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United States of America  
Nuclear Regulatory Commission  
before the  
Atomic Safety and Licensing Board

'99 JUN 22 P4:14

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ADJUDICATORY

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No. 50-029-LA-R

RESPONSE OF YANKEE ATOMIC ELECTRIC COMPANY  
TO LBP-99-22

Yankee Atomic Electric Company ("Yankee") responds, as directed, to this Board's "MEMORANDUM AND ORDER (Requesting Replies to NECNP Response to Termination Motion)" as follows:

1. Though nothing turns on the point, Yankee wishes to clarify some confusion that it may have engendered. This Board observes that "on May 26, 1999, YAEC filed another Board Notification with the Commission (with copies to this Board and the parties) . . . ." LBP-99-22 at 3. Actually, both Board Notifications were intended to be submitted to this Board, with a copy to the Commission, though we are now aware that by virtue of an error on the draftsman's part, a "Commission" caption rather than a "Board" caption was employed. In point of fact, the motion under § 2.107 was filed with this Board, and Yankee intends (and intended) and expects that this Board will rule upon it (subject to such review and supervision as the Commission may deem appropriate). Yankee's June 7, 1999, filing (to the Commission) opposed (and addressed) only NECNP's request that the *Commission* dismiss *the appeal* "with prejudice."

2. On Monday (June 14, 1999), Yankee filed a "Motion of Yankee Atomic Electric Company for Leave to Respond to Intervenors' 'Opposition to . . . Motion to Terminate [Etc.]," prior to its receipt of LBP-99-22. By the same token, we believe that LBP-99-22 was issued before the Board received our filing. Yankee believes that

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its June 14, 1999, filing constitutes the response that LBP-99-22 seeks, and that it sets forth the legal and prudential reasons why this Board should enter the customary order terminating this proceeding without prejudice and without conditions.

3. In three respects, this Board appears to have solicited a “reply” and “comments” that are not appropriate:

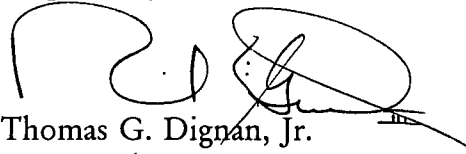
- a. As Yankee’s June 7, 1999, filing was a response to a motion submitted by the Intervenor *to the Commission* (seeking dismissal *of the appeal* with prejudice), it is now *sub judice* the Commission. Yankee respectfully submits that this Board should not solicit responses to a response filed with the Commission to a motion made to the Commission for Commission action and upon which the Commission has not yet ruled. *See LBP-99-22* at 6.
- b. In connection with Yankee’s June 7, 1999, filing (which contended that *the Commission* should dismiss the pending appeal as moot and not “with prejudice”), this Board appears to invite the parties to comment on “the viability of the current accepted contentions in a future proceeding involving a different LTP.” *LBP-99-22* at 6. Frankly, Yankee does not see how a dismissal or the nature of a dismissal of the pending appeal could have the hypothesized effect, and offers no comment thereon; and in particular, Yankee respectfully submits that this Board should abjure offering any ruling or speculation about the admissibility of contentions in a future proceeding on some different application.
- c. The Board appears to have invited comments on the effect of a dismissal of this proceeding “concerning NECNP’s and CAN’s *standing* to participate, particularly with respect to a proceeding involving a future LTP submitted by or on behalf of YAEC.” *LBP-99-22* at 6 (emphasis in the original). Whether NECNP or CAN, or any other person, for that matter, can or does demonstrate standing to participate in any future proceeding will depend upon the nature of that proceeding, the then-current state of the law on standing, and the nature of the submission made by the putative participant

at the time. Yankee respectfully submits that it would be inappropriate for this Board to issue any ruling or observation with respect to future filings in future proceedings.

### Conclusion

For the foregoing reasons and those set forth in Yankee's June 14, 1999, filing with this Board, the Board should enter an order terminating this proceeding, without prejudice and without conditions.

Respectfully submitted,



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Dated: June 17, 1999.

**CERTIFICATE OF SERVICE**

I, Robert K. Gad III, one of the attorneys for Yankee Atomic Electric Company, do hereby certify that on June 17, 1999, I served the within pleading in this matter by United States Mail (and also where indicated by an asterisk, by facsimile transmission) as follows:

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GENERAL COUNSEL  
ADJUDICATION

STAFF

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