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

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In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No. 50-029-LA-R

ASLBP No. 98-736-01-LA-R

RESPONSE OF YANKEE ATOMIC ELECTRIC COMPANY
TO FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS
MOTION TO LEAVE TO PARTICIPATE

Under date of December 30, 1998 (but not served until January 4, 1999), the Franklin Regional Council of Governments ("FRCOG") has requested:

- That it be granted status under 10 C.F.R. § 2.715(c);
- That a hearing be held on the YNPS LTP approval;
- That a number of contentions be admitted in the hearing;
- That this Board make a grant to the FRCOG in the amount of One Hundred Thousand (\$100,000) Dollars; and
- That this Board enjoin Yankee from "conduct[ing] any activity in furthering the LTP until every aspect of the Plan is formally approved subsequent to the hearing."

Yankee responds to this motion as follows:

I.
§ 2.715(c) Status

Yankee is prepared to assume that FRCOG qualifies as a "state" within the meaning of 10 C.F.R. § 2.715(c). Consequently, if a hearing is noticed in this matter, Yankee does not oppose the grant of § 2.715(c) status in that hearing to FRCOG.

II. Grant of a Hearing

The Board should take no action on this request.

A party participating under 10 C.F.R. § 2.715(c), and not as a full intervenor,¹ may not request a hearing, but only participate in a hearing if one is convened as a result of the admission of a contention submitted by a petitioner under § 2.714. CLI-98-21, slip opinion at 13 n.5; *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 425-27 (1984). A request for a hearing by a party that elects not to petition to intervene is without meaning.

III. Admission of Contentions

A 2.715(c) participant is not required to take a position on issues. However, if such a participant desires to submit contentions, "it is then bound by the same requirements for timeliness, advance notice and specificity as are other parties, so as to enable the Board and other parties to fairly prepare for and address such issues in the framework of an adjudicatory proceeding." *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), LBP-76-32, 4 NRC 293, 299 (1976). Accord, *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768 (1977). Such contentions may be considered in framing the scope of a hearing if one is otherwise granted, but not on the question of whether a hearing will be granted in the first place.

The third page (unnumbered) of the FRCOG's *Motion* contains the assertion: "The FRCOG contends the following serious issues must be formally addressed," which is followed by seven bulleted points. Construing this array to be a conditional request for the admission of additional contentions if a hearing is otherwise ordered, Yankee responds as follows:

¹FRCOG did not petition for intervenor status during the time within which such petitions were permitted.

Statement of the Contention

Decommissioning activities employ methodologies and techniques that are experimental, untested, and/or unproven. For example, the segmentation techniques that were used for cutting the high activity components were apparently untested and proved to be somewhat unsatisfactory, resulting in recommendations for modification of the technique. Similarly, decommissioning of the spent fuel pool and ion exchange pit will require the use of methods and techniques that have not previously been employed.

Yankee's Response

This "contention" must be excluded, because:

- It does not comply with (indeed, makes no attempt to comply with) the pleading requirements of 10 C.F.R. § 2.714(b);
- It appears to relate to dismantlement activities, which are not within the scope of this proceeding; and
- It raises nothing for litigation, for even if the premise were true (i.e., that one was seeking licensure of something not previously done before), there is no prohibition thereon in the Commission's regulations and therefore approval of a license could not be denied on that ground.

"A contention may be refused if it does not meet the requirements of section 2.714(b) or if the contention, even if proven, would 'be of no consequence in the proceeding because it would not entitle the petitioner to relief.'" *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 142 (1993).

"The Commission is not lenient in overlooking substantive shortcomings in intervention pleadings. It has stated that 'the current section 2.714(b) provides rather clear and explicit notice as to the pleading requirements for contentions.' Licensing Boards may not ignore those requirements when evaluating intervention petitions. *Arizona Public Service Company, et al.* (Palo Verde Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 n.1 (1991)."

Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit No. 2), LBP-92-17, 36 NRC 23, 28 (1992).

Statement of the Contention

Methods that have been used to survey and monitor the site for contamination do not incorporate appropriate random sampling and data collection methods, but rather rely on computer modeling and anecdotal evidence. This has resulted in a decision not to sample or monitor a large area that is owned and controlled by YAEC but lies outside a small "impact area." This creates the risk that contamination may exist in areas which have not been predicted by computer, perhaps due to vagaries in weather patterns, local hydrology, animal transport, or even illegal activity. Contamination from these unpredictable sources will never be discovered using the current sampling strategy; random sampling must also be used on the entire property to determine what if any mitigation is required, before any of the site is released.

