

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

DOCKETED  
USNRC

'99 JUN 28 P2:20

Administrative Judges:

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

OFFICE OF THE  
REGISTERED  
ADJUDICATOR

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

**CAN'S REPLY TO BOARD'S ORDER OF JUNE 14, 1999**

Pursuant to the Board's June 14, 1999, Order in this case, CAN sets forth the following replies:

1. CAN (and other intervenors) have put much work and effort into arguing standing, formulating contentions, discovery interrogatories, and requests for production of documents, as well as making legal responses to the Board, NRC Staff, YAEC, and filing briefs to the Commission. CAN has been involved in the Yankee Rowe case since 1992 when we first attempted to get a hearing on the Decommissioning Plan for Yankee Rowe. CAN has gone through the process of filing allegations with the Inspector General, filing a civil complaint with the United States District Court for Massachusetts, filing an appeal to the United

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States Court of Appeals for the First Circuit, fighting through standing issues and additional appeals to obtain a limited hearing before an Atomic Safety and Licensing Board Panel on a decommissioning issue, and now has struggled through this LTP process to obtain a hearing on how contaminated the Yankee Rowe site will remain for nearly forever. This is very likely the last time CAN may secure the discovery information the Board has agreed that we are entitled to request from YAEC. If YAEC's threat to resubmit the LTP in 10 to 20 years hold true, many of our members will probably no longer be alive. For many of us, it is now or never –we want the uncertainty concerning the nature and extent of contamination at Yankee Rowe to end now. We also believe that this Board has the authority and ample justification in the existing record (including YAEC's own filings) to justify ordering the production of all the discovery thus far requested, and directing that YAEC conduct testing to explain the anomalies that the hydrogeologist found in YAEC's site characterization data.

2. CAN takes that position that after the opening of Discovery in this case, YAEC relinquished the opportunity to further justify the adequacy of its application for approval of the LTP until summary judgment or trial on the merits. Any justifications at this point should be in the candid and complete answers to the discovery requests. In good faith, CAN granted YAEC's repeated requests for additional time to meet discovery requirements, and deal with administrative

difficulties they were having in moving their offices. This Board ruled that discovery could take place on the four contentions. CAN and NECNP filed joint discovery (again cooperatively acceding to YAEC's request that only one set of material be filed). CAN believes that this Board's order that discovery take place means that the Board found that it was in the public interest that the requested discovery material be made available to CAN and the other intervenors. Thus, discovery should be provided notwithstanding YAEC's request to withdraw.

3. It is a reasonable presumption that YAEC had considerable advance knowledge that it was changing its methodology to MARSSIM. YAEC has a high-level management person on the committee that formulated MARSSIM. Yet, at the prehearing, YAEC made no mention that it was considering this change. Thus, YAEC, while in a position to know well in advance of the discovery period that it was going to need to withdraw at least a substantial portion of the LTP, said nothing to the Board, NRC Staff, or Intervenors. YAEC has profited from its silence to the prejudice of the Board, the Intervenors, and the NRC Staff. While the NRC Staff may be paid for their losses in time, money, and resources, CAN and the Intervenors should also be properly reimbursed, as YAEC's silence was no less prejudicial to CAN and the other intervenors' interests.

4. It is reasonable, in the light of the above, to draw the conclusion that YAEC is attempting to avoid its legal obligations to meet discovery by

withdrawing the LTP application. Thus, a reasonable condition this Board could impose upon YAEC's withdrawal of the application would be providing the requested discovery information and documents to the intervenors. It is hard to come to any other conclusions than that YAEC's withdrawal of the LTP is intended to avoid public knowledge of actual site conditions (which knowledge this Board has found to be appropriate in its ruling on the admissibility of contentions and setting of a discovery schedule). CAN is concerned that YAEC's future LTP submission may escape the same level of scrutiny that this Board would have subjected it to if it had not been withdrawn. If YAEC is successful in this latest ploy, CAN will be forced to yet again endure the "Office of Circumlocution" which Judge Ponsler noted that CAN had been subjected to in this case since 1992.

5. Given the subsurface soil contamination and the contamination of groundwater issues raised by NECNP's hydrogeologist, this Board should safeguard the public interest by requiring that YAEC conduct further investigation and analysis of the hydrogeologic data in its site characterization.

