UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.

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

CLI-98-21

MEMORANDUM AND ORDER

This proceeding concerns a license amendment application in which Yankee Atomic Electric Company ("Yankee Atomic" or "licensee") seeks approval of its License Termination Plan ("LTP") for the Yankee Nuclear Power Station ("Yankee Rowe"). The Yankee Rowe plant is located on about ten acres of a 2000-acre site along the Deerfield River near the town of Rowe, Franklin County, Massachusetts. The New England Coalition on Nuclear Pollution, Inc. ("NECNP"), the Citizens Awareness Network ("CAN") and the Franklin Regional Planning Board ("FRPB") oppose Yankee Atomic's application and have filed petitions for intervention and requests for hearing in an effort to defeat it.

On June 12, 1998, the Licensing Board issued LBP-98-12, 47 NRC 343, rejecting all petitions to intervene and terminating this proceeding. The Board concluded that petitioners had failed to establish standing. All three petitioners have appealed LBP-98-12 to the Commission pursuant to 10 C.F.R. § 2.714a(a) and (b). For the reasons set forth below, we

affirm in part and reverse in part, and also dismiss FRPB's appeal. In addition, we curtail the scope of this proceeding and offer guidance to the Board governing further proceedings.

I. CRITERIA FOR STANDING AND PARTICIPATION

On appeal, FRPB challenges the Board's denial of its claims to organizational standing and governmental participation; it is not challenging the Board's denial of its claims to representational and discretionary standing. CAN and NECNP challenge the Board's denial of their claims to representational standing.

Our organizational and representational standing criteria are ultimately grounded on Section 189a of the Atomic Energy Act ("AEA"), 42 U.S.C. § 2239(a), which requires us to provide a hearing upon the request of any person "whose interest may be affected by the proceeding." Our procedural regulations provide that, to establish standing as of right, an intervention petition must set forth with particularity

> the reasons why petitioner should be permitted to intervene, with particular reference to ... the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene

and also

> the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section.

10 C.F.R. § 2.714(a)(2). The referenced provisions of subsection (d)(1) in turn provide that the Board shall consider the following three factors when deciding whether to grant standing to a petitioner:

> (i) The nature of the petitioner's right under the [AEA] to be made a party to the proceeding.
>
> (ii) The nature and extent of the petitioner's property, financial or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d)(1)(i)-(iii). An organization may satisfy the standing criteria set forth in sections 2.714(a)(2) and (d)(1) in either of two different ways -- based either upon the licensing action's effect upon the interest of the petitioning organization itself (i.e., organizational standing) or upon the interest of at least one of its members who has authorized the organization to represent him or her (i.e., representational standing). See, e.g., Georgia Institute of Technology (Ga. Tech Research Reactor), CLI-95-2, 42 NRC 111, 115 (1995).

When determining whether a petitioner has established the necessary "interest" under subsection (d)(1), the Commission has long looked for guidance to judicial concepts of standing. See, e.g., Quivira Mining Co. (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 5-6 (1998); Georgia Tech, supra, 42 NRC at 115. The federal jurisprudence provides that, to qualify for standing, a petitioner must (1) allege a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision. See, e.g., Steel Co. v. Citizens for a Better Environment, 118 S. Ct. 1003, 1016 (1998); Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir. 1995). These three criteria are commonly referred to, respectively, as "injury in fact," causality and redressability. The injury may be either actual or threatened. See, e.g., Wilderness Soc'y v. Griles, 824 F.2d 4, 11 (D.C. Cir. 1987). In addition, the Commission has required potential intervenors to show that their "injury in fact" lies arguably within the "zone of interests" protected by the statutes governing the proceeding -- here, either the AEA or the National Environmental Policy Act ("NEPA"). See Ambrosia Lake Facility, 48 NRC at 6.

Finally, regarding governmental participation, 10 C.F.R. § 2.715(c) provides that presiding officers will offer states, counties, municipalities and/or agencies thereof a reasonable

opportunity to participate in a proceeding. However, section 2.715(c) does not entitle those governmental bodies to full party status.

II. BACKGROUND

Yankee Atomic's submission of the LTP under 10 C.F.R. § 50.82(a)(9) and (10) is the latest in a series of events related to the licensee's decommissioning of Yankee Rowe. These events began October 1, 1991, when Yankee Atomic ceased operation of the Yankee Rowe plant. By February 14, 1992, the licensee had completed defueling the reactor, and shortly thereafter (on February 27, 1992) formally announced to the NRC its intention permanently to cease all power operations at Yankee Rowe. In response, the NRC amended the Yankee Rowe operating license on August 5, 1992, downgrading it to a possession-only license ("POL"). In December 1993, Yankee Atomic submitted its Decommissioning Plan, pursuant to a now-superseded version of 10 C.F.R. § 50.82(a). The Decommissioning Plan included spent fuel management plans currently required in 10 C.F.R. § 50.54(bb). The Commission approved the Decommissioning Plan on February 14, 1995, suspended that approval on October 12, 1995, due to a July 1995 court order (Citizens Awareness Network v. NRC, 59 F.3d 284 (1st Cir. 1995)), and ultimately reapproved the Plan on October 28, 1996.

Sections 50.82(a)(9) and (10), which the Commission promulgated in 1996, oblige a licensee who is decommissioning a power reactor to file an LTP in the form of a license amendment application. During the Commission's 1996 decommissioning rulemaking, some commenters argued that treating LTPs as license amendments was not "legally mandated." See Final Rule, "Decommissioning of Nuclear Power Reactors," 61 Fed. Reg. 39,278, 39,289 (July 29, 1996). But the Commission found it "appropriate," regardless of legal mandates, "to use the amendment process for approval of termination plans, including the associated

opportunity for a hearing, to allow public participation on the specific order required for license termination." Id.

