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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

(Yankee Nuclear Power Station)

Docket No. 50-029-LA

ASLBP No. 98-736-01-LA

RESPONSE OF YANKEE ATOMIC ELECTRIC COMPANY TO AMENDMENTS TO PETITIONS TO INTERVENE

Introduction.

On January 28, 1998, the Commission published a notice of opportunity for hearing under 10 C.F.R. § 2.105 in respect of the approval of the License Termination Plan ("LTP") for Yankee Nuclear Power Station ("YNPS") submitted by Yankee Atomic Electric Company ("Yankee"). 63 Fed. Reg. 4308, 4328. On February 26 and 27, 1998, four petitions to intervene or requests for hearing were filed: by Citizens Awareness Network, Inc. ("CAN"), by New England Coalition on Nuclear Pollution, Inc. ("NECNP"), by Nuclear Information and Resource Service ("NIRS") and by Mr. Adam Laipson, the Chairman of the "Franklin Regional Planning Board" ("Planning Board").

On March 11, 1998, Yankee filed an answer to each of these pleadings, contending (i) that in each case the pleader had failed to demonstrate the standing requisite to a request for a hearing or intervention and (ii) that in each case the pleading had identified one or more "aspects" of the proceeding that were, in fact, beyond the scope of an LTP approval proceeding. On March 16, 1998, the Staff filed an answer to the four pleadings of similar tenor. On March 25, 1998, the Planning Board filed a "Response to Yankee Atomic Electric Company's Answer to Request for Hearing of Franklin Regional Planning Board" ("Planning Board 3/25/98 Filing").

SECY-041 DS03 18956

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On March 9, 1998, this Board was convened by order of the Atomic Safety and Licensing Panel, and on March 25, 1998, this Board issued an Order establishing the deadlines for the submission of amendments to the four petitions and responses thereto.[1] On motions, these deadlines were enlarged. Amendments were served by the Planning Board, CAN, and NECNP on April 6, 1998.[2] Yankee responds to each herein. On the same date, NIRS filed a "notification" of its withdrawal from the proceeding and request to be removed from the service list.

General Principles

General Standing Principles:

The Commission employs judicial concepts of "standing" for purposes of seeking intervention in adjudicatory proceedings. *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976):

> "To have 'standing in court', one must satisfy two tests. First, one must allege some *injury* that has occurred or will probably *result from the action involved.* Under this 'injury in fact test' a mere academic interest in a matter, without any *real impact* on the person asserting it, will not confer standing. One must, in addition, allege an interest 'arguably within the zone of interest' protected by the statute. . . . See, *e.g.*, *Sierra Club v. Morton*, 405 U.S. 727 (1972); *Warth v. Seldin*, 422 U.S. 490 (1975)."

Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976) (emphases added). The test is

> "whether a cognizable interest of the petitioner might be adversely affected if the proceeding has one outcome rather than another."

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[1]The *Planning Board 3/25/98 Filing* apparently crossed in the mail with the Board's Order.

[2]The Planning Board's filing was dated April 6, 1998, but it was not served (by fax) until nearly 8:00 pm and was not received until the next morning. CAN, NIRS and NECNP elected to serve by mail, and their filings were not received until Wednesday, April 8, 1998.

The Board will note that, while Mr. Block originally filed a petition to intervene as attorney for CAN and NECNP filed a petition by its president, Mr. Block has now filed an amendment and appearance as attorney for NECNP and CAN is proceeding represented by its president. Our certificate of service has been amended accordingly.

Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

> "One focus of the 'injury in fact' test is the concept that a claim will not normally be entertained if the 'asserted harm is "a generalized grievance" shared in substantially equal measure by all or a large class of citizens' . . . . Thus, even if there is a generalized asserted harm, the Petitioners must still show *a distinct and palpable harm to them.*"

Transnuclear Inc., CLI-77-24, 6 NRC 525, 531 (1977) (emphasis added). The test today is the same as it was before:

> "In order to establish standing to intervene in a proceeding, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision. *See, e.g., Cleveland Electric illuminating Co.* (Perry Nuclear Power Plant), CLI-93-21, 38 NRC 87, 92 (1993). *See generally Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136 (1992); *Dellums v. NRC,* 863 F.2d 968, 971 (D.C. Cir. 1988)."

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

Standing must be based on some prospect of impact that is different from the impact that might accrue to the public at large. *Transnuclear Inc., supra,* 6 NRC at 531. Standing is not some mere *arcania* of the law; it is, rather, the way in which the legal system safeguards "the autonomy of those persons likely to be most directly affected by a judicial order." Among other things, the standing requirements assure that adjudicatory bodies do not reorder people's lives according to a third party's view of what is "best"—thereby perhaps contradicting what the party affected by their decision desires. *Valley Forge Christian College v. American United*, 454 U.S. 464, 473 (1982).

Standing is not something disposed of on the face of the pleadings; it is not sufficient for a prospective intervenor to *allege* injury. "Standing to intervene, unlike the factual merits of contentions, may appropriately be the subject of an evidentiary inquiry before intervention is granted." *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 277 (1978).

Proximity Standing:

In the case of construction permits and operating licenses for power reactors, proximity of residence or workplace has been allowed to stand surrogate for injury-in-fact. *E.g., Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190, *reconsideration denied*, ALAB-110, 6 AEC 247, *affirmed*, CLI-73-12, 6 AEC 241 (1973). In the case of a license amendment, however, the fundamental premise of proximity standing—namely, that *all* potential off-site impacts of operation flow from the licensing action before the Commission—is not true. Recognition of this distinction has led Licensing Boards to require more than mere proximity in order to achieve standing in a license amendment proceeding. *Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97 (1985), *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985). See also *Philadelphia Electric Co.* (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 293, 275-75 (1986) (where, in the case of a proposed operating license amendment the potential off site consequences of which is limited to "leakage through the small orifices into the secondary containment," Board would have found petitioner's residence 20 miles from the site to be "too far for 'any injury in fact' to him"). In an operating license amendment proceeding, a prospective intervenor must demonstrate a particularized non-speculative harm that derives from the very activities that will occur only if the amendment is granted.

Standing of Organizations.

An organization may attempt to demonstrate either "organizational standing" or "representative standing." The former is simply the general test as applied to the organization: does the organization own any property at risk? An organization's "interest in the problem" without a showing that a member would be adversely affected is not enough. *Allied-General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976). "Representative" standing recognizes that an incorporated advocacy group may have standing to intervene to represent, not its own interests, but the interests of members who have an interest which will be affected. *Florida Power & Light Co.* (St. Lucie Nuclear Plant, Units 1 and 2), CLI-89-21, 30 NRC

325, 329 (1989); *Public Service Company of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328 (1976). To achieve "representative" standing, the petitioner must identify by name and address at least one member who wishes to be represented by the organization and who has the necessary interest. *Virginia Electric & Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979); *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979).

As Applied in this LTP Approval Proceeding:

Two attributes of this proceeding directly affect the standing question. First, it is a license *amendment* proceeding. 10 C.F.R. § 50.82(a)(10). Therefore, any potential impact employed as an anchor for standing must derive from the scope of the amendment, not from activities that either are already licensed or for which no application is yet pending before this Board. *Pebble Springs*, *supra*, 4 NRC at 614 (alleged injury must "result from the action involved"). In the prior YNPS proceeding,[3] approval of the Decommissioning Plan authorized all of the dismantlement and decontamination activities for which any license authority was required, which implicated the small but nonetheless finite off-site impacts of decommissioning as a whole and which, under the then-prevailing regulation, Yankee was not permitted to do absent a license amendment approving the Plan. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 70 (1996).[4] Here, on the other hand, decontamination and

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[3]*Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1 (1996) (guidance on admissibility of contentions); *after remand*, LBP-96-2, 43 NRC 61 (1996) (all contentions excluded), *aff'd but remanded for consideration of late-filed contention*, CLI-96-5, 43 NRC 53 (1996); *after remand*, LBP-96-14, 44 NRC 3 (1996) (single contention admitted), and LBP-96-18, 44 NRC 86 (1996) (sole admitted contention dismissed on summary disposition), *appellate review denied*, CLI-96-9, 44 NRC 112 (1996).

[4]"Given that some, even if minor, public exposures can be anticipated from the decommissioning process, *see* Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Comm'n, Final Generic Environmental Impact Statement on decommissioning of nuclear facilities, NUREG-0586 (Aug. 1988) at 4-7 to -8 [hereinafter FGEIS]; EA at 22-24, we do not find ourselves 'in a position at this threshold stage to rule out as a matter of certainty the existence of a reasonable possibility" that decommissioning might have an adverse impact to those, such as petitioners' members, who live or recreate in such close proximity to the facility, or use local waste transportation routes. *Virginia Electric and Power Co.* (North

dismantlement have already been approved (and, for the most part, already been accomplished), and the only issue for Commission approval involves the sufficiency of the plan for final site survey and release. No approval is required for site remediation, only for license surrender.

Thus (and second), the application in question here, approval of the LTP, involves *no* off-site impacts that are not already licensed. There is nothing in the LTP that envisions any off-site release of radioactive materials beyond that for which Yankee already possesses a license, and the application for LTP approval, when granted, will confer on Yankee no license for off-site releases beyond those for which Yankee is already licensed. The combination of these factors leaves the hoped-for anchor with no holding ground and the petitioners without standing.

Planning Board

Timeliness.

In its March 25, 1998 filing, the Planning Board declared that it had *not* previously petitioned for leave to intervene.[5] However, in its most recent "amendment," the Planning Board has apparently now changed its mind. "Amendment to Franklin Regional Planning Board Request for Hearing" ("Planning Board 4/6/98 Filing") at 6: "The FRPB seeks formally to intervene in the above entitled case." Given that its prior filings were not—indeed, "clearly" not—a petition for leave to intervene, its April 6th filing is necessarily the Planning Board's *first* petition to intervene, and that first petition to intervene comes too late. The Planning Board makes no effort to demonstrate a case for late-filed intervention under 10 C.F.R. § 2.714(a)(1)—nor upon

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Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979)."

[5] *Planning Board 3/25 Filing* at 2:

> "A review of our filing with the Nuclear Regulatory Commission ('NRC') will *clearly demonstrate* that the FRPB *never requested* intervenor status in the proceeding."

