

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 Nos. 50-309
(Spent Fuel)



NRC STAFF RESPONSE IN OPPOSITION TO THE
REQUEST FOR A PREHEARING CONFERENCE BY DOWN EAST ALLIANCE

I. INTRODUCTION

On November 30, 1981, the NRC Staff received an untitled, undated document from David Colton-Manheim on behalf of the Down East Alliance (hereinafter sometimes referred to as the petitioner).^{1/} The filing requests (1) that the petitioner be supplied a copy of Maine Yankee's complete application^{2/} and (2) that a prehearing conference be scheduled

- 1/ The Staff is informed that all parties were not served this filing; accordingly, a copy is enclosed herewith as attachment 1.
- 2/ Staff Counsel contacted the petitioner's representative by telephone on December 2, 1981, and advised him that the requested application is available in the local public document room. However, the petitioner stated that the local public document room is open during irregular hours and consequently he has been unable to obtain the information. After discussing this matter with Applicant's counsel, the Staff has been assured that the petitioner's request for a complete application has been brought to the attention of Maine Yankee.

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to enable the petitioner to more fully respond to the arguments in opposition to its intervention. The NRC Staff opposes scheduling a prehearing conference for this purpose.

II. DISCUSSION

The Down East Alliance hand-served a "Written Petition for Leave to Intervene" on this Board during the prehearing conference on August 11, 1981.^{3/} Subsequently, the Staff opposed petitioner's intervention request in a pleading filed August 26, 1981.^{4/} The Staff's opposition resulted from the fact that (1) the petitioner utterly failed to demonstrate good cause justifying a favorable balancing of the factors set forth in 10 C.F.R. § 2.714 and (2) that the "interest" and "contention" requirements of 10 C.F.R. § 2.714 were not satisfied in the original intervention petition.

On August 29, 1981, the petitioner supplemented its initial filing by offering a specific contention. The contention essentially was a request to place Maine Yankee in passive safe shutdown for some indefinite period of time and thereby alleviating the need for the

^{3/} See, transcript p. 168.

^{4/} See, "NRC Staff's Response to Petition for Leave to Intervene Filed by David Colton-Manheim", dated August 26, 1981; as well as "Applicants Answer to Petition for Leave to Intervene Filed by David Colton-Manhiem," dated September 2, 1981, wherein the analysis and arguments set forth by the Staff are adopted by the Applicant.

expansion of its spent fuel pool.^{5/} The Staff submits this is not a litigable issue because it is beyond the scope of the instant proceeding, and, in any event, it is beyond the jurisdiction of this Board to grant any relief on the contention.^{6/}

With respect to the intervention of the petitioner, nothing in its filing of August 29, 1981, nor the most recent filing which prompted this response, cures the deficiencies identified in the "NRC Staff's Response to Petition for Leave to Intervene filed by David Colton-Ma" of August 26, 1981. The Staff continues to rely upon its formerly filed opposition to the intervention petition of the Down East Alliance. To date, the petitioner has continued to ignore the five factors set forth in 10 C.F.R. § 2.714 concerning late filed petitions. Similarly, no attempt has been made by the petitioner in its various pleadings to set forth with particularity its interest in this proceeding.

Lastly, in its most recent pleading the petitioner cites Houston Lighting and Power Company (Allens Creek Nuclear Generating Station,

^{5/} The specific contention stated:

"Mothball (Placement Into Passive Safe Storage) Maine Yankee now (A.S.A.P.) allowing for reopening (operation) later, even after 2008 (end of licensed period), denying thereby both the need for, and the application of, applicant for spent fuel compaction; but not to deny the possibility of recycling, even on site, through migration of the radionuclides which should be studied both as to the danger of inadvertent criticality and its possible useful employment.

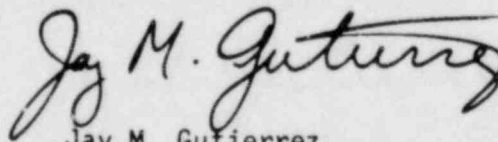
^{6/} Similar arguments averring that closing of a facility should be considered as an alternative to expanding the capacity of a spent fuel pool have been particularly rejected. Cf. Northern States Power Co. (Prairie Island Nuclear Generating Plant), ALAB-455, 7 NRC 41, 46 n.4 (1976); Consumers Powers Co. (Big Rock Point Nuclear Plant), ALAB, 13 NRC 312, 328-329 (1981).

Unit 1) ALAB-565, 10 NRC 521, 525 (1979) for the proposition; "Before any suggestion that a contention should not be entertained can be acted upon favorably, the proponent of the contention must be given some chance to be heard in response." Although the Staff acknowledges this is an accurate quotation from Allens Creek, in that opinion the Appeal Board did not dictate the form the proponent's opportunity to be heard must take (i.e. either oral argument or written response). This was left to the sound discretion of the individual licensing board. In the instant case, the movant has offered no explanation as to how or why these matters cannot be addressed through the accepted practice of a written filing rather than a prehearing conference. Absent such an explanation, the Staff submits the petitioner's request for a prehearing conference is without merit and should be denied.

III. CONCLUSION

For the reasons aforesaid and further for the reasons set forth in "NRC Staff Response to Petition for Leave to Intervene Filed by David Colton-Manheim", dated August 26, 1981, the Staff respectfully submits that the petitioner's intervention request should be denied on the basis of the written filings submitted to date and further that the petitioner's request for a prehearing conference should be denied.

Respectfully submitted,



Jay M. Gutierrez
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of December, 1981.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

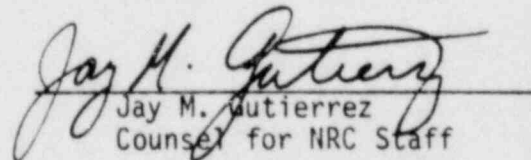
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In the Matter of)	
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(Maine Yankee Atomic Power)	(Spent Fuel)
Station)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with § 2.713, 10 C.F.R. Part 2, the following information is provided:

Name	- Jay M. Gutierrez
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Telephone Number	- Area Code 301-492-7403
Admissions	- Supreme Court for the State of West Virginia U.S. District Courts for the Northern and Southern Districts of West Virginia
Name of Party	- NRC Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555


Jay M. Gutierrez
Counsel for NRC Staff

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(Maine Yankee Atomic Power Station))

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(Spent Fuel)

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE IN OPPOSITION TO THE REQUEST FOR A PREHEARING CONFERENCE BY DOWN EAST ALLIANCE and NOTICE OF APPEARANCE [Jay M. Gutierrez] 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 11th day of December, 1981.

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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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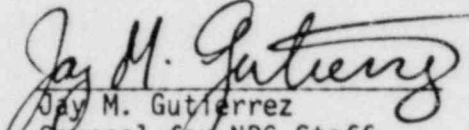
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