A licensee may file the LTP either prior to or concurrently with a license termination request. Section 50.82(a)(9) provides:

> All power reactor licensees must submit an application for termination of license. The application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.
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> * * * * * *
>
> (ii) 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.
>
> (iii) The NRC shall notice receipt of the license termination plan and make the license termination plan available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the license termination plan. The NRC shall publish a notice in the Federal Register and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

Section 50.82(a)(10) establishes the following standard for Commission approval of an LTP:

> If the license termination plan demonstrates that the remainder of decommissioning activities [1] will be performed in accordance with the regulations in this chapter, [2] will not be inimical to the common defense and security or to the health and safety of the public, and [3] will not have a significant effect on the quality of the environment and after notice to interested persons, the Commission shall approve the plan, by license amendment, subject to such conditions and limitations as it deems appropriate and necessary and authorize implementation of the license termination plan.

On May 15, 1997, Yankee Atomic filed a request for Commission approval of its LTP for Yankee Rowe. (Yankee Atomic exercised its right under our regulations to file an LTP in advance of seeking license termination.) On December 31, 1997, Yankee Atomic filed a revised LTP. Yankee Atomic's LTP states that the licensee has set aside adequate funds to complete decommissioning and to release the Yankee Rowe site for unrestricted use, that the site release criteria ensure that exposure to residual levels of radiation is kept as low as reasonably achievable ("ALARA") and that the final status survey program is adequate to verify satisfaction of the release criteria. It goes on to offer a site characterization, identify the remaining dismantlement activities, offer site remediation plans, discuss the goal of returning the site to "green fields" condition, estimate the remaining decommissioning costs, provide an environmental statement, and set forth a Final Status Survey Plan.

Yankee Atomic explains that the spent fuel pool currently contains 533 spent fuel assemblies, 12 canisters of Greater-Than-Class-C ("GTCC") waste and a small amount of reconfigured fuel. Although the licensee states that it has not yet made a decision on the long-term storage method it will employ for the spent fuel, Yankee Atomic assumes for purposes of the LTP that it will construct a dry cask storage facility onsite which it will operate under its general license -- all pursuant to 10 C.F.R. § 72.210. Yankee Atomic expects to transfer all spent fuel from the spent fuel pool to the onsite storage facility upon completion of the latter. It also expects that the Department of Energy ("DOE") will take some or all of the GTCC waste as part of a pilot project, with any remaining GTCC waste being stored in the onsite dry cask storage facility until final disposition by DOE.

On January 5, 1998, the Commission published in the Federal Register a notice of a January 13th public meeting regarding the LTP. 63 Fed. Reg. 275. The meeting was held as scheduled. On January 28, 1998, the Commission published in the Federal Register a Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration,

and Opportunity for a Hearing regarding Yankee Atomic's LTP license amendment application. 63 Fed. Reg. 4308, 4328. In response, CAN, NECNP and FRPB submitted petitions to intervene and requests for hearing in which they challenged the staff's "No Significant Hazards Consideration" finding, alleged procedural and substantive violations of NRC regulations and federal statutes (the AEA, NEPA and the Administrative Procedure Act), protested the conduct of the NRC's public meeting on the LTP, and raised various health and safety issues related to the LTP.

CAN and NECNP, both relying on a declaration of an expert witness, Mr. David A. Lochbaum, principally attacked Yankee Atomic's plans for handling spent fuel at the site. In addition, CAN and NECNP claimed that an ineffectual cleanup would spoil their members' ultimate use of the site and enjoyment of the area's aesthetic beauty. They also pointed to potential adverse effects on their members' property interests. CAN and NECNP relied on harms to members living within six miles of the Yankee Rowe site. FRPB claimed a right to organizational standing on behalf of the citizens of Franklin County and also a right to participate as a governmental body.[1]

III. THE BOARD'S ORDER DENYING STANDING AND PARTICIPATION

On June 12, 1998, the Board issued LBP-98-12. The Board first concluded that it lacked jurisdiction over both the staff's "No Significant Hazards Consideration" findings and the issues associated with the notice and conduct of the public meeting. 47 NRC at 345. The Board then considered and rejected each petitioner's arguments on standing and/or participation, and terminated the proceeding. Id. at 347-59.

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[1] Although the Board also rejected FRPB's arguments in support of representational and discretionary standing (id. at 355, 356-58), FRPB challenged neither of those rulings on appeal. Thus, we consider them waived and need not describe them here.

A. NECNP

The Board found that the concerns presented by NECNP, via a declaration filed by NECNP member Mr. Jean Claude van Itallie, were unrelated to the LTP, not redressable in this proceeding, and therefore beyond the scope of this case. The Board referred specifically to Mr. van Itallie's concerns about the "long-term environmental effects of low-level radiation," "the long-term effects of an ineffectual cleanup ... or an irradiated fuel accident" on his property value, and the need for "the final site condition projected under the LTP ... [to] satisfy the NRC's criteria for general release." Id. at 347, quoting Declaration of Jean-Claude van Itallie at 1-3. The Board noted that spent fuel management and maintenance were previously-licensed activities that had been considered and approved in Yankee Atomic's decommissioning plan, and that these matters as well as the satisfaction of the agency's general release criteria were already addressed in the Commission's existing and proposed decommissioning rules. The Board similarly found that the concerns voiced in the declaration of NECNP's expert, Mr. Lochbaum, addressed only spent fuel matters and therefore lacked available redress from the Board. 47 NRC at 347-48.

B. CAN

The Board similarly disagreed with CAN's position that spent fuel management must be considered in this LTP proceeding. The Board pointed out that 10 C.F.R. § 72.210 provides a general license to store spent fuel in an independent spent fuel storage installation ("ISFSI") at power reactor sites authorized to possess or operate Part 50 reactors. The Board further ruled that 10 C.F.R. § 50.82(a)(9)(ii) does not require an LTP to include information concerning spent fuel management and that nothing else suggests spent fuel management is appropriately at issue in this proceeding. The Board concluded that, because any injuries stemming from spent-fuel-related accidents or activities could not be remedied by the denial of the license

amendment sought in this proceeding, the Board could not grant CAN standing based on its concerns about spent fuel management. Id. at 351.

The Board next rejected CAN's assertion that its authorizing member, Ms. Deborah B. Katz, would be harmed by long-term residual contamination of the site. The Board considered her purported injury to be hypothetical and speculative and, more specifically, stated that CAN had offered no expert opinion to support her concerns about such possible injuries. Id. at 351, 352.

