 CFR §§ 2.714(a)(3) and 2.714(b) permit an amendment such as this, to include an after-acquired member upon whom to base standing, has no foundation. Only a person who has filed a petition for leave to intervene may amend his petition (§ 2.714(a)(3)), and only a person 'whose interests may be affected by a proceeding' may file a petition in the first instance (§ 2.714(a)(1)). If CSP relies upon only Mr. Caldwell as having an interest that might be affected by the proceeding and Mr. Caldwell was not a member at the time of the original filing, CSP would have no standing to file in the first place, and therefore would not be covered by the sections permitting an amendment. Furthermore, Petitioner confuses an amendment of its pleading, as permitted by § 2.714(a)(3), with a supplement to its petition in the form of the Caldwell affidavit, that is not authorized under the regulations. An amendment relates to an existing fact that was omitted or erroneously described; it is a supplement to the petition that relates to subsequent facts. Since Mr. Caldwell was not a member at the time the petition was filed, no amendment of the petition can serve to utilize his membership for that time period. Section 2.714(b) upon which Petitioner also relies, and which does permit the filing of a supplement to the petition, relates only to a listing of contentions and does not permit the curing of a jurisdictional defect that existed at the time the original petition was filed."

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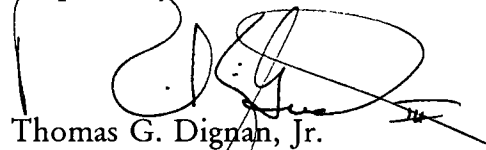
filed its initial pleading, which it has stated was *not* a petition to intervene, on February 26, 1998, and it filed its "amended" pleading on April 6, 1998. The Executive Committee and Council votes to which it now points this Board as supplying its standing were not taken until April 29, 1998. Even if that vote convened "after acquired" standing to intervene, it would come too late.

Insofar as the Planning Board seeks "interested state" status, the fact that the Executive Committee and the Council "endorse" and "support" the Planning Board's attempt to enter this proceeding *as the Planning Board* does not sufficiently address the fact that, in its own name, the Planning Board lacks municipal status. The municipal corporation is the Franklin Regional Council of Governments, of which the executive is the Executive Committee and the legislative branch is the Council. If the FRCOG had timely elected to seek admission into this proceeding, in its own name and bearing its own responsibility, it might have done so.² That the FRCOG might have had municipal standing, however, does not confer upon it the power to lend its standing to a body that, in its own right, does not.

²Indeed, if a hearing is held on the admitted contentions of another intervenor, the FRCOG (but not the Planning Board) might nonetheless seek to participate as an "interested state." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 8 (1980); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-13, 17 NRC 469, 471 (1983). As an "interested state," FRCOG's participation would be conditioned on its shouldering the responsibilities of participation. *E.g., Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), LBP-76-32, 4 NRC 293, 299 (1976). Under Massachusetts law, the FRCOG, as a municipal corporation, may be represented only by an attorney. *Brattman v. Secretary of the Commonwealth*, 421 Mass. 508, 511, 658 N.E.2d 159, 161 (1995); *Varney Enterprises, Inc. v. WMF, Inc.*, 402 Mass. 79, 79, 520 N.E.2d 1312 (1988). *See also* G. L. (1996 ed.) ch. 268A, § 11(c); 10 C.F.R. § 2.713(a).

For the foregoing reasons and those previously set forth, the petition of the Planning Board to intervene should be denied as untimely and for lack of standing, and the request of the Planning Board for "interested state" status (in the event a hearing is otherwise granted) should be denied for lack of municipal status.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas G. Dignan, Jr.", written over a large, faint, circular stamp or mark.

Thomas G. Dignan, Jr.

R. K. Gad III

Ropes & Gray

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Boston, Massachusetts 02110

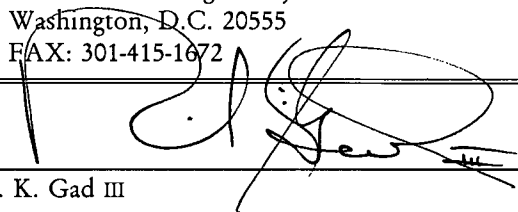
(617) 951-7000

Dated: May 5, 1998.

98 MAY 11 P3:02

CERTIFICATE OF SERVICE	
<p>I, Robert K. Gad III, one of the attorneys for Yankee Atomic Electric Company, do hereby certify that on May 5, 1998, I served the within pleading in this matter by United States Mail (and also where indicated by an asterisk, by facsimile transmission) as follows:</p>	
<p>The Hon. James P. Gleason, Chairman * Administrative Judge Atomic Safety and Licensing Board Panel U.S.N.R.C. Washington, D.C. 20555 FAX: 301-415-5599</p>	<p>The Hon. Thomas D. Murphy * Administrative Judge Atomic Safety and Licensing Board Panel U.S.N.R.C. Washington, D.C. 20555 FAX: 301-415-5599</p>
<p>The Hon. Dr. Thomas S. Elleman * Administrative Judge 704 Davidson Street Raleigh, North Carolina 27609 FAX: 919-782-7975</p>	
<p>Jonathan M. Block, Esquire * Main Street Post Office Box 566 Putney, Vermont 05346 FAX: 802-387-2667 <i>Attorney for NECNP</i></p>	<p>Mr. Adam Laipson, Chairman * Franklin Regional Planning Board 425 Main Street Greenfield, Massachusetts 01301 FAX: 413-774-1195</p>
<p>Ms. Deborah B. Katz * Citizens Awareness Network, Inc. Post Office Box 3023 Charlemont, MA 01339 FAX: 413-339-8768 <i>On Behalf of CAN</i></p>	<p>Anne B. Hodgdon, Esquire * Office of the General Counsel U. S. Nuclear Regulatory Commission Washington, D.C. 20555 FAX: 301-415-3725</p>
<p>Office of Commission Appellate Adjudication U. S. Nuclear Regulatory Commission Washington, D.C. 20555</p>	<p>Office of the Secretary U. S. Nuclear Regulatory Commission Washington, D.C. 20555 FAX: 301-415-1672</p>

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May 5, 1998

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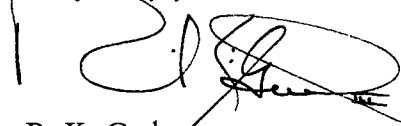
ATTENTION: Docketing and Service Branch

Re: Yankee Atomic Electric Company
(Yankee Nuclear Power Station),
Dkt. No. 50-029-LA

Dear Sir:

Enclosed herewith for filing in the above-entitled matter, please find an original and two copies of "Motion of Yankee Atomic Electric Company for Leave to Reply to New Planning Board Evidence."

Very truly yours,



R. K. Gad III

RKG/ajp:2159083.01
Enclosures

cc: Service List