Yankee's Response

This "contention" must be excluded, because:

- It does not comply with (indeed, makes no attempt to comply with) the pleading requirements of 10 C.F.R. § 2.714(b); and
- It manifestly is not related to the Status Survey Plan in this case, which does not embody "a decision not to sample or monitor a large area that is owned and controlled by YAEC but lies outside a small 'impact area.'" See LTP, SSP § 4.3.3, at p. A-27 ("Unaffected Open Land Areas"). As a consequence, there is nothing to litigate.

Statement of the Contention

Contamination of groundwater and methodologies for sampling remain an issue. The selection of monitoring well locations appears to be based on the locations of known or suspected contamination sites and does not appear to factor in the possibility that local geology may include groundwater divides, impervious layers, or bedrock close to the surface. A thorough investigation into possible groundwater contamination cannot assume a uniform substrate through which water moves predictably, but must also include discussion and investigation of the possible influences of surficial geology and bedrock features.

Yankee's Response

This "contention" should be rejected because it utterly fails to comply with the requirements of 10 C.F.R. § 2.714(b). That something "remains an issue" is not "a specific statement of the issue of law or fact to be raised or controverted." 10 C.F.R. § 2.714(b)(2). A statement of "possibilities" is not "A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion." Even assuming such a vague request for "let's do more investigating" would have been sufficient under the "notice pleading" requirements previously reflected in § 2.714(b), the governing standard is no longer "notice pleading." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 249 (1996) ("a petitioner 'must present sufficient information to show a genuine dispute' and reasonably 'indicating that a further inquiry is appropriate.'"), quoting *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 118 (1995). See also 54 Fed. Reg. 33,168, 33,170 (1989) ("The new rule will require that a petitioner include in its submission some alleged fact or facts in support of its position sufficient to indicate that a genuine issue of material fact or law exists."). Speculation about "possibilities" does not suffice under this standard.²

Statement of the Contention

In particular, the migration of radionuclides from acknowledged sub-floor contamination has not been sufficiently studied and considered in the context of local hydrology and surficial geology.

Yankee's Response

This contention must be excluded for the same reasons as the foregoing one, as well as for the reason that the fact that implementation of the plan has not been

²This is particularly true in the face of a document that reveals that groundwater conditions have been extensively surveyed. E.g., *LTP* § 2.4.5 and Fig. 2-2.

completed "yet" is immaterial to a proceeding the scope of which extends only to the sufficiency of the plan. See CLI-98-21 at 18-19.

Statement of the Contention

Despite several rounds of questions and requests for specific data, the impacts of radionuclide releases on fish due to effluent and accidental releases to the Deerfield River have not been addressed. Insufficient data has been provided relative to the species, age, general health, or whether the fish was native or stocked -- all factors that must be correlated together in order to determine true radionuclide levels in the sediment and food chain; nor has there been sufficient information about the specific testing techniques that were used. Were the proper indicator species caught and tested? Native and stocked trout are the main recreational species sought by anglers in the Deerfield River drainage, yet none of this species appear to have been collected and tested in the dated April-November 1989 survey. This is a critical issue, as contaminated fish may be consumed by humans and also may introduce significant contamination into the entire food chain when other animals feed on contaminated fish. Further, the bioaccumulation of radionuclides in fish is indicative of the presence of these materials throughout the river system tested, at a level which may be more significant than revealed by the tests. Based on the insufficient investigation of the matter, it is premature to conclude that there is no safety hazard resulting from fish contamination.

Yankee's Response

This contention must be excluded, for two reasons. First, like the two preceding it, it does not meet the requirements of § 2.714(b); it is dependent, rather, on the unsupported speculation that "contaminated fish *may* be consumed by humans and also *may* introduce significant contamination into the entire food chain when other animals feed on contaminated fish." Second, this proposed contention has nothing to do with demonstrating the satisfaction of the site release criteria with respect to potential *on site* contamination. Any historical *off site* releases (whether permitted or accidental) are beyond the scope of an LTP approval proceeding.