The Board also rejected CAN's assertions that the Massachusetts law setting site release criteria (a maximum of 10 millirem/yr) governs instead of NRC regulations (10 C.F.R. § 20.1402, setting a maximum "total effective dose equivalent" limit of 25 millirem/yr above background radiation levels), and that CAN's projected public dose level of 43-87 millirem/yr for the Yankee Rowe site constituted a showing of "injury in fact." The Board concluded that it was inappropriate for CAN to calculate such doses by using worst-case assumptions for residual radioactivity levels (i.e., using average and maximum dose rates of 5 and 10 microrem/hr, respectively) and that, even ignoring CAN's inappropriate use of those assumptions, CAN still had not shown that Yankee Atomic would fail to meet the licensee's own (and the Environmental Protection Agency's) site release criterion of 15 millirem/yr. Id. at 351-52.

The Board next addressed CAN's argument that inadequate soil remediation and monitoring might preclude the licensee's site release from being ALARA. Noting that the LTP's criterion for site release (15 millirem/yr) was well within the Commission's standard of 25 millirem/yr, the Board concluded that this argument did not explain how the requirements in the LTP for soil and groundwater monitoring failed to meet standards or would harm Ms. Katz. Id.

C. FRPB

The Board rejected FRPB's arguments in favor of organizational standing and governmental participation (and also representational and discretionary standing, neither of

which is at issue on appeal). Regarding organizational standing, the Board concluded that FRPB had failed to explain how its responsibilities fall within the zone of interests protected by the AEA or NEPA, how those interests would be harmed by acceptance of the LTP, and how FRPB meets the "injury in fact" criterion for standing. The Board further found that FRPB's allegations of harm were too vague and appeared to be offsite concerns tied to the plant's past operation and current decommissioning -- both of which were already licensed and were therefore beyond the scope of this proceeding. Id. at 354.

Next, the Board rejected FRPB's claim to governmental participation as an "interested County [body]" under 10 C.F.R. § 2.715(c). Acknowledging that the Commission had never spoken on this issue, the Board concluded that the Commission could not have intended to permit participation by a county agency that, as here, neither had standing on its own nor had legal authorization from a recognized government with sufficient "interest" in the proceeding. The Board's underlying premises were that (i) the opportunity for a governmental entity to participate is offered only to "units of the government which ... have an interest in the licensing proceeding" (quoting Final Rule, "Miscellaneous Amendments," 43 Fed. Reg. 17,798, 17,800 (April 26, 1978)), (ii) the words "interest" and "interested" party appear to be synonymous with the word "standing," (iii) only an elected body can have such an "interest," (iv) a letter to the Board from the Chair of the Franklin Regional Council of Governments indicates that FRPB is an advisory rather than an elected body, and (v) FRPB has not submitted an affidavit from the Franklin Regional Council of Governments delegating the Council's authority to FRPB for purposes of this proceeding. 47 NRC at 355-56.

IV. ANALYSIS OF ARGUMENTS ON STANDING AND PARTICIPATION

A Licensing Board's determinations regarding standing are entitled to substantial deference and we will generally uphold them absent an error of law or an abuse of discretion.

International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998). For the reasons set forth in section IV.A below, we conclude that the Board reached the correct result in denying organizational standing and governmental participation to FRPB (although our rationale differs somewhat from the Board's). However, for the reasons set forth in section IV.B below, we conclude that the Board should have granted standing to CAN and NECNP. Notwithstanding that conclusion, we agree fully with the Board that these two petitioners' major concern -- spent fuel management -- is off-limits in this proceeding, which is confined to a review of the matters specified in 10 C.F.R. § 50.82(a)(9) and (10), such as the plans for site remediation and for the final radiation survey.[2]

A. FRPB

FRPB neither filed a timely appeal of LBP-98-12[3] nor offered any explanation of the appeal's untimeliness. This procedural default alone suffices to justify rejection of FRPB's appeal in its entirety. We recognize that FRPB is acting pro se in this proceeding and we therefore might not expect it always to meet the same high standards to which we hold entities represented by lawyers. Even so, FRPB is still expected to comply with our basic procedural rules -- especially ones as simple to understand as those establishing filing deadlines. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984) (citing Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981)), rev'd in part on other grounds, CLI-85-2, 21 NRC 282 (1985). While missing a deadline for appeal is not necessarily a jurisdictional bar to further action on an

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[2] On remand, the Board will rule on admissibility of contentions and (if appropriate) will handle the merits of this proceeding. Because we reach a different result from LBP-98-12 regarding CAN's and NECNP's standing, the Board should not feel bound by the discussion in LBP-98-12 regarding CAN's and NECNP's "aspects."

[3] FRPB dated its appeal June 29, 1998 -- two days after the June 27th expiration of the filing period specified in 10 C.F.R. §§ 2.714a(a), 2.710 (ten days after service plus five additional days if service was by mail).

appeal, we historically have excused a failure to meet appeal deadlines only in "extraordinary and unanticipated circumstances." Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-684, 16 NRC 162, 165 n.3 (1982). "[O]ur general policy has been to enforce them strictly." Id. See also Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-5, 33 NRC 238, 240-41 (1991). Here, FRPB has offered no explanation at all for its late appeal. Its appeal therefore is dismissed.

Even were we inclined to overlook the lateness of FRPB's appeal, we would find it without merit. FRPB's claimed entitlement to organizational standing fails because it neither filed a timely intervention petition before the Board[4] nor attempted to justify the tardiness of its petition by addressing the late-filing criteria set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v). And its claimed status as a governmental participant in our proceeding (see 10 C.F.R. § 2.715(c)),

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[4] Although FRPB submitted a filing on February 27, 1998, it was styled not as an intervention petition but rather as a letter to various Commission offices. While the letter contains the kinds of statements that would typically appear in an intervention petition, FRPB later indicated that its letter was not intended to constitute such a petition:

> A review of our filing with the Nuclear Regulatory Commission ... will clearly demonstrate that the FRPB never requested intervenor status in the proceeding. FRPB has only requested that a public hearing be held on the License Termination Plan.... It is FRPB's intent, upon being granted a hearing, to consider the option to file for intervenor status under the applicable rules.