(Emphases added.) In the same pleading, the Planning Board declared (i) that it did not intend to file contentions, (ii) that it nonetheless did request a hearing, and (iii) that it sought status as an "interested state" under 10 C.F.R. § 2.715(c).

the face of things is there any conceivable basis on which a "good cause" finding might be made.[6] Therefore, insofar as the Planning Board now seeks intervention as a party, its request must be denied as untimely.[7]

While it is true that this Board granted leave for "amendments" to petitions, in this context "amendment" must mean leave to improve what was at least denominated and intended at the time to be a petition to intervene (however deficient the original pleading may have been in making the showings required for intervention). It stretches both the word and the concept of "amendment" beyond limits that § 2.714(a)(1) will tolerate to interpret this Board's Order of March 25th to include amendments of petitions explicitly and "clearly" *not* petitions to intervene into such petitions. By its most recent submission, the Planning Board has not *amended* a petition to intervene but rather has *created* a petition to intervene for the first time.

Standing as a Party.

The only showing essayed on this point by the Planning Board appears to be the brief discussion under the heading "Constitutional Standing." *Planning Board 4/6/98 Filing* at 5-6. In this section the Planning Board makes no claim of injury in fact to the Board itself, or to any of its property. Rather, the Planning Board claims[8] only that

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[6]"Good cause" for not having made a timely showing is the most important of the late-filed criteria under § 2.714(a)(1), *e.g.*, *Virginia Electric & Power Co.* (North Anna Station, Units 1 and 2), ALAB-289, 2 NRC 395, 398 (1975), and the burden is on the petitioner to satisfy the standards for late intervention. *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2&3), ALAB-615, 12 NRC 350, 352 (1980). Almost by definition, a conscious decision not to intervene, later reconsidered, can never amount to good cause.

[7]*See Duke Power Company* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983), *rev'g in part* ALAB-687, 16 NRC 460 (1982) (the five factors for untimely filings *must* be satisfied or the filing excluded).

[8]In apparently ill-informed manner. For instance, the claim is made that "[a]ny mishap, failure or malfunction could result with [sic] injury to any or all of the County's 70,000 inhabitants and its thousands of yearly visitors," without any explanation of how this might be so. However, Yankee already has an approved Decommissioning Plan for YNPS, which authorizes all of the decontamination and dismantlement of the facility—and which has largely been completed, in any event. *See License Termination Plan*, § 3.1 and Table 3-1.

The Planning Board likewise posits "standing" on the assertion that "operation and dismantling could result in an injury in fact" to someone, thus further demonstrating that what the Planning Board

other people might suffer injury-in-fact and it arrogates to itself the right to represent them. The Planning Board has not, however, submitted any of the documentation usually required of those seeking "representational standing,"[9] and, as demonstrated below, it is not a "government" with respect to the people upon whose claimed standing it would piggyback.

Discretionary Intervention.

In the alternative, the Planning Board requests "discretionary standing," referring apparently to *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). Prescinding from the fact that a request for "discretionary standing" must be timely, which the Planning Board's request is not, the Planning Board makes entirely inadequate showings on the findings on which any such exercise of discretion must be based.

THAT THE PETITIONER WOULD MAKE A VALUABLE CONTRIBUTION TOWARDS DEVELOPING A SOUND RECORD. The entire showing proffered on this critical factor[10] is that the Planning Board "intends" to develop a sound record and that, if its request for funding is granted, it intends to hire counsel and expert witnesses. *Planning Board 4/6/97 Filing* at 4. Such generalized statements of intent are not sufficient. *E.g.*, *Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177-78 (1983). Rather, if reliance is placed upon this factor and expertise is the basis for the assertion, a bill of particulars will be necessary. *Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978).

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is concerned about here are decommissioning activities that have already been approved (and performed) and as to which the time for "concerns" is long past.

[9]*See Virginia Electric & Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979).

[10]*Virginia Electric & Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976); *Public Service Company of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145, *reconsideration denied*, ALAB-402, 5 NRC 1182 (1977); *TVA* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977); *Nuclear Engineering Co., Inc.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743-44 (1978).

> "A late petitioner can establish that its participation may reasonably be expected to assist in developing a sound record by '(1) identify[ing] specifically at least one witness it intends to present; and (2) provid[ing] sufficient detail respecting that witness' proposed testimony to permit the Board to reach a reasoned conclusion on the likely worth of that testimony on one or more of [its] contention.'"

Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-767, 19 NRC 984, 985 (1984), quoting ALAB-747, 18 NRC at 1181. The Planning Board has not carried its burden on this factor.

THE EXISTENCE OF A PROPERTY OR FINANCIAL INTEREST OF THE PETITIONER THAT WOULD BE GREATLY AFFECTED. The Planning Board does not claim to own any property or to have any financial interest in the LTP. Rather, it bases its "interest" claim solely on the notion that, as a government, it is entitled to assume the mantle of whatever standing the public at large of the former Franklin County might have had, as the public's representative. However, as is developed more fully below (*infra* at 10), the Planning Board is not a government, nor does it have the power under Massachusetts law to represent a government in legal proceedings or to represent the citizens *parens patriæ* or otherwise in legal proceedings. By statute, the Planning Board's sole official function is advisory to the Franklin Council of Governments. St. 1996, ch. 151, § 567(r), quoted *infra*. The Council of Governments itself has not petitioned to intervene in this proceeding. *See* note 15, *infra*.

Given the utter failure of the Planning Board's filing to address those factors that might have favored discretionary intervention, there is no need to dwell upon the factors opposing any such grant.

Request for a Hearing.

Since the Planning Board has previously declared that it is not seeking to intervene as a party, and it is now too late to do so, and since it has tendered no contentions, the Planning Board filings cannot determine whether there will be a hearing. A hearing, rather, is held if (and only if) at least one petitioner for intervention is ruled to have standing and to have submitted at least one admissible contention. *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 425-27 (1984):

> "The filing and acceptance of the Pennsylvania petition pursuant to 10 CFR 2.715(c) only permits it to participate in the adjudicatory hearing if one is held. The Atomic Energy Act of 1954, as amended, does not prescribe a mandatory hearing for deciding an operating license application. Section 189a. A need for a hearing has not been established in this proceeding. No petitioner has submitted a litigable contention as required by 10 CFR 2.714, to necessitate the holding of a hearing. The filing and acceptance of the Pennsylvania petition to participate under the provision of 2.715(c) does not trigger a hearing. *See Northern States Power Co.* (Tyrone Energy Park Unit 1) CLI-80-36, 12 NRC 523, 527 (1980), *Niagara Mohawk Power Corporation, et al.* (Nine Mile Point Nuclear Station Unit 2), LBP-83-45, 18 NRC 213, 216 (1983). The State has not sought a hearing in this matter. It opted to have the licensing Board explore proposed contentions of a petitioner, which after review were found not to warrant consideration because they failed to meet Commission standards. Pennsylvania could have sought full party status under 10 CFR 2.714, for filing its own contentions, which it chose not to do. *See Project Management Corporation* (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392 (1976)."

A request for a hearing by a party that elects not to petition to intervene and propose contentions is meaningless.

Standing to Request "Interested State" Status.

While the Planning Board has requested that it be accorded "interested state" status under 10 C.F.R. § 2.715(c)[11]—*if* a hearing is otherwise to be had—the Planning Board, which has no governmental functions, is not a "state" within the meaning of 10 C.F.R. § 2.715(c) and does not qualify for § 2.715(c) status.

In Massachusetts, the term "planning board" is most commonly used to refer to the board of a city or town that is empowered to approve "subdivision" plans of land—plans that divide existing parcels into parcels one or more of which lacks the required frontage on an existing public way. G. L. (1996 ed.) ch. 41, §§ 81K *et seq.* In addition, the Massachusetts Zoning Act (G. L. (1996 ed.) ch. 40A) authorizes cities and towns to designate the local planning board (in lieu of the Zoning Board of Appeals) as the body that will hear all or a specified class of applications for zoning "special permits." Even

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[11] *Planning Board 4/6/98 Filing* at 8 *ff.* ("Additional Standing").

were the Planning Board a planning board of that type, it would not by virtue of limited authority to rule on applications for particular types of land-use permits be authorized to represent the city or town generally (or in legal proceedings not related to its official duties). Here, however, the Planning Board makes no claim to be (and, in fact, is not) a planning board within the meaning of the Subdivision Control Law or the Zoning Act. It is, rather, claimed to be only "a broad-based coalition comprised of a representative from the Selectboard and Planning Board of each of the twenty-six (26) towns of Franklin County, eighteen (18) at large members living within the County, and the members of the Franklin Regional Council of Governments Executive [sic] Committee."[12]

By the statute that created it (St. 1996, ch. 151, § 567, which abolished Franklin County as a county government effective July 1, 1997), the Planning Board has only advisory functions and can only make "recommendations" to the Franklin Council of Governments. After abolishing the county government, St. 1996, ch. 151 created the "Franklin Council of Governments," consisting of representatives of the cities and towns formerly within Franklin County. The statute transferred the courthouses, jails and registries of deeds and related property of the former county to the Commonwealth, and the Commonwealth assumed the duties and powers of the former county, and the debts of the former county relating to the same. The Sheriff and the Register of Deeds of the former county were made employees of the Commonwealth. The "Franklin Council of Governments Committee" was established as the "chief executive officer of the Council of Governments." The statute then provides:

> "The Franklin Council of Governments Committee shall have all the powers and duties of county commissioners under chapters eighty-one to eighty-eight, inclusive, of the General Laws.[13] The Franklin Council of Governments shall retain the powers and duties of counties under

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[12]Letter of Adam Laipson, dated February 26, 1998, at 2. According to the statute, the correct name of the committee would appear to be the "Franklin Council of Governments Committee." St. 1996, ch. 151, § 567(h).

[13]G. L. (1996 ed.) chs. 81-88 relate to the laying out of highways, bridges, sewers, canals and the like.

chapter one hundred and forty of the General Laws with respect to dogs and other animals.

"Any and all regional planning activities or functions established for Franklin county pursuant to the provisions of chapter four hundred and twenty-five of the acts of nineteen hundred and sixty-three, and functions authorized for regional planning commissions by sections five, five A, five B, and fourteen of chapter forty B of the General Laws, shall be the responsibility of the Franklin Council of Governments Committee.