Statement of the Contention

Sediment in the Deerfield River, in the Sherman Pond Reservoir, and near the outfall pipes has been sampled and tested, but the adequacy of

these tests is questioned. The sediment behind Number Five Dam in Monroe Bridge was removed when the dam was worked on the last two years. Questions remain as to the adequacy and thoroughness of core sampling of the sediment behind the dam. Were these sediments tested for radionuclides and other hazardous wastes before they were removed, and how and where were they disposed of? The next impoundment downstream, the Fife Brook Dam, is a bottom release operation. How far downstream were sediment tests conducted, as the nature of the Fife Brook operation would allow the discharge of radionuclides which could collect as far downstream as the Number Four Dam in Buckland. No specific information has been provided about the depth or frequency of the sampling, sampling methodology used, what random sampling methods were also employed, and how the material was handled and tested in the laboratory.

Yankee's Response

This "contention" should be excluded for the same two reasons as the previous one.

Statement of the Contention

Final site clean-up questions remain. Issues regarding formulations of effective yearly exposure dose equivalents need to be resolved. Specifically, the use of plot averages and assumptions about lifestyle and future land use introduce confusion about the actual levels of radiation proposed to remain on the site, which apparently may meet the required levels as an area-wide average but may in fact remain quite high in certain spots. Methodology for calculating and proving the final exposure rate of 15 mr/year is very confusing, and the assumptions related to unit conversions of picocuries to millirems, the daily time of exposure (is it 24 hours or only 8?), and similar issues must be satisfactorily explained. The final site survey criteria and plan including the methodology and calculations must be reviewed and affirmed by a competent, truly independent third party. Finally, in addition to laboratory testing work provided by the licensee and the NRC, the final site survey testing work must also be independently verified by a third party.

Yankee's Response

This "contention" must be excluded. Not only does it not meet the pleading requirements of § 2.714(b), this collection of thoughts it is not a "contention" in any sense of the word, but rather only a series of statements to the effect, or questions

demonstrating, that FRCOG has not fully appreciated the information set forth in the relevant documents and their scientific underpinnings.³ Neither is a basis for litigation.

IV.
\$100,000 Grant

Yankee is unaware of any authorization for a Licensing Board to make cash grants to putative intervenors.

V.
Issuance of Injunction

This Board is without jurisdiction to enter the form of injunction sought by FRCOG (or any other). Rather, the function of this Board is limited to ruling on any contentions that may be admitted to the proceeding. If one hypothesized a situation in which a license applicant were engaging in activities for which a license is required but has not yet issued, the exclusive remedy lies in the Commission's enforcement powers.

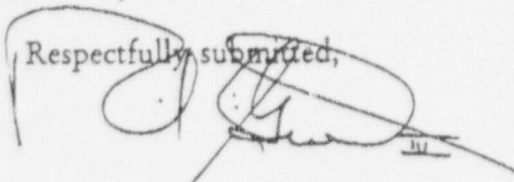
Conclusion.

For the foregoing reasons, the Board should grant the FRCOG "interested state" status if a hearing is granted on the petition of NECNP or CAN; exclude from any

³See, e.g., CLI-98-21 at 25 n.14.

such hearing FRCOG's proposed "contentions;" deny FRCOG's request for a cash grant; and deny FRCOG's request for preliminary injunctive relief.

Respectfully submitted,



Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray
One International Place
Boston, Massachusetts 02110
(617) 951-7000

Dated: January 20, 1999.

CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for Yankee Atomic Electric Company, do hereby certify that on January 20, 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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Commission:

ADJ

Licensing Board:

The Hon. Charles Bechhoefer
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S.N.R.C.
Washington, D.C. 20555

FAX: 301-415-5599

The Hon. Dr. Thomas S. Elleman
Administrative Judge
704 Davidson Street
Raleigh, North Carolina 27609
FAX: 919-782-7975

The Hon. Thomas D. Murphy
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S.N.R.C.
Washington, D.C. 20555
FAX: 301-415-5599

Parties:

Jonathan M. Block, Esquire
Post Office Box 566
Putney, VT 05346
Fax: 802-387-2646
Attorney for NECNP

Ann P. Hodgdon, Esquire
Marian L. Zobler, Esquire
Office of the General Counsel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555
FAX: 301-415-3725
Attorneys for the NRC Staff

Ms. Deborah B. Katz
Citizens Awareness Network, Inc.
Post Office Box 3023
Charlemont, MA 01339
Fax: 413-339-8768
On Behalf of CAN

Mr. Samuel H. Lovejoy
c/o Franklin Regional Council of Governments
425 Main Street
Greenfield, MA 01301
Fax: 413-774-3169
On Behalf of FRCOG

Others:

Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555
FAX: 301-415-1672

R. K. Gad III