Response to Yankee Atomic Electric Company's Answer to Request for Hearing of Franklin Regional Planning Board, dated March 25, 1998, at 2. Finally, on April 6, 1998, FRPB belatedly sought intervenor status. Amendment to Franklin Regional Planning Board's Request for Hearing" at 2.

while not untimely when submitted to the Board,[5] nevertheless fails because FRPB cannot be viewed as an "agency" within the meaning of our rules.

Not all organizations with governmental ties are entitled to participate in our proceedings as governmental "agencies." The Federal, state and local governments are all replete with numerous boards, commissions, advisory committees, and other organizations -- all of which have governmental or quasi-governmental responsibilities. We do not, however, understand section 2.715(c) to authorize automatic participation in our adjudications by each and every subpart of state and local government. FRPB is, by its own admission, an advisory body and lacks executive or legislative responsibilities. See FRPB's Brief to Support Appeal, dated June 29, 1998, at 1-2. We conclude that advisory bodies, by their very nature, are so far removed from having the representative authority to speak and act for the public that they do not qualify as governmental entities for purposes of section 2.715(c). For this reason, we agree with the Board's conclusion that FRPB does not fall within the purview of section 2.715(c). See LBP-98-12, 47 NRC at 356.

However, FRPB may still contribute its views to the Board by a variety of other means (e.g., filing briefs amicus curiae or providing witnesses for other parties). See Private Fuel Storage (ISFSI), CLI-98-13, 48 NRC 26, 35 (1998). We also note that the Franklin Regional Council of Governments has expressed an interest in this proceeding -- by endorsing FRPB's

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[5] A claim to governmental participation in our proceedings is not governed by timeliness requirements. Governmental entities may apply at any time to participate in our proceedings (up to the closure of the record) and need not satisfy either the standing requirements of section 2.714(a)(2) or the late-filing requirements of section 2.714(a)(1)(i)-(v). See 10 C.F.R. § 2.715(c). See generally Pacific Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 8 (1980). However, even governmental entities are not guaranteed the right to participate under section 2.715(c) after the record has been closed and the case is on appeal before the Commission, Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-20, 24 NRC 518, 519-20 (1986), aff'd sub nom. Ohio v. NRC, 814 F.2d 258 (6th Cir. 1987), nor can they participate absent the Board's approval of an independent, valid petition for review and request for hearing that were filed pursuant to 10 C.F.R. § 2.714.

application to participate and explaining that FRPB was representing the interests of the Franklin County region. The Council is itself free to seek participation rights before the Licensing Board and to utilize the FRPB in such an effort however it sees fit.

B. NECNP and CAN

1. Scope of This Proceeding

As noted above, to qualify for representational standing in an NRC adjudication, a petitioner must allege a concrete and particularized injury to one of its members who has authorized it to represent his or her interests. In addition, the alleged injury must be fairly traceable to the challenged action and likely to be redressed by a favorable decision. See page 3, supra. To determine whether CAN and NECNP have made an adequate showing with regard to these three factors, we must first determine the scope of this proceeding -- i.e., before deciding if petitioners' claims of injury establish a cognizable interest in an LTP proceeding, we must first determine what issues are raised by NRC approval of an LTP.

Not surprisingly, petitioners and Yankee Atomic (supported by the NRC staff) take diametrically opposed positions on the scope of an LTP proceeding. Petitioners demand a broad inquiry into Yankee Atomic's future plans for the Yankee Rowe site. Pointing to the NRC staff's "no significant hazards consideration" finding on the LTP, which mentions fuel storage safety, and to an array of NRC rules on spent fuel, especially 10 C.F.R. § 72.218 and 10 C.F.R. § 50.54(bb), petitioners argue in particular that the LTP approval process should address Yankee Atomic's plans for storing spent fuel and GTCC waste. Yankee Atomic, by contrast, insists that spent fuel management falls under a separate regulatory scheme (10 C.F.R. Part 72) entirely outside the LTP process. Yankee Atomic goes further and contends (in effect) that the LTP creates no litigable issues at all, in view of Yankee Atomic's existing authority under an NRC-approved decommissioning plan to take all actions necessary to complete

decommissioning. According to Yankee Atomic, "the LTP approval authorizes no activities ... but merely establishes the site survey plan as definitive for demonstrating releasability."[6]

Our view of the LTP differs somewhat from both Yankee Atomic's and petitioners'. We fully agree with Yankee Atomic, though, and disagree with petitioners, on the spent fuel question. Nothing in our rules brings spent fuel management within the ambit of the LTP approval process. The scope of this proceeding is, of course, coextensive with the scope of the LTP itself. Notice of Consideration of Issuance of Amendment, supra, 63 Fed. Reg. at 4309 ("Contentions shall be limited to matters within the scope of the amendment under consideration").[7]

We find unpersuasive petitioners' arguments for considering spent fuel storage questions in the context of LTP approval. Contrary to petitioners' view, the requirement in 10 C.F.R. § 72.218(b) (that an application for termination of a Part 50 license include a description of how spent fuel stored under the general license will be removed from the reactor site) is unrelated to the requirement in section 50.82(a)(9) for submission of an LTP. Section

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[6] Yankee Atomic's Brief in Response to CAN's Appeal Brief, dated July 10, 1998, at 3 n.4. See also id. at 6, 8; Yankee Atomic's Brief in Response to NECNP's Brief on Appeal, dated July 17, 1998, at 6, 11; Response of Yankee Atomic to Amendments to Petitions to Intervene, dated April 13, 1998, at 6.

[7] CAN and NECNP are mistaken in their belief that the proceeding's scope is defined instead by the scope of the NRC staff's "No Significant Hazards Consideration" determination -- for that determination is not at issue in this adjudication. 10 C.F.R. § 50.58(b)(6) ("No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination"). Accord Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 4-5 (1986), rev'd and remanded on other grounds, San Luis Obispo Mothers For Peace v. NRC, 799 F.2d 1268 (9th Cir. 1986). See also Gulf States Util. Co. (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31, 34 n.1 (1994) (immediate effectiveness findings by the staff are not subject to review by licensing boards), aff'd on other grounds, CLI-94-10, 40 NRC 43 (1994).

To the extent that CAN and NECNP may have intended to assert that the issues which were presented in the Notice of "No Significant Hazards Considerations" determination are also germane to the LTP license amendment, we deal with such issues elsewhere in this order.

