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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman  
Dr. Thomas S. Elleman  
Thomas D. Murphy

OFFICE OF THE  
RULEMAKING  
ADJUDICATIVE STAFF

**SERVED APR 22 1999**

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY  
(Yankee Nuclear Power Station)

License Termination Plan

Docket No. 50-029-LA-R

ASLBP No. 99-754-01-LA-R

April 22, 1999

MEMORANDUM AND ORDER

(Denying Motion for Reconsideration of Contention 4)

This proceeding concerns the License Termination Plan (LTP) for the Yankee Nuclear Power Station (YNPS), in Rowe, Massachusetts, for which Yankee Atomic Electric Co. (YAEC or Licensee) is seeking approval. In our Prehearing Conference Order dated March 17, 1999, LBP-99-14, 49 NRC \_\_\_, we considered numerous proposed contentions proffered (in many cases, jointly) by the New England Coalition on Nuclear Pollution (NECNP) and the Citizens Awareness Network (CAN), and we accepted four of them (designated Contentions 1-4).

Pending before us is a motion filed by YAEC on March 29, 1999, seeking reconsideration of our allowance of Contention 4, which was a consolidation of contentions that

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had been submitted jointly by NECNP and CAN.<sup>1</sup> Timely responses opposing the Reconsideration Motion have been filed by NECNP, CAN, and the Franklin Regional Council of Governments (FRCOG, participating as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c)).<sup>2</sup> A response in support of the motion (agreeing in toto with everything put forth by YAEC) was filed by the NRC Staff.<sup>3</sup> YAEC seeks to file a reply to the responses of NECNP and CAN,<sup>4</sup> and NECNP seeks to reply to YAEC's reply.<sup>5</sup> (Inasmuch as YAEC's reply includes references to criteria adopted in the decommissioning plan that is not otherwise before us, we

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<sup>1</sup>"Objection To and Motion of Yankee Atomic Electric Company For Reconsideration Of A Portion of Prehearing Conference Order," dated March 29, 1999 (hereinafter, "Reconsideration Motion").

<sup>2</sup>"[NECNP's] Opposition to [YAEC's] Motion to [Reconsider] Part of Prehearing Conference Order," dated April 9, 1999; [CAN's] Reply to [YAEC's] Objection To and Motion for Reconsideration of a Portion of Prehearing Conference Order," dated April 9, 1999; [FRCOG] Opposition to Objection to and Motion for Reconsideration of Portion of Prehearing Conference Order Filed by [YAEC]," dated April 8, 1999.

<sup>3</sup>"NRC Staff Response to [YAEC's] Objection To and Motion for Reconsideration of A Portion of Prehearing Conference Order," dated April 9, 1999.

<sup>4</sup>YAEC's "Motion For Leave To Reply (Reconsideration Of A Portion of Prehearing Conference Order), dated April 12, 1999.

<sup>5</sup>NECNP's "Motion for Leave to Reply to [YAEC's] Motion for Leave To Reply (Reconsideration of a Portion of Prehearing Order) and YAEC's Reply," dated April 12, 1999.

accept both YAEC's reply and NECNP's reply to the reply.)<sup>6</sup>  
For reasons set forth, we are denying YAEC's motion,  
although clarifying to some degree the basis for our earlier  
Prehearing Conference Order ruling on this contention.

The contention under review reads as follows:

Contention 4. Contrary to the requirements of 10  
C.F.R. § 50.82, the methodology YAEC employs in  
the LTP for the selection of applicable scenarios  
for the calculation of its final release doses  
is not adequate to demonstrate that the LTP  
will assure the protection of the public  
health and safety.

YAEC in its Reconsideration Motion takes issue with  
this contention on essentially four grounds (although some  
of them tend to overlap each other). We deal with them  
seriatim.

First, and most important, it claims that, by imposing  
criteria for Total Effective Dose Equivalent (TEDE) release  
values set forth in the LTP (here, 15 mrem/yr, see, e.g.,  
LTP at pp. 1-1, 1-2, 4-1), the contention, by exploring one  
aspect of the means by which the 15 mrem/yr is to be  
calculated, could subject YAEC to criteria that are not  
applicable to the site in question.