"The Council of Governments Committee as the executive body and the Regional Advisory Board as the legislative body shall have and may exercise any and all authority for regional planning as may be authorized by state law and shall be responsible for the establishment of policies to guide all regional planning and development activities of the Franklin Council of Governments.

"The Franklin Regional Planning Board shall *advise* the Council of Governments Committee and Regional Advisory Board on all issues *related to planning* and shall make *recommendations* as appropriate."

St. 1996, ch. 151, § 567(r) (emphases added). No other function, and no governmental powers, are conferred upon the Planning Board elsewhere in the statute.[14] Lacking any governmental function or powers, or the authority to speak for any government, the Planning Board is not a "state" for purposes of § 2.715(c). *See Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 146 (1987).

The Franklin Council of Governments itself has not petitioned to intervene, nor is there anything in the record showing an authorization for the Planning Board to act on its behalf. To the contrary, this Board has been advised, we are informed, that the Planning Board is *not* acting on behalf of the Council of Governments.[15]

The Planning Board offers a number of arguments concerning its standing to seek § 2.715 status, but none of them are material given what the Planning Board does *not*

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[14]The entirety of § 567 is set forth in Appendix 1 to this filing (with all amendments). The phrase "planning board" has been set off in bold face wherever it appears (which is only five times).

[15]Yankee has received a copy of a letter dated March 26, 1998, from Brad C. Councilman, Chair, Franklin Regional Council of Governments to the Chairman of this Board.

controvert, namely that it is the Franklin Council of Governments Committee (or "Executive Committee," as the Planning Board refers to it) that is the "chief executive officer of the Council of Governments" (St. 1996, ch. 151, § 567(h), quoted *infra* at 32) and that the Planning Board is merely an advisory board (*id.* § 567(r), 4th ¶, quoted *infra* at 35). The Planning Board asserts that:

> "The [Planning Board] is one of three bodies that comprises [sic] the Franklin Regional Council of Governments formed on July 1, 1997 to replace Franklin County's previous form of county government. The Executive Committee and the Council (the representative body) are the two other branches. All three bodies 'shall jointly have and may exercise any and all authority for regional planning as may be authorized by current and future federal and state laws.'"

Planning Board 4/6/98 Filing at 2.[16] This is repeated later, when the Planning Board asserts that:

> "[The Planning Board holds] 'joint' authority along with the Franklin Regional [sic] Council of Governments (FRCOG) - the replacement for the former Franklin County Commission (see S. 5 & 7 of Chapter 151 of the Acts of 1996) . . . ."

Id. at 8. Sections 5 and 7 of St. 1996, ch. 151,[17] say nothing at all about the Planning Board. Rather, the Planning Board's citation is most likely a typographical error for "567" and, as demonstrated by the quotation in text (and by the full text of § 567 in the Appendix hereto), the Planning Board's claim of what the statute says is too extravagant. Moreover, this assertion is belied by the Planning Board's quotation, which purports to give the Planning Board "'joint' authority" only as to planning, not

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[16]In the copy of its filing served on Yankee, there is a footnote call appended to this quote but no body of the footnote, and so the source is not revealed. Note that the statute (St. 1996, ch. 151, § 567(r)) places "any and all authority for regional planning as may be authorized by state law" in the Council of Governments Committee and Regional Advisory Board, not the Planning Board. Likewise, the statute places responsibility for "the establishment of policies to guide all regional planning and development activities of the Franklin Council of Governments" upon the Council of Governments Committee and Regional Advisory Board, not the Planning Board. Putting aside this discrepancy, however, note that the language quoted by the Planning Board extends only to "any and all authority for regional planning," not to county government generally.

[17]Which are set forth in their entirety in Appendix 2 to this filing.

government. But even if, as the Planning Board asserted, it were an equal member of a collegial entity, it is hornbook law that the collegium may act and exercise its powers only as a collegium, not as individual members. *E.g.*, *Shrewsbury Edgemere Associates Limited Partnership v. Board of Appeals of Shrewsbury*, 409 Mass. 317, 321 (1991); *Kenney v. McDonough*, 315 Mass. 689, 693-94 (1944) ("The informal steps taken subsequently by some of its members were not the doings of that body, which cannot act separately as individuals but can proceed only by vote at a valid meeting"); *City of Lawrence v. Stratton*, 312 Mass. 517, 521 (1942).[18] The fact that the Committee (or Executive Committee) has not joined the Planning Board—apparently after invitation—is fatal to the Planning Board's standing to act for it as the governmental body of the county.[19]

Finally, the Planning Board relies on the "affidavit" of one "Daniel B. Hammock" attached to its April 6th filing. This document is not, in fact, an affidavit, since it is not

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[18]"The previous vote could not be amended in this respect by the separate individual consent of those who had passed the previous vote. The council under § 32, and in accordance with the settled principles of law, was required to act as a collective body in determining the terms of the conveyance and in authorizing the mayor to execute and deliver the deed."

[19]This same point disposes of the Planning Board's assertion that it "enjoys the right to elect its own representative to the FRCOG Executive Committee (see S. 7.2.6 of the FRCOG Charter)." *Planning Board 4/6/98 Filing* at 9. Putting aside the difference between the Planning Board's assertion as to the composition of the Committee and the statute, the right to appoint a *member* of the Committee does not authorize one to act *as* or *for* the Committee.

Likewise, it is a bit of an overstatement that the Planning Board, "along with the Franklin Regional Council of Governments (FRCOG) [is] a replacement of the former Franklin County Commission," *Planning Board 3/25/98 Filing* at 3-4, since, once again, under Massachusetts law the Planning Board is merely an advisory board; but even taking this statement at face value, the Planning Board may not act as the "replacement for the former Franklin County Commission" unless it does act *"along with"* the Council, which it has not done here.

The Planning Board also, no doubt unintentionally, creates the impression that it is a public health agency:

> "The Planning Board cannot carry out its government mandate to protect the 'public health, safety and welfare,' as stated in the purpose clause of the FRCOG Charter, would be derelict in its duties, and bring harm to its organizational interests, were it not to seek formal public hearings on this matter."

Planning Board 3/25/98 Filing at 3. However, as the governing state statute quoted herein shows, the Planning Board is not a public health agency, but only an advisory board.

made under oath.[20] Moreover, even if the witness were present and under oath, and even were the witness shown to have had expert qualifications in the law (which this witness has not been shown to have), a witness is not permitted to testify as to opinions of law. Questions of law, such as the legal status of the Planning Board, are answered by citation to available statutes and cases.[21]

Whether someone claiming the right to speak as a representative of an "interested state" has been empowered to do so is a question of state law. *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144 (1987). However, this Board must be convinced that the state has, indeed, conferred such authority on the one who seeks such status:

> "Section 2.715(c) was promulgated to carry out the congressional directive that, in the furtherance of cooperation between the Commission and the states, an opportunity be provided to the representatives of interested states to participate in the adjudication of license applications. It is reasonable to assume that the legislative contemplation was that the concerned state, and not this agency, would make the decision respecting who is to serve as its spokesman. Be that as it may, however, it scarcely would fulfill the stated objective of state-Commission cooperation if the NRC were to place the mantle of state representative upon the shoulders of an individual who is precluded by the law of the state from wearing it. Indeed, there appears to be no conceivable basis on which a licensing board could accept the views of an individual in such a category as reflecting the official position of a state on the issue(s) in controversy."

Id., 25 NRC at 152. Almost by definition, the authority to reflect the official position of the former Franklin County lies with its "chief executive officer"—by statute, the

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[20]The *jurat* affixed to the "affidavit" attests only that the "affiant" declared the document to be his "free act and deed," not that he had been administered an oath by an officer qualified to do so.

[21]At page 9 of its April 6th filing, the Planning Board states: "said document cited approvingly in 1995 WL 135723 (NRC), Advanced Medical Systems, Inc. 3/13/95." The legal reference appears to be *Advanced Medical Systems, Inc.*, LBP-95-3, 41 NRC 195 (1995). The antecedent reference is the Hammock "affidavit." Thus, this cryptic statement seems to be to the effect that the Licensing Board in LBP-95-3 cited Mr. Hammock's "affidavit" "approvingly" in its decision.

On its face, this would be unlikely, since the "affidavit" is dated April 6, 1998, more than three years *after* the decision in LBP-95-3. A review of LBP-95-3 finds nothing that refers to Mr. Hammock, the Planning Board, Franklin County, or the Commonwealth of Massachusetts. As a consequence, we are unable to decipher the Planning Board's assertion.

"Council of Governments Committee"—not with the board convened to render advice and recommendations to the Committee.

Funding.

In its most recent submission, the Planning Board reiterates its request, now apparently directed to this Board, that it be provided with $100,000 of federal funds. *Planning Board 4/6/98 Filing* at 10-11. As Yankee has previously pointed out, the Commission has no authority to fund third-party participation in its proceedings. The Planning Board has cited no contrary authority.

Contentions.

The Planning Board includes a list of 6 briefly stated "contentions." *Planning Board 4/6/98 Filing* at 7-8. None is admissible.

In the first instance, none of the Planning Board's contentions have been submitted in the form or with the support that is required by 10 C.F.R. § 2.714(b):

> "(2) Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:
>
> "(i) A brief explanation of the bases of the contention.
>
> "(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.
>
> "(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. . . ."

10 C.F.R. § 2.714(b)(2). None of the Planning Board's brief assertions comes close to meeting its burden under this provision.

Beyond that, the Planning Board's "Contention 1"[22] would be inadmissible because (i) dismantlement activities are beyond the scope of this LTP proceeding, particularly where, as here, Yankee already possesses an approved Decommissioning Plan for YNPS (*infra* at 21-23); and (ii) the Planning Board cites (and we are aware of) no regulatory requirement that specific decommissioning methods and techniques be "tested," "proven" or non-"experimental." *Cf.* 10 C.F.R. § 50.59.[23] Contentions 4 and 5 would be inadmissible because they do not refer to decontamination of the *site* and because they address historical off-site releases. Contention 3 may suffer the same difficulty (one cannot tell from its brevity). Contention 6 ("questions remain") would never be admissible in an NRC adjudicatory proceeding.