72.218(b) requires Yankee Atomic, at the time it files its license termination request, to submit a description of how spent fuel will be removed. By contrast, section 50.82(a)(9) specifically provides that the LTP may be filed in advance of the submission of the license termination request.

Likewise, CAN and NECNP err in concluding that the scope of this proceeding is determined by the Commission's regulation requiring the submission of a plan for management and removal of the spent fuel (10 C.F.R. § 50.54(bb)) -- for that regulation nowhere mentions the LTP. Rather, the scope of the LTP application (and therefore the scope of this proceeding) is defined solely by the terms of 10 C.F.R. § 50.82(a)(10), as read in light of the filing requirements of 10 C.F.R. § 50.82(a)(9)(ii)(A)-(G). Importantly, sections 50.82(a)(9) and (10) do not refer to spent fuel management. This omission in our decommissioning rule was intentional. See Final Decommissioning Rule, 61 Fed. Reg. at 39,292:

> 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 capability to handle fuel for dry cask storage, these requirements are maintained in 10 CFR Part 72.[8]

We thus conclude that, quite apart from the LTP, Yankee Atomic already possesses the necessary license authority for both continued use of the spent fuel pool pursuant to its existing Part 50 license and the movement of spent fuel from the pool to NRC-approved dry casks in an

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[8] See also id. at 39,293 ("the NRC definition of decommissioning excludes interim storage of spent reactor fuel"). A further indication of our intent to exclude spent fuel management from consideration in any review of an LTP is found in the fact that the following language in the Final Decommissioning Rule's Statement of Consideration does not include a requirement that the licensee submit any information on spent fuel management:

> 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, (3) adequacy of the final survey required to verify that these release criteria have been met. (Id. at 39,289.)

on-site ISFSI pursuant to 10 C.F.R. § 72.210, if and when Yankee Atomic decides that such movement should be made. (We also agree with Yankee Atomic that it has authority to move heavy loads over the spent fuel pool pursuant to Amendment 149 to its Part 50 POL -- a conclusion petitioners do not contest.) Yankee Atomic's existing licensing authority and the Commission's current regulatory structure thus combine to place the issue of spent fuel management beyond the scope of this proceeding. Given the heavy emphasis petitioners have placed on spent fuel issues, this limitation severely circumscribes the issues germane to this proceeding.

Eliminating the spent fuel issue leaves the question whether the LTP results in any real-world consequences that conceivably could harm petitioners and entitle them to a hearing. Yankee Atomic believes it does not. We disagree. Indeed, in 1996, when we promulgated the current version of our decommissioning rule, we considered the LTP a significant enough event that we required it to be treated as a license amendment, complete with a hearing opportunity. See Final Decommissioning Rule, 61 Fed. Reg. at 39,284, 39,286, 39,289. Acceptance of Yankee Atomic's apparent view that the LTP is a kind of hortatory document, without important effects, would defeat the carefully-crafted process we established just two years ago.

Yankee Atomic stresses that it does not need our approval of its LTP at this stage in the decommissioning process in order to proceed with implementation of all remaining activities set forth in the Decommissioning Plan. Consequently, according to Yankee Atomic, LTP approval in and of itself would have only the limited effect of determining that the proposed framework for site characterization, cleanup and final survey will be adequate to demonstrate compliance with the regulations, the license conditions, and the previously-approved Decommissioning Plan to the extent necessary to allow unrestricted release of the site. It may very well be (and it has been Yankee Atomic's repeated representation in this instance, see note 6, supra) that the LTP is not proposing any authorizations for future activities that would require amendments to either

the license conditions or the previously-approved Decommissioning Plan. For purposes of this decision, we accept Yankee Atomic's characterization on this issue and therefore rule that any Commission approval of this LTP will not and cannot be construed to approve actions by Yankee Atomic beyond those already authorized. To this extent, Yankee Atomic is correct in its conclusion that the effects of an LTP approval are minimal.

However, Yankee Atomic's logic fails in next suggesting that these minimal current effects render a hearing on the LTP superfluous. The LTP has at least one important future consequence which Yankee Atomic itself acknowledges and which must be litigated now or never. The NRC's approval of the LTP would entitle Yankee Atomic to proceed with its final decommissioning activities secure in the knowledge that, absent extraordinary circumstances, the NRC would not later (at the license termination stage) second-guess Yankee Atomic's site survey methodology. Indeed, the regulation governing license termination -- 10 C.F.R. § 50.82 (a)(11) -- does not provide for consideration of this methodology's adequacy at the termination stage.[9] Thus, the LTP approval's effects would, in a sense, lie dormant until Yankee Atomic sought to terminate its license -- an action it has not yet taken. At that future time, however, its effects would become critically important because the LTP's prior approval would greatly restrict the scope of this agency's review of the request to terminate Yankee Atomic's license and

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[9] Section 50.82(a)(11) provides only that:

The Commission shall terminate the license if it determines that --

> (i) The remaining dismantlement has been performed in accordance with the approved license termination plan, and
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> (ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

would likewise preclude petitioners from challenging any part of the survey methodology.[10] The LTP stage, in other words, is petitioners' one and only chance to litigate whether the survey methodology is adequate to demonstrate that the site has been brought to a condition suitable for license termination. They are precluded from doing so at the license termination stage.[11]

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[10] See Final Rule on Decommissioning, 61 Fed. Reg. at 39,289. Although the relevant regulatory history of the Decommissioning Rule does not directly address the scope-of-proceeding issue we are now considering, the following statements in that history point the way to the interpretation the Commission is now spelling out. The Statement of Consideration for the Final Decommissioning Rule declares that one of the Rule's general overall purposes is the enhanced efficiency of the process by which a licensee terminates its license. See id. at 39,296 ("The final rule clarifies current decommissioning requirements for nuclear power reactors in 10 CFR Part 50 and presents a more efficient, uniform, and understandable process"). The Commission intended that the pre-implementation review of the LTP would enhance the efficiency of the final decommissioning stages by enabling licensees, absent extraordinary circumstances, to avoid retracing their decommissioning steps as a result of a detailed NRC post-implementation review. See Proposed Rule, "Decommissioning of Nuclear Power Reactors," 60 Fed. Reg. 37,374, 37,375 (July 20, 1995):

> Once the licensee had completed implementation of the termination plan and the Commission had verified that the licensee had satisfactorily implemented the termination plan then, as in the existing rule, the Commission would terminate the license.

and id. at 37,377:

> [T]he licensee would then execute the plan and, after this was accomplished and verified by the NRC, the Commission would terminate the license.

