

UNITED STATES OF AMERICA  
before the  
NUCLEAR REGULATORY COMMISSION

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USNRC

'99 JUN 10 P4:41

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

OFFICE OF SECRETARY  
REGULATORY AFFAIRS  
Docket No. 50-029-LA  
ADJUDICATORY STAFF

YANKEE'S RESPONSE TO  
INTERVENORS' "MOTION IN SUPPORT OF [YANKEE'S]  
MOTION FOR DISMISSAL OF APPEAL"

1. At the foot of the referenced motion is the request that this Commission "dismiss the appeal with prejudice." A dismissal "with prejudice" would amount to a determination on the merits, presumably a Commission determination that the four challenged contentions were properly admitted. Since the appeal has become moot, there is neither occasion for nor propriety in any adjudication on the merits, and either inadvertently or otherwise, the Intervenors have misidentified the appropriate action to be taken by the Commission. *Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 15 (1996); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), CLI-85-16, 22 NRC 459 (1985); *Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), 18 N.R.C. 1164 (1983); *Puget Sound Power & Light Co.* (Skagit Nuclear Power Project, Units 1 and 2), CLI-80-34, 12 NRC 407 (1980).<sup>1</sup> The appeal should be "dismissed as moot."

<sup>1</sup>See also *United States Department of Energy* (Clinch River Breeder Reactor Plant), ALAB-755, 18 NRC 1337, 1338-39 (1983); *Long Island Lighting Co.* (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-628, 13 NRC 24 (1981); *Dairyland Power Coop* (LaCrosse Boiling Water Reactor), ALAB-638, 13 NRC 374, 376 (1981); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 55 (1978); *Boston Edison Co.* (Pilgrim Nuclear Power Station, Unit 2), ALAB-656, 14 NRC 965, 966 (1981); *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-668, 15 NRC 450, 451 (1982).

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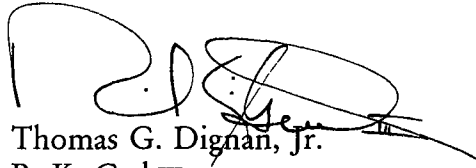
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2. As for the balance of the Intervenor's motion, which appears to be asserting that Yankee should have apprised the Commission that the pending appeal was moot but kept secret from the Commission the reasons why, Yankee frankly does not understand the argument being made and therefore cannot respond to it.

By its attorneys,



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Dated: June 7, 1999.

**CERTIFICATE OF SERVICE**

I, Robert K. Gad III, one of the attorneys for Yankee Atomic Electric Company, do hereby certify that on June 7, 1999, I served the within pleading in this matter by United States Mail (and also where indicated by an asterisk, by facsimile transmission) as follows:

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