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June 15, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE CHIEF OF STAFF
ADJUDICATIVE STAFF

BEFORE THE COMMISSION

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

NRC STAFF RESPONSE CONCERNING
YANKEE ATOMIC ELECTRIC COMPANY'S
"BOARD NOTIFICATION (WITHDRAWAL OF APPLICATION) AND
MOTION TO TERMINATE PROCEEDING AND DISMISS APPEAL"

INTRODUCTION

On May 26, 1999, Yankee Atomic Electric Company (Yankee) filed with the Commission "Board Notification (Withdrawal of Application) and Motion to Terminate Proceeding and Dismiss Appeal." In its filing, Yankee 1) notified the Board of Yankee's withdrawal of its application for an operating license amendment approving its License Termination Plan (LTP); 2) moved, pursuant to 10 C.F.R. § 2.107(a), for termination of the proceeding; and 3) suggested that the Commission should dismiss Yankee's pending appeal of LBP-99-14, the memorandum and order of March 17, 1999, in which the Licensing Board admitted four contentions and admitted New England Coalition on Nuclear Pollution (NECNP) and Citizens Advisory Network (CAN) as consolidated intervenors.

On June 5, 1999, New England Coalition on Nuclear Pollution (NECNP) filed with the Commission "Motion in Support of Yankee Atomic Electric Company's Motion for Dismissal of

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Appeal,” by which NECNP supported Yankee’s motion to dismiss the appeal but asked the Commission to dismiss the appeal with prejudice.

On June 7, 1999, NECNP filed with the Licensing Board on behalf of the consolidated intervenors an “Opposition to Yankee Atomic Electric Company’s Motion to Terminate, and Proposed Form of Order for Expenses, Fees, and Responses to Discovery.” Also on June 7, 1999, Yankee filed with the Commission “Yankee’s Response to Intervenors’ Motion in Support of [Yankee’s] Motion for Dismissal of Appeal.”

On June 14, 1999, the Atomic Safety and Licensing Board issued a “Memorandum and Order (Requesting Replies to NECNP Response to Termination Motion).” The NRC staff addresses these matters below.

BACKGROUND

On October 23, 1998, the Commission issued CLI-98-21, in which it reversed, in part, LBP-98-12 and determined, among other things, that NECNP and CAN had standing to intervene in a proceeding concerning the application of Yankee Atomic Electric Company (Yankee) for an amendment to its operating license approving its License Termination Plan (LTP), submitted by Yankee on May 15, 1997, and revised December 18, 1997. On January 26-27, 1999, a reconstituted Licensing Board conducted a prehearing conference to consider contentions filed by NECNP and CAN. On March 17, 1999, the Licensing Board issued LBP-99-14, in which it admitted four contentions and admitted NECNP and CAN as consolidated intervenors.

On March 29, 1999, Yankee filed for reconsideration of the admission of one of the four contentions. NECNP and CAN filed separate responses opposing Yankee's reconsideration motion¹ and the NRC staff filed a response supporting it.² On April 22, 1999, the Licensing Board issued a "Memorandum and Order Denying Motion for Reconsideration of Contention 4."

On April 1, 1999, Yankee filed an appeal of LBP-99-14. NECNP and CAN opposed Yankee's appeal, while the Staff supported it.³

On April 6, 1999, the Licensing Board issued a Notice of Hearing.

On May 13, 1999, Yankee notified the Board of its determination to modify its LTP so as to employ "MARSSIM" (Multi Agency Radiation Survey and Site Investigation Manual," NUREG-1575) in lieu of the NUREG/CR-5849 methodology on which the LTP Yankee has now withdrawn is based. Subsequently, on May 26, 1999, Yankee filed its "Board Notification (Withdrawal of Application) and Motion to Terminate Proceeding and Dismiss Appeal."⁴

¹ NECNP's Opposition to Yankee Atomic's Motion to Reconsideration [*sic*] Part of Prehearing Conference Order, April 9, 1999; Citizen's Awareness Network, Inc. Reply to Yankee Atomic Electric Co.'s Objection to and Motion for Reconsideration of Portion of Prehearing Conference Order, April 9, 1999.