The Planning Board, therefore, has not proffered and sufficiently supported any admissible contention.

NECNP

Standing.

In its original submission, NECNP made no effort to demonstrate either organizational standing or representational standing.

In its "amendment," NECNP claims "representational standing" on the basis of the affidavit of a single member, one Jean-Claude van Itallie.[24] The affidavit of Mr. van Itallie is attached to NECNP's filing. Therein, Mr. van Itallie complains of two types of harms to himself: radiation injury (or fear thereof) and diminution of property

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[22]"Decommissioning activities employ methods and techniques that are experimental, untested and unproven."

[23]"The holder of a [Part 50 license] may . . . conduct tests or experiments not described in the safety analysis report, without prior Commission approval . . . ."

[24]"New England Coalition on Nuclear Pollution, Inc. Amended Petition to Intervene in License Amendment Proceeding for the Yankee Nuclear Power Station License Termination Plan" ("NECNP 4/6/98 Filing"), at 9.

values. These, he asserts, he fears on account of two sources: (i) spent fuel management and disposal and (ii) "ineffectual clean up of Yankee Rowe site." *van Itallie Aff.* ¶¶ 6, 7. Mr. van Itallie claims to live 6 miles from the YNPS site. *Id.* ¶ 2. Mr. van Itallie does not claim any qualifications to opine that there is, in fact, any risk to himself or his property; that function, rather, is delegated by NECNP to Mr. David Lochbaum, whose affidavit is submitted by NECNP in order to satisfy its burden of demonstrating, in its own words, that "[t]he threat posed to Mr. van Itallie . . . is not merely speculative . . . ." *NECNP 4/6/98 Filing* at 13. However, Mr. Lochbaum's affidavit is limited to matters involving spent fuel management only. *Lochbaum Aff., passim.*[25] Thus the only *claimed* injury-in-fact to an NECNP member that is *supported* as being non-speculative relates to on-site spent fuel management.

This is not sufficient for "representational standing" because spent fuel management is not a matter that is within the scope of the LTP and it is not something that will be affected, one way or the other, by the outcome of this proceeding—and, therefore, NECNP and its member have not shown "a cognizable interest of the petitioner [that] might be adversely affected if the proceeding has one outcome rather than another." *Public Service Company of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

This LTP proceeding does not extend to issues regarding spent fuel management, whether Yankee will or must continue to employ wet storage in the spent fuel pool, whether Yankee may or must opt for dry storage using casks of some sort, or any

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[25]After a description of qualifications and assignment, the substance of Mr. Lochbaum's affidavit is contained in paragraphs 8 and 9. Paragraph 8 declares that "the following significant safety issues remain for persons living in close proximity" to YNPS: (a) "[c]ontrols do not appear to adequately preclude damage to the fuel storage racks" on account of a hypothesized heavy load drop on the racks; (b) "neither the [LTP] nor the FSAR describe how irradiated fuel can or will be safety removed from the spent fuel pit;" and (c) "[t]he [LTP] and complementary FSAR do not define the instrumentation and controls needed to detect potential problems in the spent fuel pit." Paragraph 9 declares that "[b]ecause . . . the above safety concerns addressed in paragraph 8 remain" at YNPS, persons living in proximity to the plant "are at a risk of suffering the effects of the potential accidents described above." In fact, the affidavit does not address how, even if they occurred, the postulated accidents could result in any off-site consequences, given the actual inventory of the YNPS spent fuel pool.

other fuel management issue (including the subject of heavy loads over the pool).[26] The Commission itself has stated:

> "[T]he NRC definition of decommissioning excludes interim storage of spent reactor fuel."

61 Fed. Reg. 39,278, at 39,293 (July 29, 1996). The LTP regulation, 10 C.F.R. § 50.82(a)(9)(ii), does not require the LTP to contain any information regarding spent fuel management.[27] In promulgating revised § 50.82, the Commission described the function of the LTP approval in these terms:

> "The requirement for submittal of a termination plan is retained in the final rule because the NRC must make decisions, required in the current rule on the decommissioning plan, regarding (1) the licensee's plan for assuring that adequate funds will be available for final site release; (2) radiation release criteria for license termination, and (3) adequacy of the final survey required to verify that these release criteria have been met."

61 Fed. Reg. 39,278 at 39,289 (July 29, 1996). The absence of any review of spent fuel management was intentional:

> "The existing rule, as well as the proposed rule, consider the storage and maintenance of spent fuel as an operational consideration and provide separate part 50 requirements for this purpose. Regarding maintaining the

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[26]At the moment, there is a YNPS Tech. Spec. provision that prevents such movements (*Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 80 (1996)) and a pending license amendment (long ago noticed and on which the time for intervention has long passed) for a change in that provision. *See* 62 Fed. Reg. 54,866, 54,879 (October 22, 1997). The time for filing requests for hearing and petitions to intervene on that other amendment expired November 21, 1997. *Id.* at 54,867. No requests or petitions were ever filed.

[27]"The license termination plan must include-

(A) A site characterization;
(B) Identification of remaining dismantlement activities;
(C) Plans for site remediation;
(D) Detailed plans for the final radiation survey;
(E) A description of the end use of the site, if restricted;
(F) An updated site-specific estimate of remaining decommissioning costs; and
(G) A supplement to the environmental report, pursuant to § 51.53, describing any new information or significant environmental change associated with the licensee's proposed termination activities."

capability to handle the fuel for dry cask storage, these requirements are maintained in 10 CFR part 72."

Id. at 39,292.

The LTP does not seek and Yankee does not need, any additional license or license amendment via the LTP process for spent fuel management: Yankee already possesses a license under 10 C.F.R., Part 50 sufficient to authorize continued use of the existing spent fuel pool,[28] and it already possesses a general license under 10 C.F.R. § 72.210 to move fuel to approved dry casks (when, as and if Yankee decides that such movement should be made). Should Yankee decide in the future to seek a separate Independent Spent Fuel Storage Installation license under 10 C.F.R. § 72.40, an application will be filed and a notice of opportunity for hearing will issue on that application, but no such application has yet been filed (or prepared). In short, whether the LTP were to be approved or disapproved would work no change in either Yankee's existing license authority or its management of spent fuel.

As a consequence, none of the "accidents" that Mr. Lochbaum purports to validate for Mr. van Itallie's concern amount to an "injury [that] is likely to be redressed by a favorable decision." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).[29] Mr. van Itallie therefore has failed to demonstrate

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[28]Certain modifications to the spent fuel pool (removing its dependence on other plant systems) were previously approved when the YNPS Decommissioning Plan was approved or were performed under the authority of 10 C.F.R. § 50.59 and, in any event, have already been implemented.

[29]It is probably unnecessary to add that:

(i) Insofar as Mr. van Itallie complains of releases of radioactivity during the remaining dismantlement activities, in addition to the fact that Mr. van Itallie is not qualified to render any opinion as to the credibility of such releases and Mr. Lochbaum has not done so, those dismantlement activities are already licensed perforce the approved YNPS Decommissioning Plan and are not a subject of this LTP, and any releases of radioactivity in connection therewith are already licensed under the outstanding YNPS Part 50 license; and

(ii) Insofar as Mr. van Itallie complains of a prospect of diminished property values, in addition to the fact that neither Mr. van Itallie nor Mr. Lochbaum is qualified to render any opinion on this subject, which therefore remains speculative, the claim is intrinsically illogical (to whatever extent there is a diminution in property values on account of the accumulated on-site inventory 6 miles away, that diminution has already occurred).

standing, for want of which NECNP has failed to demonstrate standing as his representative.

Aspects of the Proceeding.

NECNP has identified a number of the "aspects of the proceeding" in which it wishes to intervene. 10 C.F.R. § 2.714(a)(2). Many of these are not, in fact, aspects of this LTP proceeding and involve issues that are not litigable on the license amendment pending before this Board.

SPENT FUEL MANAGEMENT. *See supra* at 18-20.

DESIGN OF THE SPENT FUEL POOL. NECNP asserts, as an "aspect" of this proceeding in which it wishes to participate that "[i]solating the nuclear fuel waste building and nuclear fuel waste pit will introduce new unanalyzed hazards and/or aggravate existing hazards in ways not previously analyzed." *NECNP 4/6/98 Filing* at 31. Beside being outside the scope of the LTP because, as the Commission has said, "the NRC definition of decommissioning excludes interim storage of spent reactor fuel" (61 Fed. Reg. 39,278, at 39,293 (July 29, 1996)), NECNP's denomination of this topic as an "aspect" traverses a separate limitation: the LTP approval process does not involve relitigation of dismantlement activities and plans previously set forth in Yankee's approved Decommissioning Plan for YNPS.[30]

Yankee has an approved Decommissioning Plan for the dismantlement of YNPS. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86 (1996), *review denied*, *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-9, 44 NRC 112 (1996).[31] As the former decommissioning rule was interpreted,

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[30]One perhaps need not add that the "isolation" of the spent fuel pool has long since been completed. *See License Termination Plan* § 3.1: "In addition, the Spent Fuel Pool and other systems associated with fuel storage have been electrically and mechanically isolated to crate a Spent Fuel Pool 'island' that will not be adversely impacted by ongoing decommissioning activities."

[31]At the time the decommissioning rule was revised in July, 1996, Yankee's Decommissioning Plan had been noticed for opportunity for a hearing under 10 C.F.R. § 2.105 and, in fact, a proceeding was ongoing. The Decommissioning Plan was eventually approved, and that approval endures after the amendment of § 50.82. *See* 10 C.F.R. § 50.82 (Introduction): "For power reactor licensees whose decom-

approval of a decommissioning plan amounted to a form of license under AEA § 189a. *CAN v. NRC,* 59 F.3d 284 (1st Cir. 1995); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-95-14, 42 NRC 130 (1995). Such a license having been issued, it remains in effect unless and until it expires or is suspended or revoked by the Commission. The LTP is not application by Yankee for any additional authority for the dismantlement of structures or equipment at YNPS, and issues relating to dismantlement are therefore not within the scope of any LTP proceeding.

