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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the
ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	Docket No. 50-029-LA
)	ASLBP No. 98-736-01-LA
YANKEE ATOMIC ELECTRIC COMPANY)	
)	
(Yankee Nuclear Power Station))	April 9, 1999

CITIZENS AWARENESS NETWORK, INC. REPLY TO YANKEE ATOMIC
ELECTRIC COMPANY'S OBJECTION TO AND MOTION FOR
RECONSIDERATION OF A PORTION OF PREHEARING CONFERENCE ORDER

Citizens Awareness Network, Inc. (CAN), hereby replies under 10 CFR Part 2.730 to Yankee Atomic Electric Company's (YAEC) Objection and Motion for Reconsideration of part of the Atomic Safety and Licensing Board's Prehearing Conference Order in the license amendment proceeding on YAEC's proposed License Termination Plan (LTP). CAN joins with the New England Coalition on Nuclear Pollution in their motion as a citizen intervenor group. CAN is participating in this adjudicatory process to represent the interests and protect the health and safety of our community.

I. Reply to YAEC's Motion.

On March 17, 1999 the Atomic Safety and Licensing Board (ASLAB) issued a Prehearing Conference Order (Ruling on Contentions) in which it accepted four reworded contentions from the Citizens Awareness Network (CAN) and New England

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Coalition on Nuclear Pollution (NCNP). On March 29, 1999, YAEC filed a motion for reconsideration of "Contention 4". YAEC claims therein that the ASLAB converted a "voluntary undertaking into the equivalent of a regulatory requirement, in contravention of the governing regulations ..."¹

YAEC claims that its "voluntary undertaking" derives from its status as an SDMP plant, and YAEC in its motion describes itself as meeting the qualifications for SDMP.² CAN submits firstly that the SDMP Action Plan is mere guidance. It is not regulation, it has not gone through a rulemaking process nor has it been released for public comment. The enhanced rulemaking process referred to by Ms. Hogdon in the prehearing transcript addressed the Subpart (e) rulemaking, which though related in a manner to the SDMP, was not in fact a rulemaking on the SDMP or the SDMP Action Plan.³

Unlike an NRC regulation, it does not constitute binding legal requirements. The SDMP Action Plan in fact states "It should be noted that the Action Plan itself does not contain enforceable standards and is not intended to create new rights or obligations on third parties or to preclude litigation of properly framed issues in any pending proceeding"⁴. Therefore, YAEC's commitments in its LTP should not be affected by its claimed SDMP status or its "voluntary" commitments. In fact, YAEC's site remediation

¹ Yankee Atomic Electric Co. Objection To and Motion of Yankee Atomic Electric Co for Reconsideration of a Portion of Prehearing Conference order. Docket No. 50-029-LA

² NUREG-1444 Site Decommissioning Management Plan, October, 1993

³ Official Transcript of Proceedings, United States of America Nuclear Regulatory Commission, Yankee Atomic Electric Company (Yankee Nuclear Power Station) Case No: 50-029- LA- R, ASB-300-644, Greenfield, MA January 26, 1999 pp. 29-30

plan should be examined in light of NRC's new decommissioning rule and the requirements the rule establishes for site release criteria for power reactors. CAN recognizes that the NRC rule sets a higher standard for site release dose limits than YAEC's LTP commitment and will address this issue in our reply.

CAN submits that YAEC currently does not qualify as an SDMP plant as set out in 10 CFR part 20.1401 or under the SDMP Action Plan.⁵ In the SDMP Action Plan summary NRC describes the criteria for SDMP plants, which includes "...the NRC's general expectation that SDMP site cleanup will be completed within a 4-year timeframe after operations cease or 3 years after the issuance of an initial cleanup order..."⁶ YAEC has been decommissioning the Yankee Rowe site since 1992 and site remediation is far from accomplished. Clearly this is just one of the ways in which YAEC's decommissioning plan fails to meet SDMP criteria. Even if YAEC and NRC Staff were to be permitted to stretch NRC guidelines to allow YAEC to qualify as an exceptional member of this group, YAEC still would not meet the essential requirements of timeliness and effectiveness. In addition, Mr. Weber in a transcript from NRC states, "So, in the program management plan, we have objectives, responsibilities, and resources are specifically carved out in NRC budget, to support this program (SDMP). It also includes the listing of the contaminated sites. People don't like to be listed on the SDMP, because, to some, it's equivalent to being listed on EPA's Superfund list or the national

⁴ 57 FR 13389 April 16, 1992 Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites, p.2

⁵ NUCLEAR REGULATORY COMMISSION AGENCY: Nuclear Regulatory Commission. Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites 57 FR 13389 April 16, 1992

priorities list.”⁷ Is YAEC the equivalent of a Superfund site and if so, is the dispute over clean up an admission by YAEC that in fact the site is seriously contaminated?