² NRC Staff Response to Yankee Atomic's Objection to and Motion for Reconsideration of a Portion of Prehearing Conference Order, April 9, 1999.

³ NECNP's Reply to Yankee Atomic's Appeal of LBP-99-14, April 16, 1999; Citizens Awareness Network, Inc. Reply to Yankee Atomic Electric Co.'s Appeal of Prehearing Conference Order, April 16, 1999; NRC Staff Response in Support of Yankee Atomic Electric Co.'s Appeal of LBP-99-14, April 16, 1999.

⁴ On April 1, 1999, the NRC staff issued its Environmental Assessment (EA) on Yankee's proposed License Termination Plan and on May 17, 1999, NECNP submitted late-filed contentions based on the staff's EA. No responses were filed to the late-filed contentions because of Yankee's
(continued...)

DISCUSSION

Although addressed to the Commission, it is unclear from which forum Yankee is seeking relief. On the one hand, it appears to seek relief from the Licensing Board, especially in Paragraph 2, where it addresses termination pursuant to 10 C.F.R. § 2.107. On the other hand, however, in Paragraph 3, Yankee requests that the Commission dismiss the appeal, it having been mooted by the withdrawal of Yankee's application for approval of its LTP.

Before the NRC staff's response to Yankee's motion was due to be filed with the Commission, the Licensing Board issued a Memorandum and Order (Requesting Replies to NECNP Response to Termination Motion), in which the Licensing Board requested responses to the consolidated intervenors' Opposition to Yankee Atomic Electric Company's (YAEC's) Motion to Terminate," filed with the Licensing Board June 7, 1999.

Although the Commission could on its own decide all matters pertaining to termination raised by the consolidated intervenors in their "Opposition," including the imposition of conditions, (see, e.g., *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113 (1998)), unless directed by the Commission to do otherwise, the Staff plans to file its response to the consolidated intervenors' "Opposition" with the Licensing Board according to the schedule the Board has established in its "Memorandum and Order."

⁴(...continued)
decision to withdraw the LTP and request the proceeding be terminated.

Also, the Commission could act on Yankee's request to the Commission to dismiss the appeal⁵ (and vacate LBP-99-14, the unreviewed decision admitting contentions); *see LES, supra*. However, under the circumstances it would seem more appropriate for the Commission to hold Yankee's request to dismiss the appeal in abeyance, pending Licensing Board action on the motion to terminate.

CONCLUSION

For the reasons discussed above, the Commission should hold in abeyance any action on Yankee's motion to dismiss its appeal pending the Licensing Board's action on the motion to terminate.

Respectfully submitted,

Ann P. Hodgdon

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of June 1999

⁵ NECNP's filing of June 5, 1999, urges the Commission to grant Yankee's motion to dismiss the appeal of LBP-99-14 but to attach prejudice to the dismissal. Yankee's response of June 7, 1999, opposes dismissal of the appeal with prejudice.

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Docket No. 50-029-LA

OFFICE OF GENERAL COUNSEL
REGULATORY AND
ADJUDICATION STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE CONCERNING YANKEE ATOMIC ELECTRIC COMPANY'S "BOARD NOTIFICATION (WITHDRAWAL OF APPLICATION) AND MOTION TO TERMINATE PROCEEDING AND DISMISS APPEAL"" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by an asterisk, by first-class mail this 15th day of June, 1999:

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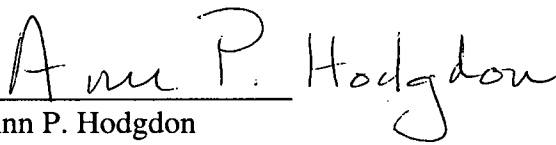
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