[11] We observe that this latter limitation is highlighted by the fact that our regulations nowhere expressly require a licensee to file a license amendment application in order to seek termination of its Part 50 license and therefore do not provide hearing rights with regard to such a request for termination. Compare the Statement of Consideration for the Final Decommissioning Rule, which makes clear that a Part 50 license cannot be terminated prior to the completion of a hearing on the license termination plan. 61 Fed. Reg. at 39,286, 39,289. See also Statement of Consideration for Proposed Decommissioning Rule, 60 Fed. Reg. at 37,375. Cf. 10 C.F.R. § 72.218(b) (referring to "[a]n application for termination of the reactor operating license submitted under § 50.82 " rather than to a license amendment application). Notably, the Commission considered and rejected the option of requiring licensees to file license amendment applications in order to terminate their licenses. See Draft Proposed Rule, "Decommissioning of Nuclear Power Reactors," at 50 (proposed revision to 10 C.F.R. § 50.82(b), which the Commission later rejected), attached as Enclosure 2 to SECY-94-179, "Notice of Proposed Rulemaking on Decommissioning of Nuclear Power Reactors" (July 7, 1994); Draft Proposed Rule ("Option 2"), "Decommissioning of Nuclear Power Reactors," at 11

(continued...)

In short, the time to obtain a hearing on license termination decisions comes at the LTP stage, as our rules unambiguously provide. Having decided what matters are germane (the matters listed in 10 C.F.R. § 50.82(a)(9) and (10)) and not germane (spent fuel storage) to the LTP proceeding, we now turn to the "injury in fact," causality and redressability aspects of standing.

2. NECNP's Standing

NECNP claims "injury in fact," and hence standing to intervene, based on Mr. van Itallie's concerns about the effect of an "ineffectual cleanup" upon his own health, safety and property. NECNP argues that Mr. van Itallie is a local resident who lives, walks and hikes in the immediate vicinity of the reactor site and that he would therefore be personally at risk of injury if the site were not adequately cleaned up prior to its unrestricted release. According to NECNP, Mr. van Itallie is concerned "whether the LTP's provisions for site surveys, identification of remaining decommissioning tasks, and decommissioning funding are adequate to provide reasonable assurance that the LTP site release criteria will, in fact, be satisfied." NECNP's Reply Brief on Appeal of LBP-98-12, dated Aug. 5, 1998, at 2-3 n.2.[12] He also says that contamination at the reactor site "interferes with [his] enjoyment of the local scenic beauty." Declaration of Jean-Claude van Itallie at 2. According to NECNP, all these claims of injury are directly related to the purpose of the amendment -- which is to establish criteria and monitoring sufficient to restore the site to the "green fields" condition of unrestricted use.

We agree with NECNP that Mr. van Itallie's claims of "injury in fact" suffice for standing to intervene in this case. To be sure, some of his allegations of injury relate solely to spent fuel

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[11](...continued)
(alternative proposed revision to 10 C.F.R. § 50.82(b), which the Commission also rejected), attached as Enclosure 5 to SECY-94-179, supra. The Commission takes official notice of these last two documents, both of which were released to the public on July 14, 1994.

[12] NECNP's motion for leave to file this brief is granted.

storage -- a subject, as we explained earlier in this opinion, not germane to LTP approval. But he makes several other allegations of injury not tied to spent fuel, including his core claim that "ineffectual cleanup" of the reactor site under the LTP may result in adverse health effects, loss of aesthetic enjoyment, and diminished property values for those who live, work or play in the immediate vicinity. Numerous judicial decisions recognize allegations closely similar to these as sufficient "injury in fact" for standing in environmental cases. See, e.g., Dubois v. USDA, 102 F.3d 1273, 1282 (1st Cir. 1996); Sierra Club v. Cedar Point Oil Co., 73 F.3d 546, 555-57; Kelley v. Selin, 42 F.3d at 1509. See generally Animal Legal Defense Fund v. Glickman, 154 F.3d 426 (D.C. Cir. 1998) (en banc) (collecting cases).

Our agency, too, has regularly admitted into our proceedings petitioners who show a close connection to the site, either as neighbors or regular visitors, and a realistic possibility that the NRC licensing action could injure them. See, e.g., Private Fuel Storage (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31-32 (1998). Indeed, in our two most recent decommissioning decisions, one involving Yankee Rowe itself, we concluded that nearby citizens could challenge the efficacy of the facility's decommissioning activities. See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 247-48 (1996); Sequoyah Fuels Corp. (Gore, Okla., Site), CLI 94-12, 40 NRC 64, 71-75 (1994).

We see no reason to reach a different result here. It seems obvious to us that an ill-considered LTP -- for example, one with inadequate provisions for radiation monitoring -- plausibly could result in injury to NECNP members, like Mr. van Itallie, who live near Yankee Rowe and reasonably might be expected to come into contact with the site. The NRC staff opposes NECNP's standing on the ground that Mr. van Itallie has failed to show any legal entitlement to enter the Yankee Rowe site after the license is terminated. Therefore, the argument goes, his claims of injury are too speculative, as he himself may never suffer harm if the LTP proves inadequate. We find this an overly legalistic view. The purpose of the LTP

process is to ensure that the property will be left in such a condition that nearby residents like Mr. van Itallie can frequent the area without endangering their health and safety. To insist that potential intervenors show more -- that they demonstrate with certainty that they will be allowed onto the site once the license is terminated -- would go beyond what is necessary to show injury-in-fact in license termination cases. In the context of the Yankee Atomic LTP, which proposes unrestricted release, requests for hearings would founder on the requirement to show a future legal entitlement to enter the property, a showing no one realistically can be expected to make at the LTP stage. We cannot accept that result, as it would undercut our deliberate decision in 1996 to provide for an opportunity for a hearing on approval of LTPs.