In addition, the SDMP Action Plan states that “[T]he SDMP provides a comprehensive strategy for NRC and licensee activities dealing with the cleanup and closure of contaminated nuclear material facilities over which the NRC has jurisdiction. ... (The SDMP does not include more routine decommissioning cases such as nuclear power reactors).”⁸ The power reactors previously allowed to decommission under SDMP were Shoreham and Fort St. Vrain. Both stations had much shorter operational lives and therefore site remediation was not as complex as it is at Yankee Rowe, which operated for thirty-one years.

Further, 10 CFR 20 Subpart (e) excludes sites, which :

- (1) Have been decommissioned prior to the effective date of the rule in accordance with criteria identified in the Site Decommissioning Management Plan (SDMP) Action Plan of April 16, 1992 (57 FR 13389);
- (2) Have previously submitted and received Commission approval on a license termination plan (LTP) or decommissioning plan that is compatible with the SDMP Action Plan criteria; or
- (3) Submit a sufficient LTP or decommissioning plan before August 20, 1998 and such LTP or decommissioning plan is approved by the Commission

⁶ Ibid. p. 1

⁷ NUCLEAR REGULATORY COMMISSION Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Joint Subcommittees: 1st Meeting Docket Number: (not applicable) Rockville, Maryland , March 26, 1996 Work Order No.: NRC-587 Pages 1-255

⁸ Ibid. 57 FR 13389 April 16, 1992 Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites

before August 20, 1999 and in accordance with the criteria identified in the SDMP Action Plan, except that if an EIS is required in the submittal, there will be a provision for day-for-day extension.

It has yet to be shown that YAEC's decommissioning plan was either written to be SDMP criteria compliant, or that it was approved by the NRC as such. Neither case that YAEC cites in its appeal supports its claim that it has been approved to be considered an SDMP site, and therefore grandfathered under 10 CFR 20.1401 (b)(3). Neither case ever attempts to address the issue. YAEC in its LTP executive summary in Revision 1 of its LTP at page A-viii makes a claim that its LTP will meet SDMP guidelines however CAN has found no similar claim for its decommissioning plan.

Whether YAEC can be grandfathered in under 1401 (b) or must meet the 1402 requirements, does not relieve YAEC of its commitments made in the LTP. Rather than demonstrate a commitment and assurance that its LTP plan can be effective, YAEC threatens to withdraw its commitments when its methodology is questioned. YAEC in its LTP committed to a 15 millirem per year dose to the effected population. Now that the methodology for YAEC's calculations are questioned, YAEC maintains that it doesn't have to meet commitments it made repeatedly in its LTP, as well as in many public meetings, forums, and public relations campaigns, since it claims that it is an SDMP plant and its commitments were voluntary⁹. The licensee can not have it both ways. It must make "good" on its commitments.

If the LTP is to gain approval then YAEC must honor the commitments it made, and the questions that have arisen pertaining to methodology employed are both valid and reasonable. It is irrational that the licensee declares that since its commitment is “voluntary”, it is not accountable to the regulatory requirements YAEC committed to in its LTP. Once YAEC committed in its LTP to a standard it is obligated under law to meet that standard. YAEC should not be permitted to pick and choose between decommissioning guidelines, regulations, and dose calculations to avoid its commitments. If the licensee can do this, it renders NRC regulations arbitrary and irrational and raises doubts about other commitments made by the licensee.