YAEC goes on to explain that, at least in its view,  
there are no TEDE dose requirements applicable to the site  
at all, inasmuch as the LTP is not subject to the

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<sup>6</sup>In addition, YAEC on April 13, 1999, submitted an item  
that was intended to have been attached to its April 12  
Reply motion but was inadvertently omitted, and on April 14,  
1999, submitted an "Erratum (Reconsideration of a Portion of  
Prehearing Conference Order.)" We accept both filings.

requirements of 10 C.F.R. § 20.1402 (source of a TEDE requirement) but rather to the Site Decommissioning Management Plan (SDMP) Action Plan requirements (set forth at 57 Fed. Reg. 13389, April 16, 1992) applicable prior to the adoption by the Commission of the TEDE requirements. YAEC describes the SDMP site release criteria as dependent "primarily" on surface activity readings and an exposure rate pass value of 5 microroentgen/hr and as not requiring the determination of a TEDE to the average member of the critical group, or even that a critical group be defined (Reconsideration Motion, at 2). YAEC adds that it "voluntarily" subjected itself to a TEDE requirement that it could drop from its LTP without violating any governing regulatory requirement.

The intervenors counter this argument of YAEC on a number of grounds. Some are matters of policy that we are not able to resolve--such as whether the site should be subject to the SDMP criteria or, if so, whether the LTP must be finally approved by the Commission by August 20, 1999 for the SDMP criteria to be applicable. We only hold that the site is currently subject to the SDMP criteria, given the apparent previous submission and prior Commission approval of a decommissioning plan compatible with SDMP criteria (see 10 C.F.R. § 20.1401(b)(2)) and that we will judge the validity of Contention 4 in light both of the SDMP criteria and YAEC's utilization of the 15 millirem/year dosage in the

LTP. Nor need we consider NECNP's claim that the SDMP criteria are not entitled to regulatory force. Although the SDMP criteria clearly were not initially adopted as formal regulations, they (and their applicability to particular sites, such as the YNPS site) are referenced by current regulations and may thus be accorded weight on that score.

The intervenors next point is more telling. They claim that YAEC is relying on the TEDE figure in its LTP and, accordingly, to be a meaningful commitment, YAEC must calculate it correctly. That YAEC might amend its LTP to withdraw the TEDE commitment is irrelevant to the intervenors, who claim that a modified LTP would still be subject to Commission approval.

As we perceive the argument, the intervenors claim that the Licensee is bound by its TEDE dose commitment, even if voluntary, and in that circumstance the dose must be calculated properly. Otherwise, it is no more than a facade or an advertising gimmick, not worth the paper on which it may be printed. That the "voluntary" commitment may later be withdrawn or watered down is of no consequence, except to engender another Commission review of the LTP.

After consideration of the various arguments, we conclude the TEDE commitment in the LTP is something more than "voluntary." The Licensee has itself acknowledged that the 15 mrem/yr TEDE requirement has been included in the approved YNPS Decommissioning Plan, which was inserted into

the FSAR and then carried forward to the LTP.<sup>7</sup> Whether or not it was voluntarily initiated, it becomes binding when included as an FSAR condition.

Moreover, both the SDMP and the TEDE requirement in 10 C.F.R. § 20.1402 are subject to ALARA<sup>8</sup> requirements. The LTP utilizes the 15 mrem/yr requirement to fulfill its SDMP ALARA requirements. Thus, for example, the LTP states (at p. 4-1):

The purpose of this section [Section 4] is to identify the remediation methods that may be used, describe the areas on site that may be subject to remediation, and demonstrate that the site release criterion of 15 mrem/year is adequate to ensure that residual levels of radioactivity at YNPS will be As Low As is Reasonably Achievable (ALARA). [Emphasis supplied.]

The LTP goes on to explain (at p. 4-4) that "[t]his [ALARA] analysis will show that, in areas with dose levels already lower than 15 mrem/year for an average member of the critical population group, the benefits of further

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<sup>7</sup>"Erratum (Reconsideration of a Portion of Prehearing Conference Order)," submitted by YAEC on April 14, 1999, at 1.

<sup>8</sup>ALARA (acronym for "as low as is reasonably achievable") is defined as "making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest." 10 C.F.R. § 20.1003.

remediation are not proportionate to the total costs"  
[emphasis supplied].