We similarly reject Yankee Atomic's argument that LTP approval will result in no offsite consequences. Yankee Atomic's position is largely a red herring in the LTP context. Even in the absence of a showing of injury away from the reactor site, it is enough for standing in LTP proceedings to allege, as NECNP does, that an improvident approval of an insufficient LTP today could result in future real impacts to people traversing the current on-site land. After license termination (whether with restricted release or, as in this proceeding, unrestricted release), that land presumptively will be sufficiently accessible to the public to allow a colorable claim of a realistic threat of injury sufficient to establish standing.

There can be no real question that NECNP's claims of injury flow directly from the LTP. NECNP alleges, for example, that Yankee Atomic's proposed surface contamination patterns "allow grossly contaminated patches and hot-spots to be overlooked" (NECNP Appeal Brief at 20, quoting NECNP's Amended Petition at 36) and that the LTP failed to address "significant environmental information ..., such as the changes in site characteristics, including paving and compaction of soil, which are likely to affect the flow of contaminated groundwater" (NECNP Appeal Brief at 20, citing Amended Petition for Intervention at 26-28). The first of these is relevant to the adequacy of both the site remediation plan and the final radiation survey (10

C.F.R. § 50.82(a)(9)(ii)(C), (D)) and the second is relevant to the presence of "new information or significant environmental change associated with the licensee's proposed termination activities" (10 C.F.R. § 50.82(a)(9)(ii)(G)). Consequently, these two grounds for concern fall within the scope of this proceeding. Moreover, these grounds are sufficiently detailed to support Mr. van Itallie's claims of threatened injury and provide sufficient support for the existence of a "realistic threat" of injury. Although we recognize that Mr. van Itallie's grounds are subject to dispute on their merits, we do not require him (or NECNP) to demonstrate the "certainty" of his position's correctness at this early a stage of the proceeding. Sequoyah Fuels, CLI-94-12, 40 NRC at 74 ("Although NACE has not established the existence of these flow patterns with certainty, such certainty is not required at this threshold stage" (footnote omitted)).

We also conclude that the threatened injuries discussed above are "fairly traceable" to the licensing action at issue here, i.e., the approval of the LTP. If the LTP were approved despite a failure to satisfy the requirements of 10 C.F.R. § 50.82(a)(9)(ii), then the subsequent implementation of the LTP and termination of the POL could result in the inappropriate release of a site that still poses a threat to public health and safety -- the very injury Mr. van Itallie claims. We further conclude (to state the obvious) that Mr. van Itallie's asserted injury is susceptible of redress by a decision in Mr. van Itallie's and NECNP's favor, viz., a denial of Yankee Atomic's request for Commission approval of the LTP or a Commission-mandated change to the LTP. Such a decision would necessarily conclude that the LTP did not comply with 10 C.F.R. § 50.82(a)(9)(ii) and/or (10), and would require Yankee Atomic to redraft the LTP in a way that would satisfy the requirements of those regulations -- the very result that Mr. van Itallie and NECNP seek here.[13]

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[13] Yankee Atomic asserts that NECNP's (and CAN's) claims of standing are deficient because they are not supported by an expert affidavit. Our regulations admittedly require that the petition "set forth with particularity ... the specific aspect or aspects of the subject matter of

(continued...)

Because of the conclusions set forth above regarding NECNP's standing, we do not need to address Mr. van Itallie's or NECNP's remaining allegations of injury. However, NECNP should not interpret our grant of standing to mean we have also concluded that its allegations of injury are sufficiently supported to pass muster at the "contention" stage of this proceeding. That is an issue on which the Board has yet to rule and on which we offer no opinion.

3. CAN's Standing

The declaration of Ms. Katz, who is represented by CAN in this proceeding, is in most significant respects the same as that of Mr. van Itallie. As we did with NECNP, we conclude CAN has alleged enough potential harm from an ineffectual cleanup that it has standing to intervene.

Although this resolves the issue of CAN's standing, we comment briefly, in the form of guidance to the Board, on two of CAN's arguments. See Baltimore Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC ___, passim (Aug. 26, 1998) (discussing the Commission's inherent supervisory authority over our adjudications). We address these arguments now because they may well resurface at the contention stage of this proceeding.

As one ground for its concerns, CAN challenges the Board's ruling that ALARA issues are not germane to this LTP proceeding. We agree with CAN that ALARA theoretically could apply to the instant proceeding. As we clearly stated in CLI-96-7 (in the Yankee Rowe decommissioning proceeding), section 50.82 "expressly requires decommissioning 'to be performed in accordance with the regulations in this chapter' [and that t]hese regulations

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[13](...continued)
the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2) (emphasis added). But no regulation and no Commission decision requires submission of expert affidavits in order to demonstrate standing. Only when technical fact disputes arise at the standing stage are such affidavits necessary. See Sequoyah Fuels, CLI-94-12, 40 NRC at 71-75.

include, of course, the ALARA rule in 10 C.F.R. Part 20." 43 NRC at 250-51 (footnote omitted), quoting 10 C.F.R. § 50.82(e) (superseded by 10 C.F.R. § 50.82(a)(10) which contains the same language). However, CAN appears to raise this ALARA issue only in conjunction with its argument that Yankee Atomic's calculations sidestep the fact that, upon release, the site would have an excessive radioactivity rate of 43-87 millirem/year above background radiation levels. We agree with the Board that CAN, in reaching this conclusion, inappropriately used worst-case-scenario assumptions.[14] Therefore, although ALARA could be germane to a decommissioning proceeding, CAN has not yet shown that its particular ALARA concerns are in fact germane to the instant case.[15]

CAN also contends that the Board failed to address its concerns regarding site release criteria, and insists that the Commission require Yankee Atomic to adhere to a 15-millirem criterion to which Yankee Atomic had agreed, rather than the 25 millirem criterion subsequently adopted by the Commission in its 1997 license termination rule. This is a non-issue. Yankee has already agreed in its LTP to meet the 15-millirem criterion. Consequently, without some

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[14] See LBP-98-12, 47 NRC at 352. 10 C.F.R. § 20.1402 provides that:

> A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a [total effective dose equivalent] to an average member of the critical group that does not exceed 25 mrem ... per year. (Emphasis added)

10 C.F.R. § 20.1003 defines "critical group" as "the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances" (emphasis added). Section 20.1402 (the Commission's recent rule on site release criteria) prescribes the pertinent standards for termination of the Yankee Rowe reactor license, and is not subject to challenge or litigation in an adjudication. See generally 10 C.F.R. § 2.758.