YAEC in its LTP repeatedly¹⁰ commits to an exposure rate pass value of 15 mrem/yr, yet it now claims that it cannot be forced to meet this commitment. Yankee had previously committed to an exposure rate pass value of 30 mrem/yr¹¹, the 15 mrem/yr. commitment in the LTP is an improvement that CAN finds laudable. The argument that YAEC now presents, that intervenors cannot have contentions surrounding this issue admitted by the ASLAB, are based on faulty logic. Intervenors do not even need to contend that YAEC in its LTP proposes to allow levels above or below either the 15 or 30 mrem per year exposure rate pass values, or that it is statutorily required, to meet either for Contention 4 to stand. The contention stands regardless of the issues surrounding Subpart (e) of 10CFR20. Intervenors merely need to contend that YAEC

⁹ Yankee Atomic Electric Company Objection To and Motion of Yankee Atomic Electric Company for Reconsideration of Portion of Prehearing Conference Order. Docket No. 50-029-LA p. 1

¹⁰ YNPS License Termination Plan Revision 0, 1997

¹¹ Official Transcript of Proceedings “Informal Hearing - - Yankee Rowe Decommissioning Plan”, Greenfield, MA; August 16, 1994 Accession Number 9409080186. p 9.

must be able meet the 15 mrem/yr level because this is the exposure rate pass value that YAEC stated that it will meet and that the methodology laid out in the LTP is not sufficient to meet this standard. This contention does not hinge on whether or not Yankee is required to meet 10 CFR 20.1402 requirements, or whether it is required to make a TEDE analysis. (YAEC would indeed be required under 10 CFR 20.1401 (d) to do a TEDE for the first 1000 peak years). The contention stems from YAEC's decision and commitments in its LTP. The Board, in its decision, properly accepts YAEC's commitment to the 15 mrem/year TEDE dose criteria as ruling.¹² If YAEC's commitments in its own LTP cannot be considered as ruling when they meet, and even if they exceed, regulatory standards, of what use is the LTP?

YAEC presents the argument that being required to meet its own standards is penalizing it.

“Yankee's voluntary undertaking in this situation...should be encouraged, not penalized. To declare...that if one commits to do more than the minimum you may be held down the road to do more than you have committed to do is to erect a powerful disincentive to making....such otherwise laudable and desirable but entirely gratuitous undertakings”¹³

Requiring that YAEC use a methodology that will in fact allow it to properly meet the standards that it has chosen, and thereby live up to the LTP should not be seen as a penalty. YAEC is not being asked, as it would suggest, to do more than it has committed

¹² LBP-99-14 pp. 17-18

¹³ Yankee Atomic Electric Company Objection To and Motion of Yankee Atomic Electric Company for Reconsideration of Portion of Prehearing Conference Order. Docket No. 50-029-LA p. 5

to do. Indeed, Yankee is being asked to do exactly what it has committed to do, in a manner that will allow it to fully meet its standards.

If the licensee follows its own logic, that it is not required to meet a 15mrem/yr TEDE, the licensee should be required to retract and revise its LTP since in its present form it repeatedly commits to a 15 millirem/ per yr standard. It should resubmit a version of the plan which accurately describes what YAEC's commitments are, what methodology it will employ to meet those commitments, and what figures, and dose calculations the community as well, as the regulators, can be assured that YAEC will meet. If YAEC does not intend to meet the 15 millirem per year dose commitment that too should be explicitly stated in the LTP. Then the ASLAB could potentially hold another prehearing conference on YAEC's revised and resubmitted LTP. In addition, it must then be determined that YAEC's LTP approval by the Staff was premature. Since YAEC may then be forced to qualify for decommissioning under NRC's new rule (since the old rule requires LTP approval prior to August 1999), CAN believes that it is incumbent upon YAEC to stand by its 15 mrem/yr commitment, or, the very minimum, meet the 25 millirem/ per yr of the new NRC decommissioning rule.

YAEC further argues that since the use of the "gardener" critical group would not effect the dose since the dose that must be met is the 25 millirem/per year rather than the 15 millirem YAEC "voluntarily" committed to. We do not agree that the use of the gardener would necessarily fall below the 25 millirem. In any case, YAEC committed in its LTP to meet 15-millirem/per year standard repeatedly.

In Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors¹⁴ the NRC staff comments on the “average member of the critical group”:

“The critical group is an individual or relatively homogeneous group of individuals expected to received the highest exposure within the assumptions of the particular scenario. The average member of the critical group is represented by the average of the doses for all members of the critical group, which in turn is assumed to represent the most likely exposure situation. For example, the critical group for a scenario in which people work inside a building would be the group of regular employees working in a building that has been decontaminated. If the site were converted to residential use, the critical group could be people whose occupations involve resident farming at the site, not an average of all the residents on the site.¹⁵

Indeed NRC Staff go further than the “gardener” scenario and YAEC in its commitments to the community goes further than the “gardener” scenario. YAEC contends that Contention 4 should be rejected as “10 C.F.R. 20.1402 does not require the calculation of a TEDE for the member of the critical group who is atypically exposed”.¹⁶ CAN's contentions do not address calculating atypical exposure. The scenario addressed in the contention contemplates the family farm scenario set forth in YAEC's LTP.

YAEC, in its motion, attempts to disregard the hours that would be spent in the field by a farmer. YAEC twists CAN's contentions in an attempt to make it appear that an atypical member of the critical population would be exposed to residual radiation

¹⁴ Staff Responses to Frequently Asked Questions on Decommissioning of Nuclear Power Reactors NUREG 1628

¹⁵ Ibid. 8.8

¹⁶ Yankee Atomic Electric Co. Objection To and Motion of Yankee Atomic Electric Co for Reconsideration of a Portion of Prehearing Conference order. Docket No. 50-029-LA page 7

from dirt for 88 hours per year while they were gardening, when in fact the most typical of family farmers, the critical population themselves, would spend considerably more time in contact with the dirt.

YAEC further contends that in order for Contention 4 to be admissible, CAN's contention should have asserted that the average member of the critical group is a full-time gardener.¹⁷ Mr. Austin, Chief of the Low-Level Waste and Decommissioning Projects Branch, came to our community in August of 1994 and told us that

“Yankee Rowe has proposed a standard of 30 millirem per year exposure from *all* reasonable pathways, 30 millirem is about one tenth of the natural background radiation. That exposure rate would be calculated based on human intrusion on the site, *including a postulated family farm being constructed on the site growing crops, 25 percent of the crops consumed on the farm*, postulated drinking well, in which we would assume that a person drinks 2 liters a day of the groundwater. We sum up all these exposures and their proposal is that the sum be 30 millirem or less.¹⁸ (Emphasis added)

In a letter from Don Davis, YAEC CEO, to Mr. Adam Laipson, Chair of the Franklin Regional Planning Board, dated January 5, 1998, Davis asserts that “In the LTP, Yankee has committed to limit the dose from residual plant-related radioactivity to less than 15 millirem/ yr.”¹⁹ Davis states that this dose includes all exposure pathways. His example is “...if a person were to build a house on the Yankee site, farm the land...”²⁰

¹⁷ Yankee Atomic Electric Co. Objection To and Motion of Yankee Atomic Electric Co for Reconsideration of a Portion of Prehearing Conference order. Docket No. 50-029-LA page 8

¹⁸ Official Transcript of Proceedings “Informal Hearing - - Yankee Rowe Decommissioning Plan”, Greenfield, MA; August 16, 1994 Accession Number 9409080186. page 9.

¹⁹ Letter Enclosure titled “YAEC Responses to Franklin Regional Council of Governments Questions on YNPS License Termination Plan” from Don Davis, YAEC CEO, to Adam Laipson, Chair Franklin Regional Planning Board, January 5, 1998, p.12

²⁰ Ibid.

First, the family living on the “postulated family farm” is not atypically exposed and the calculation for the TEDE should be for this family who *is* the critical group. According to a Massachusetts Department of Food and Agriculture publication, Massachusetts leads New England in direct sales of farm products. Further, 80% of Massachusetts’ 5,574 farms are individual or family owned and over 93 percent are small farms.²¹ A family farm is a reasonable and typical scenario for the region.

Secondly, since the family is consuming 25% of their crops, one must assume that the remaining 75% of the crops grown on this family farm are sold. YAEC’s LTP scenario of 5 hours per week gardening (person gardening 1 percent of their time during a four-month growing season)²² does not equate to a family farm. CAN contends that the LTP calculations should be based on a farmer farming the land 6 hours per day, 5 days per week. This equates to 30 hours of farming per week. Atypically exposed, and unprotected by even the assumptions in the family farm scenario, is the postulated 2-year-old child playing in the soil as her parent farms.