Thus, in summary, the LTP itself reflects that the TEDE value contained therein is not a purely "voluntary" commitment but rather has been submitted to reflect what already is included in the approved Decommissioning Plan and to fulfill the SDMP ALARA requirement.<sup>9</sup> Beyond that, this section of the LTP demonstrates the significance of the average population group and, perforce, its method of calculation (which, we reiterate, is what this contention challenges). Accordingly, this aspect of YAEC's challenge to Contention 4 is rejected.

YAEC's second ground for challenging Contention 4 is that, even assuming that the YNPS were not an SDMP plant but was subject to the criteria of 10 C.F.R. § 20.1402, the contention, if proved, would subject YAEC to proving the sufficiency of a dose criteria lower (15 mrem/yr) than the 25 mrem/year limit specified in 10 C.F.R. § 20.1402. What YAEC neglects to mention, however, is that the 25 mrem/year maximum dose specified in 10 C.F.R. § 20.1402 is itself subject to ALARA considerations, and that the 15 mrem/year in the LTP was submitted as an ALARA figure. As noted above, the ALARA dose must be calculated correctly for it to be meaningful. In that connection, the Licensee is required

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<sup>9</sup>In addition to the ALARA requirement, the SDMP criteria refer to "an overall dose objective of 10 millirem per year." 57 Fed. Reg. at 13,390.

to adopt a relevant exposure scenario and make site measurements of distributed exposure to an average individual in the reference scenario, irrespective of the specific annual dose to be met. Accordingly, this aspect of YAEC's challenge to Contention 4 is also rejected.

The third aspect of YAEC's challenge to Contention 4 is that it would substitute a particular defined individual (a gardener) for an average member of a particular group. YAEC characterizes a "gardener" as a "member of the critical group who is atypically exposed." [Reconsideration Motion, at 7.] Whether or not LBP-99-14 may be read that way, the Board did not intend to require any particular defined group, gardener or otherwise. Rather, the Board read the various presentations of the intervenors as demonstrating that the critical group adopted by the Licensee did not necessarily reflect the likely average member of the critical group that would occupy the site.

The answer to the contention may well be that the average member of the critical group is not the resident utilized by YAEC but an individual engaged in a higher percentage of on-site activities, including gardening. As NECNP observes, "[t]he scenario YAEC uses in the LTP may be reasonable for window-box gardeners and joggers in the city. It does not apply to potential site occupants who will, like so many New Englanders, try to get all of their vegetables from the 'patch' they began cultivating in April." [NECNP

Response, at 8.] The bases relied on in LBP-99-14 tended to support such a scenario. But the answer may also be that the group presented by the LTP accurately reflects potential site usage. The contention merely opens the door to evidence of what the most appropriate critical group will be. Accordingly, this portion of YAEC's objection to the contention is based on a misunderstanding of the intent of the contention and is accordingly rejected.

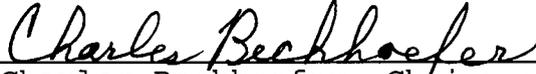
YAEC's final challenge is that the contention is hopelessly vague, giving no guidelines as to what YAEC would have to prove. CAN's April 9, 1999 filing with respect to the Reconsideration Motion (at pp. 10-12) demonstrates that all the contention seeks to establish is a "reasonable and typical scenario for the region" in order to determine TEDE values. CAN would have us accept an average farmer, or gardener, and has provided information supporting that result. As explained above, the Intervenors have established only that an appropriate controversy is to be adjudicated by the Board. YAEC will be required to show that the LTP uses the appropriate scenario to calculate the final release doses for the decommissioning of the YNPS.

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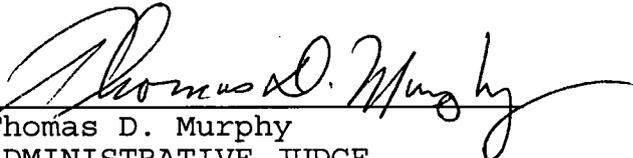
For all of the above reasons, YAEC's motion for reconsideration of the portion of LBP-99-14 that admitted NECNP/CAN Contention 4 is hereby denied.

IT IS SO ORDERED.

The Atomic Safety and  
Licensing Board

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

  
Dr. Thomas S. Elleman  
ADMINISTRATIVE JUDGE

  
Thomas D. Murphy  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 22, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No.(s) 50-029-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O--DENY'G MOT.--LBP-99-17 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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