[15] Morever, it may not always be necessary to make a separate showing of compliance with ALARA. For example, the Generic Environmental Impact Statement for the license termination rule finds that, for soil, doses that meet the 25 millirem per year dose limit are ALARA. See NUREG-1496, Vol. 1, § 6.2 and Table 6.1 (discussing, inter alia, costs of cleaning up soil to 25 millirem or below at a reference power reactor). In these cases, additional demonstration of compliance with ALARA may not be necessary.

new showing by CAN, there is simply no controversy for the Board (and the Commission) to resolve.

4. Relief Requested by CAN and NECNP

Although our discussion above resolves the issues of whether NECNP and CAN have standing, we take this opportunity to deny two of the requests for relief that NECNP and CAN lodged with us on appeal. Our rulings on these matters will further limit the scope of the remaining proceeding.

CAN and NECNP first express concern that the Board's ruling in LBP-98-12 would forever deprive them of any opportunity for a hearing on spent fuel storage issues. The source of these petitioners' concern is the Board's rejection, as irrelevant, of all concerns regarding hazards posed by spent fuel storage in dry casks on the ground that they are "activities previously licensed and considered in the licensee's decommissioning plan and approved therein." See, e.g., NECNP Appeal Brief at 22-23, quoting LBP-98-12, slip op. at 7. NECNP (which provided the more thorough discussion of this point) points out that an earlier Board had dismissed as premature these same concerns when NECNP tried to raise them in the 1995-96 proceeding on Yankee Rowe's Decommissioning Plan. The earlier Board had explained that the dry cask issues were not ripe because Yankee Atomic had yet to decide whether to build a dry cask storage facility. See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 79 (1996). See also Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 257 and n.16 (1996). NECNP also notes that Yankee Atomic has yet to seek licensing authority for such a facility and that, consequently, NECNP has not had an opportunity for a hearing on that subject.

According to NECNP, LBP-98-12 is completely inconsistent with the earlier Board's decision in LBP-96-12 and in effect transforms the cask storage matters from prospective issues into issues previously decided, thereby depriving NECNP of any opportunity for a

hearing on issues related to cask storage. NECNP believes that nothing has occurred sufficient to alter the accuracy of the decommissioning Board's 1996 statement, supra. To correct this problem, NECNP asks the Commission to rule that Yankee Atomic is not entitled to proceed with dry cask storage absent licensing of an ISFSI under Part 72 of our regulations, with safety and environmental reviews and an opportunity for a public hearing.

This request for relief reflects petitioners' confusion regarding the two different kinds of ISFSI licenses. Under 10 C.F.R. §§ 72.210 et seq., Yankee Atomic is entitled to a general license to operate an ISFSI as long as it retains its Part 50 license and as long as it stores spent fuel in a cask approved by rulemaking for listing in 10 C.F.R. § 72.214. However, once the Commission terminates Yankee Atomic's Part 50 license, Yankee Atomic's authority under the general license (should it employ one) would automatically and simultaneously end, because the general ISFSI license draws its existence solely from the Part 50 license. Thus, if Yankee Atomic wishes to operate an ISFSI to hold the spent fuel for the period of time following the termination of the Part 50 license, it must first obtain a site-specific ISFSI license under section 72.40 of our regulations -- a process which requires safety and environmental reviews and provides the public an opportunity to seek a hearing on the underlying license application. However, it is not at all clear that Yankee Atomic will ever seek the latter kind of ISFSI license (since it is possible that Yankee Atomic will transfer the fuel from the site prior to termination of the Part 50 license). For now, Yankee Atomic would be entitled under its current license and under Part 72 of our regulations to proceed with on-site dry cask storage in Commission-approved dry casks. Petitioners, of course, are entitled to participate in rulemakings in which the Commission considers whether to approve particular types of dry casks.

NECNP and CAN also seek a second form of relief. They challenge the Board's denial of their requests that the Commission correct certain alleged errors associated with the notice and conduct of the NRC staff's January 13, 1998, public meeting. Petitioners raise a panoply of

grievances concerning that meeting. The Board correctly declined to address this set of issues. Adjudications are not the appropriate forum for resolving complaints about NRC staff conduct. See Curators of the University of Missouri, CLI-95-8, 41 NRC 386, 396 (1995) ("in adjudications, the issue for decision is not whether the Staff performed well, but whether the license application raises health and safety concerns"). However, the Commission will treat petitioners' complaints as if they were directed to the Commission outside the adjudicatory context. We have instructed the NRC staff to provide us with a written response to petitioners' complaints. After reviewing the staff's response, we will respond directly to petitioners by letter.

VIII. CONCLUSION AND ORDER

For the foregoing reasons, we affirm in part and reverse in part LBP-98-12, and dismiss FRPB's appeal. FRPB is denied standing in this proceeding. CAN and NECNP are granted standing in this proceeding. However, to gain a hearing, CAN and NECNP must still present at least one germane contention that satisfies the admissibility requirements of 10 C.F.R. § 2.714. Moreover, if the Board does grant CAN and NECNP a hearing, the scope of the proceeding will be far more restricted than they have requested. It will consider neither (1) staff's "No Significant Hazards Consideration" determination nor issues pertaining to (2) the conduct of the January 13, 1998, public meeting, (3) spent fuel (including storage, management and removal), (4) any future application by Yankee Atomic to terminate its Part 50 license, (5) the general ISFSI license currently available to Yankee Atomic pursuant to 10 C.F.R. § 72.210, nor (6) any possible future application by Yankee Atomic for a site-specific license to establish and operate an ISFSI pursuant to 10 C.F.R. § 72.40.

This case is remanded to the Licensing Board for further proceedings consistent with this Memorandum and Order.

IT IS SO ORDERED.

For the Commission

John C. Hoyle
Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of October, 1998.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-98-21) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)50-029-LA
COMM MEMO & ORDER (CLI-98-21)

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Dated at Rockville, Md. this
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