It is true that, in the enumeration of the matters to be contained in an LTP, the regulation calls for an "[i]dentification of remaining dismantlement activities." 10 C.F.R. § 50.82(a)(9)(ii)(B). Note that this "identification" is in contrast to the requirement of "*[p]lans* for site remediation," "*[d]etailed plans* for the final radiation survey," and "[a]n *updated site-specific estimate* of remaining decommissioning costs;" the language suggesting that, unlike the latter, the former is primarily for information. An "identification" is merely a list of activities, which as a statement of fact, unlike a "plan" or a "detailed plan" or an "estimate," is not subject to approval or disapproval. The regulations would be illogical if the LTP were the occasion for approval or disapproval of remaining dismantlement activities where: (i) in the case of a transition plant, like YNPS, the dismantlement plans have already been specifically approved, after an opportunity for a hearing on them, and (ii) in the case of a post-1996 plant, the regulations were amended to delete the requirement of any such approval. Indeed, the regulations would be doubly illogical if the submission of an LTP were the occasion for "yea or nay" approval of *remaining* dismantlement activities, since the timing of the submission of the LTP is entirely up to the licensee of the facility (and could easily be deferred until all dismantlement activities had been completed). That the Commission intended nothing so meaningless is confirmed by the Commission's own statement of the purpose of requiring an LTP to be submitted and approved:

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missioning plan approval activities have been relegated to notice of opportunity for a hearing under subpart G of 10 CFR part 2, the public meeting convened and 90-day delay of major decommissioning activities required in paragraphs (a)(4)(ii) and (a)(5) of this section shall not apply, and any orders arising from proceedings under subpart G of 10 CFR part 2 shall continue and remain in effect absent any orders from the Commission."

> "The requirement for submittal of a termination plan is retained in the final rule because the NRC must make decisions, required in the current rule on the decommissioning plan, regarding (1) the licensee's plan for assuring that adequate funds will be available for final site release; (2) radiation release criteria for license termination, and (3) adequacy of the final survey required to verify that these release criteria have been met."

61 Fed. Reg. 39,278 at 39,288 (July 29, 1996). There is no mention of reviewing or approving the "identification" of remaining dismantlement activities.

CASK DROP OR HEAVY LOADS ISSUES. *See NECNP 4/6/98 Filing* at 33. Beside being an element of spent fuel management, the question of what loads may be moved over the YNPS spent fuel pool is the subject of existing Technical Specification provisions, the amendment of which is not proposed, and will not be accomplished, by approval of the LTP. Moreover, these limits are the subject of a separate license amendment proceeding, on which NECNP apparently elected not to intervene. *See* note 26, *supra*.

SITE RELEASE CRITERIA. Like CAN (*infra* at 25), NECNP posits that the governing legal requirement is based on the "worst case scenario." *NECNP 4/6/98 Filing* at 34. Like CAN, NECNP is wrong as a matter of law.

Contentions.

NECNP has not set forth any contentions.

CAN

Standing.

In its original submission, CAN made no effort to demonstrate either organizational standing or representational standing.

Like NECNP, in its "amendment," CAN claims "representational standing" on the basis of the affidavit of a single member, one Deborah Katz. Indeed, the CAN and NECNP papers are very similar and, in places, *verbatim* identical. Attached to the CAN submission is Ms. Katz's affidavit. Therein Ms. Katz, who like Mr. van Itallie lives 6 miles from the YNPS site, postulates her "injury-in-fact" on the fact that she

believes herself to be unable "to freely enjoy the natural recreational pleasures of her neighborhood, and the aesthetic pleasures of the natural surroundings . . . ." *NECNP 4/6/98 Filing* at 11; *Katz Aff.* ¶ 10. This disability Ms. Katz attributes entirely to concerns about spent fuel management issues. *Katz Aff.* ¶ 11.[32]

For the reasons set forth above, this showing by Ms. Katz is insufficient to confer "representational standing" upon CAN, since spent fuel management issues are not within the scope of this proceeding. *See* discussion *supra* at 18-20. Like Mr. van Itallie, therefore, Ms. Katz has not demonstrated (or, for that matter, claimed) "some *injury* that has occurred or will probably *result from the action involved.*" *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976) (emphases added). She has not demonstrated (or claimed) a "cognizable injury" that "might be adversely affected if the proceeding has one outcome rather than another." *Public Service Company of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

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[32]In her affidavit, Ms. Katz identifies three specific concerns regarding spent fuel pool management: (A) an otherwise unexplained "[p]oor chemistry in the pool" that will result in the assemblies "emit[ting] large quantities of radioactivity when moved out of the pool;" (B) "[l]oss of cooling" due to entirely unspecified scenarios that "would result in unplanned exposure and direct releases of radiation;" and (C) the same unexplained loss of coolant, supposedly resulting in shine doses within the spent fuel building.

Like NECNP, CAN relies upon the same affidavit of Mr. Lochbaum to give substance to the claimed spent fuel pool concerns, which Ms. Katz neither claims or possesses the qualifications to do. However, Mr. Lochbaum's affidavit does not, in fact, give credibility to the scenarios enumerated in Ms. Katz's affidavit, all of which are entirely beyond design basis and none of which would be likely (given the actual inventory in the YNPS spent fuel pool) to result in any impact at the site boundary.

Ms. Katz also adverts to two "concerns" that do not relate to spent fuel management. In paragraph 13, she expresses a "concern" that the LTP employs a site release criterion that is "much higher than our [otherwise unidentified] Massachusetts state standard." The site release criteria for decommissioned nuclear power plants is the subject of a Commission regulation (10 C.F.R. § 20.1402, as promulgated by 62 Fed. Reg. 39,058 (July 21, 1997)), which this Board must observe. (It need hardly be added that a state does not have the power to set radiological standards applicable to nuclear power plants.) In paragraph 15 of her affidavit, Ms. Katz expresses a "concern" about "tritium contamination which I understand has migrated from the ion exchange pit to Sherman Pond." Putting aside the fact that this conclusory language is wholly insufficient to demonstrate (nor, in fact, does it even claim) injury-in-fact to Ms. Katz, historical off-site releases of radioactivity are matters not within the scope of the LTP.

Aspects of the Proceeding.

CAN has identified a number of the "aspects of the proceeding" in which it wishes to intervene. 10 C.F.R. § 2.714(a)(2). Many of these are not, in fact, aspects of this LTP proceeding and involve issues that are not litigable on the license amendment pending before this Board.

SITE RELEASE CRITERIA. While this may be a valid "aspect" of an LTP proceeding in general, the only issue identified by CAN is not. As stated by CAN:

> "NRC requirement for 15 mrem per year posits a family farm with a garden with 24 hr a day habitation. [Yankee]'s calculations for 15 mrem/year above background require the family farm to be inhabited no more than 8 hours a day rather than the 24-hours per day, 365 days per year assumed in the underlying reference documents."

CAN 4/6/98 Filing at 22. In substance, CAN posits that the governing criterion requires a "worst case" assessment.[33] CAN is wrong.

The YNPS License Termination Plan employs a site release criterion of 15 mrem/yr for the Total Effective Dose Equivalent (TEDE) that might be received by the average member of the critical population group of persons exposed to residual contamination at the site.[34] The plan also presents supplementary criteria for exposure to gamma emitting radionuclides: exposure rates must not exceed an average of 5 μR/hr above background measured one meter from a surface with a maximum of 10 μR/hr at any point of measurement. CAN's assertion is that the maximum value of 10 μR/hr

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[33]Thus: "[Yankee]'s calculations in actuality compute to between 43 and 87 m/r per year [sic] above background on the site." *CAN 4/6/98 Filing* at 22. CAN arrives at these values by simplistically multiplying 5 and 10 μr/h by 8766, thus:

$$5\times10^{-6} \times 8{,}766 = 43.83\times10^{-3};$$
$$10\times10^{-6} \times 8{,}766 = 87.76\times10^{-3}.$$

[34]Actually, the LTP proposes to use the Site Decommissioning Management Plan (SDMP) (see NUREG-1444, October 1993) and then, going one step further than it is required to do, to also demonstrate satisfaction of a 15 mrem/yr TEDE to the average member of the critical population group. The SDMP is an available option to YNPS. 10 C.F.R. § 20.1401(b); *LTP*, Appendix A, § 3.1 (p. A-7).

is inconsistent with the site release criterion of 15 mrem/yr and, therefore, the YNPS License Termination Plan fails to meet the regulatory requirements.

CAN's stated "aspect" is based on a legally erroneous interpretation of the governing regulatory requirement. It is based on the premise that, if a person were to sit exactly on the spot where a reading of 10μr/h might be observed and then remain there for 8,766 hours, he or she would receive a dose in excess of 15 mrem for the year. That is to say, CAN's assertion of this "aspect" implies a legal requirement that the 15 mrem/yr be demonstrated at the absolute limit of theoretical exposure—the theoretically "worst case" scenario.

The governing regulatory requirement, however, does not require use of a "worst case" scenario. It is, rather, that:

> "A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an *average member of the critical group* that does not exceed 25 mrem (0.25 mSv) per year . . . ."