6. Although YAEC claims the it could be a decade before the submission of its next LTP, the resubmission of an LTP might be sooner. Originally, YAEC told the NRC that it would go into SAFSTOR at Yankee Rowe. Then, through an illegal interpretation of regulations, the NRC allowed YAEC to

begin the Early Component Removal project. This entailed stripping and shipping of 90% of the radionuclide inventory off site without prior submission and approval of a Decommissioning Plan. CAN took NRC to the U.S. Court of Appeals for the First Circuit over this issue and won. In the subsequent hearing process, YAEC continued to strip the reactor while CAN raised serious health and safety issues which the Appellate Court decision validated. It is hard for CAN, after these years and years of protracted legal struggles, to have any faith that YAEC will keep its commitments or promises concerning the clean-up of Yankee Rowe.

7. YAEC may again move quickly after this proceeding is terminated and submit a second LTP. While YAEC has told this Board that it may be 10 or 20 years before the next LTP is submitted, it had told reporters that its will only be about two years more. CAN believes that the hearing process should be left open for a given period of time. CAN contends that it is reasonable for the current Board to maintain jurisdiction of the case for at least 24 months to see whether YAEC will submit its LTP. Further, CAN and NECNP should have automatic standing in proceeding commenced on this Board's continued jurisdiction over the resubmission of YAEC's LTP. Being required to litigate standing on this matter will waste the Board's and Commission's time (as well as money -- and that of the intervenors and the ratepayers too). Reapplying for standing would be an

unnecessary and unfair delay that will merely distract from the important issues concerning the adequacy of YAEC's new LTP.

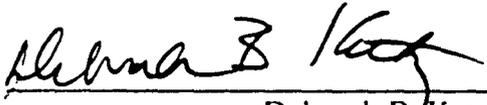
8. In CAN's (and NECNP's) first ASLAB hearing (in the Yankee Rowe decommissioning segment of this case), the Licensing Board Panel allowed that our concerns about onsite storage of high-level waste would be addressed at a later hearing. The Commission later ruled that our concerns about high-level waste storage were beyond the purview of the Board. We do not want to be caught in this kind of Catch-22 again regarding standing and other issues arising when YAEC submits its third LTP. Therefore, CAN believes that the standing of CAN's (and the other Intervenors) should be "grandfathered" in to any subsequent hearing process on YAEC's next. The NRC should also provide that the current rules on hearing requirements will continue to apply to any such subsequent LTP hearing, even if the Commission subsequently alters the current regulations. In addition, YAEC should be held to 15 millirem/yr. standard in the FSAR and other YAEC documents. YAEC's resubmitted LTP should also be reviewed in light of CAN's (and the other intervenors') previous contentions, and any new contentions CAN (or the other intervenors) choose to submit.

### CONCLUSION

In summary, CAN believes that this Board has the authority and just cause to grant the relief requested on behalf of the Intervenors in NECNP's June 7, 1999,

filing and proposed Order. CAN also believes that this Board should take action to assure that the interests of the public and the public-interest intervenor groups are not prejudiced by YAEC's withdrawal of the LTP. Right now, our members, and so many citizens of Franklin County and adjacent areas of Vermont, are left wondering about the nature and extent of contamination at Yankee Rowe. CAN has freely given time, energy, and resources to try to assure that our members and the public have adequate information about the contamination at the Yankee Rowe site. At a minimum, the Board should find a way to satisfy the public's right to know the answers to the very serious questions CAN and others have raised about Yankee Rowe site contamination. To allow these questions to go unanswered for 10 to 20 years is not in the public interest, and compounds the plain legal prejudice CAN and the other intervenors have suffered by YAEC's withdrawal of the LTP. In short, fees, costs, expenses and conditions are well justified in this case.

Respectfully submitted:

  
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Dated 6/23/99

Certificate of Service

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I, Deborah B. Katz, pro se representative for Citizens Awareness Network, Inc., certify that on June 23, 1999, I served the within CAN's Reply to Board's Order upon parties in this matter by United States Postal Service First Class Mail, postage pre-paid, as follows: 99 JUN 28 P2:20

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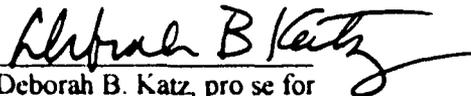
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