

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
MAINE YANKEE ATOMIC POWER COMPANY )  
 )  
(Maine Yankee Atomic Power Station) )

Docket No. 50-309  
(Spent Fuel)



NRC STAFF RESPONSE TO THE STATE  
OF MAINE PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

On October 24, 1979, the U.S. Nuclear Regulatory Commission (NRC) published in the Federal Register (44 Fed. Reg. 61273) notice of the proposed issuance of an amendment to a facility operating license to increase the Maine Yankee Atomic Power Station's spent fuel storage capacity. On November 28, 1979, the State of Maine, by its Attorney General, notified the NRC of its intention to participate in the above proceeding as an interested State pursuant to 10 C.F.R. § 2.715(c).

Prior to the Board's convening a special prehearing conference pursuant to 10 C.F.R. § 2.751a for the purpose of, inter alia, considering the admissibility of contentions and making determinations as to the parties to the proceeding,<sup>1/</sup> the Licensee proposed a modification to its earlier amendment proposal. Pursuant to this Board's Order of January 6, 1981, the NRC then published a "Supplemental Notice of Proposed Issuance of Amendment to Facility Operating License" (46 Fed. Reg. 9315, January 28, 1981). In

<sup>1/</sup> Only one entity, Sensible Maine Power, filed a Petition for Leave to Intervene. Sensible Maine Power filed its petition on November 23, 1979, and filed its list of contentions on April 28, 1980.

response to this notice the State of Maine, acting through its Attorney General, timely filed a petition for leave to intervene as a full party pursuant to 10 C.F.R. § 2.714.

## II. STANDING

The NRC Staff does not oppose the admission of the State as a party to this proceeding and suggests that at present it could be appropriately admitted under either the provisions of 10 C.F.R. § 2.714 or as an interested state under the provisions of 10 C.F.R. §2.715(c). Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976). Since the State has now filed its petition pursuant to §2.714, however, it must meet the "standing" requirements applicable to all parties in Commission proceedings. Sierra Club v. Morton, 405 U.S. 727 (1972); Tennessee Valley Authority (Watts Bar), ALAB-413, 5 NRC 1418 (1977); Allied General Nuclear Services (Barnwell), ALAB-328, 3 NRC 420, 423 (1976).

To establish standing, the provisions of 10 C.F.R. §2.714(a)(2) require that a petitioner to an NRC proceeding shall:

1. Set forth the "interest" of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene; and
2. Identify the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

As to the interest portion of Section 2.714, the NRC Staff believes that the State of Maine has satisfactorily established its interest in the subject matter of this proceeding in its Petition at pages 1 and 2.

In addition to the "interest" requirement of 10 C.F.R. § 2.714, a petition must also set forth with particularity the specific aspect or aspects of the subject matter of the proceeding to which a petitioner wishes to intervene. The instant petition has set forth specific aspects of the subject matter of the proceeding to which intervention is sought by the State at pages 2 and 3. The Staff believes that the specification provided is adequate to satisfy the requirements of 10 C.F.R. § 2.714(a)(2).

This finding is limited to a determination as to whether the State has adequately met the requirement of identifying the aspects of the proceeding to which intervention is sought. Of course, Section 2.714 also contains a requirement that contentions be set forth with reasonable specificity and basis. The contentions are not required to be filed at this time.<sup>2/</sup> The Staff's determination above should not be construed as a finding that the State has met the contention requirement nor that the Staff agrees with the merits of the aspects identified by the State.

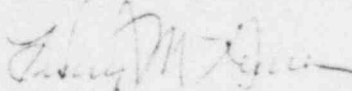
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<sup>2/</sup> 10 C.F.R. § 2.714(b) provides that no later than fifteen (15) days prior to the special prehearing conference held pursuant to 10 C.F.R. § 2.714a, or prior to the first prehearing conference where no special prehearing conference is held, a petitioner must supplement his petition to include a list of the contentions which a petitioner seeks to have litigated in the proceeding.

III. CONCLUSION

For the foregoing reasons, the NRC Staff believes that the State of Maine has satisfied the requirements of 10 C.F.R. § 2.714 pertinent to "interest" and specification of "aspects of the proceeding."

Respectfully submitted,



Henry J. McGurren  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 18th day of March, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO THE STATE OF MAINE PETITION FOR LEAVE TO INTERVENE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 18th day of March, 1981:

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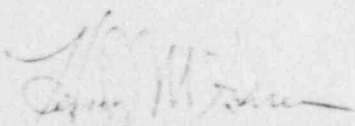
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