10 C.F.R. § 20.1402, as promulgated by 62 Fed. Reg. 39,058 (July 21, 1997) (emphasis added).

Both the value (25 mrem/yr) and the unit (mrem/yr TEDE to an average member of the critical population group) are a means of establishing, with appropriate conservatism, that the potential public doses from released decommissioned sites will not exceed the public dose permitted for NRC licensees (operating plants and others), namely 100 mrem/yr. The latter is from non-background sources, and to deal with the possibility that an individual might be exposed to more than one non-background source, a "constraint" value, comprised of a fraction of the public dose, is employed. This value, in turn, is based on such considerations as probable use and occupancy scenarios under which someone might be exposed. *See* 62 Fed. Reg. 39,058 at 39,063.[35]

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[35]"Thus, the Commission concludes that a generic dose constraint or limitation for decommissioning sources of 0.25 mSv/y (25 mrem/y) for unrestricted release of a site is reasonable from the standpoint of providing a sufficient and ample margin of safety for protection of public health and safety. It is recognized that this conclusion reflects a judgment regarding the likelihood of individuals being exposed to multiple sources with cumulative doses approaching 1 mSv/y (100 mrem/y) rather than an analysis

Specifically rejected by the Commission, in promulgating § 20.1402, was the use of a "worst case" assessment:

> "Some commenters agreed with provisions of the rule that would apply the dose limit to an average member of the critical group rather than to the 'reasonably maximally exposed (RME) individual' because it is consistent with ICRP and provides an appropriate protection standard. Other commenters objected to use of 'an average member of the critical group.' These commenters favored applying the dose limit to the most exposed person rather than to an average person. They asserted that this would be consistent with the approach used for other licensed activities and environmental protection.
>
> " . . .
>
> "Section 20.1003 of the proposed rule defined the term 'critical group' as the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances. For example, if a site were released for unrestricted use, the critical group would be the group of individuals reasonably expected to be the most highly exposed considering all reasonable potential future uses of the site. As noted in the preamble to the proposed rule (at 59 FR 43218; August 22, 1994), NUREG/CR-5512 defines the critical group as an individual or relatively homogeneously exposed group expected to receive the highest exposure *within the assumptions of a particular scenario* and the dosimetric methods of 10 CFR part 20. The average member of the critical group is an individual who is assumed to represent *the most likely exposure scenario based on prudently conservative exposure assumptions* and parameter values within model calculations. For example, the critical group for the building occupancy scenario can be the group of regular employees working in a building that has been decontaminated. If a site were converted to residential use, the critical group could be persons whose occupations involve resident farming at the site, not an average of all residents on the site.
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> "Although the terms 'critical group' and 'average member' are new terms in NRC regulations, they are consistent with ICRP practice of defining and using a critical group when assessing individual public dose from low levels of radioactivity similar to those expected from a decommissioned site. ICRP recommends that such analyses should consider exposure to individuals representative of those expected to receive the

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based on probability distributions for such exposures. However, considering the kinds of occupancy time typically assumed for the average member of the critical group at a site, it is highly unlikely that individuals could realistically be expected to experience exposures to other sources with a cumulative effect approaching 1 mSv/y (100 mrem/y)."

> highest dose using cautious but reasonable assumptions. This approach has been adopted in the proposed FRG and is also consistent with the recommendations of the National Academy of Sciences on the Yucca Mountain Standards (August 1995)."

62 Fed. Reg. 39,058 at 39,067-68 (emphases added).

As noted in the foregoing passage, the regulation was based in part on Kennedy *et al.*, RESIDUAL RADIOACTIVE CONTAMINATION FROM DECOMMISSIONING (Pacific Northwest Laboratory, 1992) (NUREG/CR-5512), wherein the authors stress that the calculations are to be based on models that represent "a prudently conservative (*not worst case*) manner to estimate the likely radiation dose to an individual in a limited population group exposed to residual radioactive contamination." *Id.*, Vol. 1, p. xiii (emphasis added). Likewise, in NUREG/CR-5512, the term "TEDE" is defined to mean:

> "The total effective dose equivalent (TEDE) received during a year of scenario exposure. *The duration of exposure for each pathway is determined by the scenario considered and need not be 8766 h/y.* For example, an individual may reside or work at a contaminated site for only a fraction of the year."

Id., Vol. 1, p. 2.1 (emphasis added). Indeed, the Report appears to identify precisely this situation when responding comments tendered on drafts:

> "Comment 5: Explain an apparent discrepancy with the 5 μR/h release criteria. A conversion of 5 μR/h, with continuous exposure for 8676 h/y, gives a dose value of about 31 mrem/y, not 10 mrem/y.
>
> "Response: As stated in the previous response, the value of 5 μR/h at 1 m approximates 10 mrem/y for the external exposure pathway, assuming a 2000 h/y exposure period [based on the use of the scenarios]."

Id., p. A-4.

CAN's proposed "aspect," which makes no allowance for the governing standard, fails to state a litigable issue, for it (i) is premised on the failure to meet something that,

as a matter of law, does not have to be met and (ii) does not assert that a requirement that *does* have to be met will not be met.[36]

CONTROLS AND PROCEDURES. According to CAN:

> "The proposed site release plan for [YNPS] does not adequately describe [Yankee]'s planned decommissioning activities or its controls and limits on procedures and equipment, in violation of 10 C.F.R. § 50.82(b)."

CAN 4/6/98 Filing at 25. The LTP is governed by 10 C.F.R. § 50.82(a)(9)(ii). This section does not mention "planned decommissioning activities or its controls and limits on procedures and equipment." The citation to "10 C.F.R. § 50.82(b)" is obviously in error, since subsection (b) does not apply to power plants. It appears that CAN has too uncritically recycled an old (and rejected) issue under a since-repealed regulation. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 73 (1996).[37]

SPENT FUEL MANAGEMENT. CAN refers to spent fuel management issues, manifestly its major area of interest, in numerous places. *E.g.*, *CAN 4/6/98 Filing* at 25-26, 27-28, 28. For the reasons set forth above, however, spent fuel management issues are not an aspect of this LTP proceeding. *Supra* at 18-20. In addition, disagreement with the Commission's promulgation of 10 C.F.R. § 72.210, which confers on Yankee a general license for on-site dry cask storage, is beyond the scope of this or any other

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[36]The proposed contention also fails because it is premised upon a manifestly incredible scenario. First, the average exposure in an area must be less than 5 μR/hr. Second, it is impossible to postulate that someone would spend an entire year—literally; that is to say, 8,766 consecutive and uninterrupted hours—contemplating their mounting exposure while maintaining a "Rodin-esque" posture over the highest exposure location. If nothing else, cold outdoor temperatures and certain basic biological needs would render such a scenario incredible.

[37]CAN also seems to miss the point that an LTP is not really a licensing amendment that authorizes action (that but for such a license could not be taken). To the contrary, an LTP is primarily about approving (i) the licensee's selection of site release criteria (at least where the licensee elects a criterion other than the default criterion of 10 C.F.R. § 20.1402) and (ii) the licensee's site survey plan, conducted to demonstrate that the licensee has complied with the site release criteria. The purpose of approving the latter is not that site survey activities are prohibited in the absence of or prior to an LTP approval—site characterization activities go on virtually continuously—but rather that, once a final survey plan has been approved, the licensee's obligation is limited to executing that plan. *See* 61 Fed. Reg. 39,278 at 39,289 (July 29, 1996), quoted *supra.* at 19.

adjudicatory proceeding. A Licensing Board is bound by the Commission's regulations and lacks jurisdiction to grant what would amount to an amendment of them. Persons seeking an amendment of the Commission's regulations must proceed via petition under 10 C.F.R. § 2.802.

Contentions.

CAN has not set forth any contentions.

NIRS

As noted above, NIRS has withdrawn from the proceeding.

Conclusion

The petitions of CAN and NECNP should be dismissed for want of demonstrated standing. The petition of the Planning Board should be dismissed for want of demonstrated standing to intervene and for want of standing to seek status as an "interested state" were there otherwise to be a hearing.

Respectfully submitted,

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Dated: April 13 1998.

Appendix 1: Mass. St. 1996, ch. 151, § 567 (Entirety)

SECTION 567. (a) Notwithstanding the provisions of any general or special law to the contrary, all functions, duties and responsibilities for operation and management of the jail, house of corrections and registry of deeds of Franklin county and all duties and responsibilities for operation and management of property occupied by the courts in Franklin county are hereby transferred to the commonwealth, subject to the provisions of this section.

(b) Notwithstanding the provisions of any general or special law to the contrary, pursuant to this section, the county government of Franklin county is hereby abolished, as of July first, nineteen hundred and ninety-seven. Nothing in this section shall affect the existing county boundaries. All powers and duties of Franklin county under any existing regional services agreements or special acts are hereby transferred to the Franklin Council of Governments established pursuant to subsection (r).

(c) All valid liabilities and debts of Franklin county pertaining to the functions cited in subsection (a) which are in force on June thirtieth, nineteen hundred and ninety-seven, are henceforth obligations of the commonwealth, except as may be otherwise provided in this section.

(d) All valid leases and contracts of Franklin county pertaining to the functions cited in said subsection (a) which are in force on June thirtieth, nineteen hundred and ninety-seven, are henceforth obligations of the commonwealth and the commonwealth shall have authority to exercise all rights and enjoy all interests conferred upon the county by said leases and contracts except as may be otherwise provided in this section.

(e) Notwithstanding the provisions of any general or special law to the contrary, there is hereby transferred to the commonwealth all right, title and interest in real and personal property including without limitation, except as may be otherwise provided in this section, the Franklin county courthouse, the Franklin county registry of deeds, the Franklin county jail and house of corrections, and the land on which they are situated and the parking facilities, fixtures and improvements located thereon or associated therewith. Such transfer shall be subject to the provisions of chapter seven of the General Laws and the jurisdiction of the commissioner of the division of capital planning and operations, or his successor, as provided therein. Personal property of the offices and meeting rooms of the Franklin county commissioners shall become the property of the Franklin Council of Governments. The transfers under this subsection shall be effective and shall bind all persons, with or without notice, without any further action or documentation. The commissioner of the division of capital planning and operations, or his successor, may, from time to time, execute and record and file for registration with such registry of deeds or land court, a certificate confirming the commonwealth's ownership of any interest in the real property formerly held by Franklin county. Funds held in trust by the county of Franklin for specific charitable or program purposes other than those pertaining to the court, jail or registry of deeds shall remain under the custody of the Franklin Council of Governments.

(f) Herlihy Park, so called, a parcel of fifteen acres, more or less, located in the town of Whately and under long term lease from the county by said town for use as a recreation area,

shall be offered without consideration to the town upon dissolution of the county. If the town declines to take ownership of the property within one hundred eighty days of the offer, the commonwealth shall take possession of said property without abrogation of the lease to the town of Whately.

(g) The Franklin Council of Governments may occupy, without consideration, such space as is under the control of the Franklin county commissioners in the Franklin county courthouse as of June thirtieth, nineteen hundred and ninety-seven, or its equivalent, including common use of parking. Not later than February first, nineteen hundred and ninety-eight, the Franklin Council of Governments Committee, the commissioner of the division of capital planning and operations, and the chief justice for administration and management of the trial court shall jointly recommend to the house and senate committees on ways and means alternative methods for providing suitable quarters for the Franklin Council of Governments, including fair compensation for moving expenses.