Even if YAEC did not use the scenario of a family farm referenced in its LTP (which CAN would protest since a family farm is typical of this region and since YAEC already committed to a farm scenario), typical people spend more than 5 hours per week

²¹ “Farm & Market Report”, Massachusetts Department of Food and Agriculture, Vol. 76 No. 2, February 1999, p 1.

²² 8760 hrs/ yr. x 0.01-87.6 hrs gardening a years. Assuming a 4 month growing season (52 weeks/year)x (year/ 12months) x 4 month growing season = 17.3 weeks growing season: therefore, 87.6 hrs/17.3 weeks in growing season = 5.1 hrs per week.

in the soil tilling, planting, weeding, watering, and harvesting not only vegetables but also flowers. It is more than reasonable for a person to spend at least 2 percent of their time over a 4 month growing season. This means that the LTP should at a minimum, assume a person living on a family farm would garden at least 30 hour a week, and that any person gardens 10 hours per week or more.²³

NRC rules and regulations are not mutable and anomalous. YAEC should not arbitrarily pick and choose from these regulations at will when it is held accountable to its commitments for site remediation. The rules and regulations were established to assure necessary public and environmental protections into the regulatory scheme. Neither the 25 mrem/yr dose, nor the 100 mrem/yr dose, are mentioned in YAEC's LTP. The only dose repeatedly referred to throughout the LTP is the 15 mrem/yr. Such doses as the 25 mrem/yr or 100 mrem/yr were not mentioned at the NRC meeting held on January 13, 1998 in Buckland, Massachusetts²⁴ or any previous public meetings. See LTP sections 2.1, 2.4.3, 2.4.4, 4.4.3. CAN contends that NRC and the ASLAB must require Yankee Rowe's LTP to adhere to a "no more than 15 mrem/yr" release criteria.

The experience of our community in relating to this licensee and the NRC Staff is that whatever commitments that these parties have made to our community since 1991

²³ $8760 \text{ hrs/yr} \times 0.02 = 175.2 \text{ hrs}$ gardening in a year, assuming a 4 month growing season. Therefore 175.2 hrs/17.3 weeks in growing season – 10.1 hrs per week.

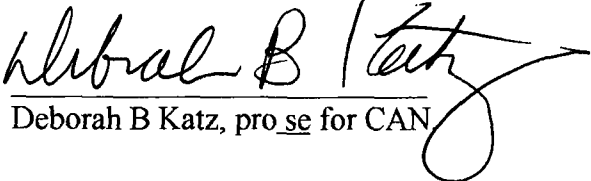
²⁴ The Official Transcript of Proceedings United States of America Nuclear Regulatory Commission: "Public Meeting (Yankee Nuclear Power Station License Termination Plan, Shelburne, Ma, January 13, 1998

are mutable. We experience ourselves as repeatedly participating in a shell game, in which every time we attempt to hold YAEC to its own commitments that it makes to our community-whether to 15 millirem/ per yr., 25 millirem/ per yr., or 30 millirem per yr.-it changes with the support of NRC Staff. CAN would like the YAEC to do as it says it will do. CAN is asking only for simple fairness and adequate assurances that our community which is suffering can be protected from radioactive contamination of our children and our natural resources.

II Conclusion:

For the foregoing reasons of law, regulations, and fact: (1) YAEC's Motion for Reconsideration should be denied.

Respectfully Submitted,


Deborah B Katz, pro se for CAN

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the
ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of) Docket No. 50-029-LA
)
YANKEE ATOMIC ELECTRIC COMPANY) ASLBP No. 99-754-01-LA-R
(Yankee Nuclear Power Station))
)
License Termination Plan) Served: April 9, 1999

CERTIFICATE OF SERVICE FOR
CITIZENS AWARENESS NETWORK'S REPLY TO YAEC'S MOTION

I, Deborah B. Katz, on behalf of Citizens Awareness Network, Inc., certify under penalty of perjury that on April 9, 1999, copies of the enclosed papers were served on the parties below by mailing them postage pre-paid U.S. Postal Service Priority 2-Day Mail:

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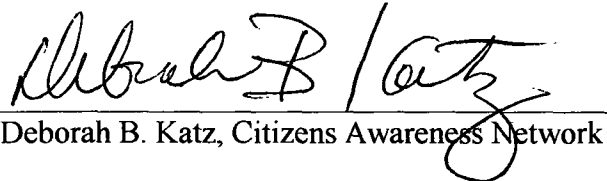
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