(h) Notwithstanding any general or special law to the contrary, the county commissioners of Franklin county shall on July first, nineteen hundred and ninety-seven, become known as the Franklin Council of Governments Committee and each member may serve until the end of the current term as if a county commissioner and until a successor committee member is elected. Said committee shall be the chief executive officer of the Council of Governments and shall have the powers of selectmen under sections fifty-two and fifty-six of the chapter forty-one of the General Laws. Two members of the Franklin Council of Governments Committee shall be chosen by the voters of Franklin county at the biennial state election in the year two thousand, and in every fourth year thereafter, and one committee member shall be so chosen at the biennial state election in the year nineteen hundred and ninety-eight, and in every fourth year thereafter, and in addition at each biennial state election such number of members of the committee will be so chosen as may be required to fill vacancies. No more than one of the committee members shall be chosen from the same city or town. If two persons residing in the same city or town shall appear to have been chosen to said offices, only the person receiving the larger number of votes shall be declared elected; but if they shall receive an equal number of votes, neither person shall be declared elected. If a person residing in a city or town where a committee member who is to remain in office also resides, shall appear to have been chosen, he shall not be declared elected. If the person is not declared elected by reason of the above provisions, the person receiving the next highest number of votes for the office, and who resides in another city or town, shall be declared elected.

(i) Notwithstanding any special or general law to the contrary, the Franklin county register of deeds in office June thirtieth, nineteen hundred and ninety-seven shall become an employee of the commonwealth under the secretary of the commonwealth effective July first, nineteen hundred and ninety-seven. The register shall remain an elected official retaining local administrative control under the general direction of the state secretary. The salary of such register shall be set at a sum equivalent to sixty percent of the salary of an associate justice of the land court. The operation of the registry shall remain under the control of the register as provided by law. The budget of the registry shall be determined by the secretary of the commonwealth, subject to appropriation by the general court; the register shall appoint employees and subordinates subject to the approval of the secretary. The secretary of the commonwealth shall have the authority, if he determines after consultation with the register

that a pattern of conduct, standard, practice or procedure of the registry is contrary to law, to order such official to comply with the law.

(j) Notwithstanding any general or special law to the contrary, the sheriff of Franklin county in office June thirtieth, nineteen hundred and ninety-seven, shall become an employee of the commonwealth under the secretary of public safety effective July first, nineteen hundred and ninety-seven. The sheriff shall remain an elected official retaining local administrative control under the general direction of the executive office of public safety. The salary of such sheriff shall be set at a level equivalent to the salary of the superintendent of a comparable state corrections facility, to be determined through a classification study conducted by the state personnel administrator.

(k) Notwithstanding any general or special law to the contrary, the Franklin county treasurer, appointed by the county commissioners under chapter twelve of the acts of nineteen hundred ninety-five, shall on July first, nineteen hundred and ninety-seven, become known as the director of finance for the Franklin Council of Governments. The director of finance shall be appointed by the Franklin Council of Governments Committee. The director of finance shall have the powers and duties of a municipal treasurer under section thirty-five of chapter forty-one and under sections fifty-four, fifty-five and fifty-five A of chapter forty-four of the General Laws. The director may also incur temporary debt in anticipation of revenue for a term not to exceed one year, with the approval of a majority of the Franklin Council of Governments Committee. Such temporary debt shall not exceed one-half of the amount of the Council of Governments assessment under subsection (v). Sections sixteen to nineteen, inclusive, and sections twenty-one to twenty-two C, inclusive, of chapter forty-four of the General Laws shall, so far as apt, apply to debt issued under this subsection. The director of finance shall serve in the same capacity as the county treasurer with respect to the retirement system.

(l) Notwithstanding any general or special law to the contrary, effective July first, nineteen hundred and ninety-seven, the commonwealth shall assume all financial control and responsibility over the Franklin county registry of deeds, Franklin county jail and house of corrections and Franklin county courthouse operations.

(m) All revenues collected from the operation of the functions cited in subsection (a) shall become revenues of the commonwealth on and after the effective date of this section, subject to the provisions of this section. All revenues collected from the operation of the functions cited in said subsection (a) before the effective date of this section which have not been expended or encumbered on or before June thirtieth, nineteen hundred and ninety-seven, shall be transferred to the commonwealth, subject to the provisions of this section. Deeds excise taxes shall be included as revenue collected for the operation of the functions cited in subsection (a).

(n) Notwithstanding the provisions of any general or special law or rule or regulation to the contrary, the Franklin county sheriff, all deputies, jailers, superintendents, keepers, officers, assistants and other employees of the sheriff, employed on the effective date of this section in the discharge of their responsibilities set forth in section twenty-four of chapter thirty-seven and in section sixteen of chapter one hundred and twenty-six of the General Laws, transferred by this section to the commonwealth, shall be transferred with no impairment of employment

rights held immediately before the effective date of this section, without interruption of service, without impairment of seniority, retirement or other rights of employees, without reduction in compensation or salary grade and without change in union representation. Any collective bargaining agreement in effect immediately before said effective date of the transfer shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. Nothing in this subsection shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before such date. All demands, notices, citations, writs, precepts, and all other notices given by the sheriff, deputies, jailers, superintendents, keepers, officers, assistants or other employees of a sheriff, as the case may be, before the effective date of this section shall be valid and effective for all purposes unless otherwise revoked, suspended, rescinded, canceled or terminated in accordance with law.

Any enforcement activity imposed by the sheriff, any deputies, jailers, superintendents, keepers, officers, assistants or other employees of the sheriff, before the effective date of this section shall be valid, effective and continuing in force according to the terms thereof for all purposes, unless superseded, revised, rescinded or canceled in accordance with law.

All petitions, hearings, appeals, suits and other proceedings duly brought against, and all petitions, hearings, appeals, suits, prosecutions and other legal proceedings begun by the sheriff, deputies, jailers, superintendents, keepers, officers, assistants or other employees of the sheriff, as the case may be, which are pending immediately before the effective date of this section, shall continue unabated and remain in force notwithstanding the passage of this section.

All records maintained by the sheriff, deputies, jailers, superintendents, keepers, officers, assistants and other employees of the sheriff before the effective date of this section shall continue to enjoy the same status in any court or administrative proceeding, whether pending on the effective date of this section or commenced thereafter, as they would have enjoyed in the absence of the passage of this section.

Employees of Franklin county registry of deeds shall be transferred to the commonwealth under the office of the state secretary as of the effective date of this section. The rights of such transferred employees will be governed by the same laws and rules generally applicable to employees of the state secretary.

(o) In the case of employees of the Franklin county jail or house of correction in the custody and control of the sheriff of Franklin county, the employer, as defined in section one of chapter one hundred and fifty E of the General Laws, shall mean the sheriff of Franklin county or any individual who is designated to represent the sheriff and act in his interest in dealing with employees.

(p) Notwithstanding any general or special law to the contrary, the provisions of subsection (c) of section seven of said chapter one hundred and fifty E shall apply to the sheriff of Franklin county.

(q) Employees of Franklin county who have retired or retire on or before June thirtieth, nineteen hundred and ninety-seven shall remain a part of the Franklin county retirement system and are subject to the health insurance plans, rules and regulations of the Franklin

Council of Governments. The Franklin Council of Governments shall be a member of the Franklin county retirement system as successor to Franklin county. The powers, duties and responsibilities of Franklin county with respect to group health insurance under chapter thirty-two B of the General Laws are hereby transferred to the Franklin Council of Governments. The Franklin Council of Governments shall continue to provide health insurance coverage for covered employees transferred to the commonwealth by this section until October first, nineteen hundred ninety-seven. During the period employees continue to remain covered by the Franklin Council of Governments plan, employee payroll deductions and employer contributions shall be made by the commonwealth and paid over to the Franklin Council of Governments. The Franklin Council of Governments shall pay any necessary premiums in anticipation of reimbursement from the commonwealth. The contribution ratio effective during the transition period shall be the effective ratio for state employees.

(r) The Franklin Council of Governments is hereby established within the geographical boundaries of Franklin county. Any powers previously conferred upon the Franklin county and its county commissioners by chapter four hundred and twenty-five of the acts of nineteen hundred and sixty-three as amended shall be retained by the Franklin Council of Governments and the Franklin Council of Governments Committee. The Franklin Council of Governments Committee shall have all the powers and duties of county commissioners under chapters eighty-one to eighty-eight, inclusive, of the General Laws. The Franklin Council of Governments shall retain the powers and duties of counties under chapter one hundred and forty of the General Laws with respect to dogs and other animals.

Any and all regional planning activities or functions established for Franklin county pursuant to the provisions of chapter four hundred and twenty-five of the acts of nineteen hundred and sixty-three, and functions authorized for regional planning commissions by sections five, five A, five B, and fourteen of chapter forty B of the General Laws, shall be the responsibility of the Franklin Council of Governments Committee.

The Council of Governments Committee as the executive body and the Regional Advisory Board as the legislative body shall have and may exercise any and all authority for regional planning as may be authorized by state law and shall be responsible for the establishment of policies to guide all regional planning and development activities of the Franklin Council of Governments.

The Franklin Regional **planning board** shall advise the Council of Governments Committee and Regional Advisory Board on all issues related to planning and shall make recommendations as appropriate.

The Franklin Council of Governments may apply for state, federal or other entities' grant or other programs on such terms as apply to county governments.

(s) Notwithstanding any general or special law to the contrary, the county advisory board of Franklin county shall on July first, nineteen hundred and ninety-seven become known as the Franklin Regional Advisory Board. The advisory board shall consist of a member of the board of selectmen of each town. Each town shall have a weighted vote based on that town's assessment for expenses of the Council of Governments. Each town's weighted vote will be computed based on the most recent biennial report of the commissioner of revenue submitting

the final equalization and apportionment upon the several towns of the amount of property and the proportion by every one thousand dollars of regional services assessment which should be assessed upon each town, and assessment ratios for classes of property in each town under section ten C of chapter fifty-eight of the General Laws. The advisory board shall be the legislative and appropriating authority of the Council of Governments, and shall each spring adopt a budget for the following fiscal year.

(t) The Franklin county **planning board** shall henceforth be known as the Franklin Regional **planning board**. The board shall continue to be comprised of one member of each town's board of selectmen and **planning board**, the Council of Governments Committee, and fifteen at-large members from the region selected by the membership pursuant to its bylaws. The regional **planning board** shall advise the Council of Governments Committee and regional advisory board regarding any regional planning issue and shall act according to its by-laws.

(u) Notwithstanding the provisions of any special or general law to the contrary, any political subdivision of the commonwealth may enter into agreement with the Franklin Council of Governments to perform jointly or for the other, or in cooperation with other entities, any service, activity or undertaking which such political subdivision is authorized by law to perform. For the term of such agreement and subject to the terms thereof, said Council of Governments shall be authorized to perform such service, activity or undertaking and the regional service area committee may designate appropriate representatives to oversee such performance, provided that the functions and duties of such representative or representatives are set forth in the agreement.

(v) Notwithstanding any special or general law to the contrary, for the fiscal year beginning July first, nineteen hundred and ninety-seven, and all subsequent fiscal years, the Franklin Council of Governments may impose a regional assessment up to one hundred and two and one-half percent of the amount of the county tax assessed under the provisions of chapter thirty-five of the General Laws for the fiscal year beginning July first, nineteen hundred ninety-six. The regional assessment, shall be allocated among the members of the Council of Governments in proportion to their respective equalized valuations as reported to the general court by the commissioner of revenue in accordance with section ten C of chapter fifty-eight of the General Laws. The regional assessment shall be based upon the budget adopted by the regional advisory board, net of estimated revenues. The regional assessment shall be retained by the Franklin Council of Governments and shall be used solely for the purpose of providing regional or municipal services or both, under the authority granted above. The commonwealth shall not assess the towns of Franklin county for the transfer of former County functions either directly, through a reduction in local aid, or by any other means.

During the period July first, nineteen hundred and ninety-seven through June thirtieth, nineteen hundred and ninety-nine, the regional assessment may be reduced or increased from the base year of fiscal nineteen hundred ninety-seven pursuant to the action of the Council of Governments Committee and Regional Advisory Board subject to the same formula and limits of the former county tax. After June thirtieth, nineteen hundred ninety-nine, this subsection may be revised pursuant to subsection (w).

(w) A Regional Charter Commission, comprised of the Franklin Council of Governments Committee and one representative from each municipality appointed by the board of selectmen,

shall be constituted within ninety days of the effective date of the Franklin Council of Governments, and shall report a recommended structure for the Council of Governments not later than December thirty-first, nineteen hundred and ninety-seven. Each member shall have one vote and proceedings shall be conducted pursuant to Roberts Rules of Order. Matters shall be determined by simple majority vote. Within sixty days of the first meeting of the charter commission, the commission may vote to include other individuals or groups as members of the commission. Such proposal may include changes in the executive and representative bodies, changes in the assessment allocation formula, but not the total amount of the assessment, recommendations for further transfer of functions to the commonwealth, and other related operational rules and procedures. Such proposal shall be placed on the town meeting warrants of each town in the Franklin county region in the spring of nineteen hundred ninety-eight. Such proposal shall make provision for the method of determining approval of the charter proposal, but such method of approval must require at least a majority vote of town meeting in a majority of the towns or a majority vote in a county-wide election. Such proposal shall also include provisions for towns to enter or leave participation in the base assessment and shall include a default option to abolish the Council of Governments in event such charter proposal is not approved. Such charter shall take effect July first, nineteen hundred ninety-eight.

(x) The secretary of administration and finance, in consultation with the Franklin Council of Governments Committee, may issue guidelines to govern the implementation of this section.

(y) Notwithstanding the provisions of any general or special law to the contrary, for the fiscal year beginning July first, nineteen hundred and ninety-six, all net costs incurred by, or attributable to, the operations of the Franklin county jail, registry of deeds and court facilities shall become obligations of the commonwealth, to the extent that they exceed net costs for the fiscal year beginning July first, nineteen hundred and ninety-five and are determined to be reasonable by the county government finance review board.

The statute was amended, in part, by St. 1996, ch. 204, § 124, which provides, in its entirety:

SECTION 124. Section 567 of said chapter 151 is hereby amended by striking out subsection (w) and inserting in place thereof the following subsection:--

(w) A Regional Chamber* Commission comprised of the Franklin Council of Governments Committee or its statutory antecedent and one representative from each municipality appointed by the board of selectmen shall be constituted on or before October first, nineteen hundred and ninety-six, and shall report a recommended structure for the Council of Governments not later than December thirty-first nineteen hundred and ninety-seven. Each member shall have one vote and proceedings shall be conducted pursuant to Roberts Rules of Order. Matters shall be determined by simple majority vote. Within sixty days of the first meeting of the Charter Commission, the Commission may vote to include other individuals or groups as members of the commission. Such proposal may include changes in the executive

*Sic: Charter?

and representative bodies, changes in the assessment allocation formula, but not the total amount of the assessment, recommendations for further transfer of functions to the commonwealth, and other related operational rules and procedures. Such proposal shall be placed on the town meeting warrants of each town in the Franklin county region not later than June thirtieth, nineteen hundred and ninety-eight. Such proposal shall make provision for the method of determining approval of the charter proposal, but such method of approval must require at least a majority vote of town meeting in a majority of the towns or a majority vote in a county-wide election. Such proposal shall also include provisions for towns to enter or leave participation in the base assessment and shall include a default option to abolish the Council of Governments in the event that such charter proposal is not approved. Such charter shall take effect not later than July first, nineteen hundred and ninety-eight.

The statute was further amended, in part, by St. 1998, ch. 55, § 1, which provides, in its entirety:

SECTION 1. Section 567 of chapter 151 of the acts of 1996 is hereby amended by striking out subsection (o) and inserting in place thereof the following subsection:--

(o) An employee of the sheriff of Franklin county shall be an "employee" or "public employee" as defined in section 1 of chapter 150E of the General Laws and the sheriff of such county shall be an "employer" or "public employer" as defined in said section 1 of said chapter 150E. A collective bargaining agreement negotiated by said sheriff shall be submitted to the governor in conformity with the provisions of subsection (c) of section 7 of said chapter 150E.

The statute was affected, albeit not amended, in part, by St. 1997, ch. 48, § 24, which provides, in its entirety:

SECTION 24. Notwithstanding the provisions of section 567 of chapter 151 of the acts of 1996, this section shall apply to the sheriff of Franklin county. Said sheriff shall remain an elected official under the provisions of section 159 of chapter 54 of the General Laws and shall be known as the Franklin sheriff. Said sheriff shall operate pursuant to the provisions of chapter 37 of the General Laws. Said sheriff shall retain administrative and operational control over the office of the sheriff, the jail and the house of correction.

The statute has not further been amended.

SECTION 5. Notwithstanding the provisions of any general or special law to the contrary, expenditures made from the AA subsidiary, so-called, of the items of appropriation in sections two and two B of this act which are listed below for the personnel costs associated with the programs funded in each of the items listed below shall not exceed the amounts specified herein for each such item. Notwithstanding the provisions of any general or special law to the contrary, the number of full time equivalent positions compensated from the AA subsidiary, so-called, of each of the items listed below shall not exceed the number of authorized positions specified below for each such item, provided, however, that for the purposes of this section board and commission members and seasonal employees shall not be classified as full time equivalent positions. Nothing in this section shall be construed so as to make any further appropriation of funds. Notwithstanding the provisions of any general or special law to the contrary, fiscal year nineteen hundred and ninety-seven collective bargaining costs associated with collective bargaining units two, five, eight and ten are hereby deemed to be fully funded, provided further, that the costs associated with fiscal year nineteen hundred and ninety-seven salary adjustments for unit and non-unit employees, so-called, compensated from items 7066-0000 through 7518-0100, inclusive, are hereby deemed to be fully funded.

[A> ACCOUNT <A]	[A> TOTAL AUTHORIZED AA SUBSIDIARY SPENDING <A]	[A> TOTAL AUTHORIZED FULL TIME EQUIVALENT POSITIONS <A]
0320-0001	$ 757,990	7
0320-0003	$ 2,632,822	58.27
0320-0010	$ 580,148	13

[Balance of columns of similar figures omitted.]

SECTION 7. The commissioner of the division of capital planning and operations is hereby authorized and directed to develop a project accounting system for all pool accounts including, but not limited to, asbestos, handicapped access, demolition, fire protection improvement, environmental hazards, air pollution, energy, preventive maintenance, wastewater treatment and toxic waste clean up. Said project accounting system shall be utilized to assess charges for all project related costs including, but not limited to, administrative overhead. The commissioner may, in accordance with schedules approved by the secretary of administration and finance, employ or reassign employees of the division to said projects as may be required; provided, however, that salaries and administrative expenses shall be charged to the accounts funding said project. Such charges shall not exceed two percent of the following appropriation accounts: 1102-7881, 1102-7882, 1102-7885, 1102-7886, 1102-7887, 1102-7890, 1102-7893, 1102-7894, 1102-7895, 1102-7896, 1102-7897, 1102-8801, 1102-8819, 1102-8847, 1102-8869, 1102-8880, 1102-8890, 1102-8891, 1102-8892, 1102-8893, 1102-8895, 1102-8897, 1102-8899 and 1102-9802.7

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for Yankee Atomic Electric Company, do hereby certify that on April 13, 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:

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	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
The Hon. Dr. Thomas S. Elleman Administrative Judge 704 Davidson Street Raleigh, North Carolina 27609 FAX: 919-782-7975	
Jonathan M. Block, Esquire Main Street Post Office Box 566 Putney, Vermont 05346 FAX: 802-387-2667 *Attorney for NECNP*	Mr. Adam Laipson, Chairman Franklin Regional Planning Board 425 Main Street Greenfield, Massachusetts 01301 FAX: 413-774-1195
Ms. Deborah B. Katz Citizens Awareness Network, Inc. Post Office Box 3023 Charlemont, MA 01339 *On Behalf of CAN*	Anne B. Hodgdon, Esquire Office of the General Counsel U. S. Nuclear Regulatory Commission Washington, D.C. 20555 FAX: 301-415-3725
Office of Commission Appellate Adjudication U. S. Nuclear Regulatory Commission Washington, D.C. 20555	Office of the Secretary U. S. Nuclear Regulatory Commission Washington, D.C. 20555 FAX: 301-415-1672

R. K. Gad III