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

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Before Administrative Judges:

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

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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

March 17, 1999

PREHEARING CONFERENCE ORDER
(Ruling on Contentions)

This proceeding concerns the License Termination Plan (LTP) for the Yankee Nuclear Power Station, in Rowe, Massachusetts (Yankee-Rowe), for which Yankee Atomic Electric Co. (Licensee or YAEC) seeks approval. For reasons set forth below, we are approving four of the contentions advanced by two petitioners for intervention--the New England Coalition on Nuclear Pollution, Inc. (NECNP) and the Citizens Awareness Network (CAN)--and are granting the requests for a hearing and petitions for leave to intervene of those petitioners.

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I. Background. In a Memorandum and Order dated October 23, 1998, CLI-98-21, 48 NRC 185, the Commission determined, inter alia, that NECNP and CAN (petitioners for intervention) had standing to become parties to this proceeding. It remanded the proceeding to the Atomic Safety and Licensing Board to determine whether the petitioners had any viable contentions that would entitle them to be admitted to the proceeding as intervenors. The Commission further ruled that the Franklin Regional Planning Board (FRPB) was not qualified, and hence could not participate, as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c) and, additionally, lacked standing to participate as an intervenor. The Commission left open the possibility that the Franklin Regional Council of Governments (FRCOG), which had endorsed the FRPB petition, might seek participation rights as an interested governmental entity.

The Commission also outlined particular standards that the Licensing Board was to follow in ruling upon any proposed contentions. Among other matters, it outlined general subjects that could be considered--indeed, must be considered now if ever--and others that could not be considered.

By Memorandum and Order (Schedules for Remanded Proceeding; Prehearing Conference), dated October 27, 1998

(later modified on November 30, 1998), the Licensing Board established schedules for the filing of proposed contentions, responses by the Licensee and NRC Staff, and for a prehearing conference for us to consider the contentions. Under the schedules, NECNP timely filed its proposed contentions on January 2, 1999 (NECNP Contentions) and CAN timely filed its proposed contentions on January 5, 1999 (CAN Contentions). The FRCOG timely filed a motion for leave to participate as a governmental entity on December 30, 1998.

The Licensee and the NRC Staff each filed their responses to the proposed contentions of NECNP and CAN on January 20, 1999 (YAEC Response to NECNP; YAEC Response to CAN; Staff Response). The Staff opposed all contentions. The Licensee initially appeared to accept reworded portions of two NECNP contentions and opposed other NECNP contentions and all of the CAN contentions. At the prehearing conference referenced below, the Licensee confirmed its opposition to all NECNP/CAN contentions and supported a position similar to that presented by the Staff. In a January 20, 1999 filing, the Licensee responded to the FRCOG motion, and the Staff responded to FRCOG on January 25, 1999. Both favored FRCOG participation as an interested governmental body, in the event a hearing were held on other

intervenors' contentions. A prehearing conference was held in Greenfield, MA on January 26-27, 1999.¹

The Licensing Board first outlines the general standards for contentions in this proceeding, including criteria defined by the Commission in CLI-98-21. Then we set forth our ruling on each of the contentions submitted by NECNP and CAN, as well as on the FRCOG motion. Because CAN, in its filing on contentions, has joined NECNP with respect to all of NECNP's contentions, we treat NECNP contentions first, referring to them as NECNP/CAN contentions. To the extent that CAN contentions and bases support or echo NECNP/CAN contentions, we deal with them in our discussion of the NECNP/CAN contentions. Next we discuss other contentions submitted by CAN. Where there is either overlap between the NECNP/CAN joint contentions and others submitted separately by CAN, or issue overlap among various NECNP/CAN contentions, we deal with the contentions consolidated by subject matter. Finally, we rule on the FRCOG Motion for Leave to Participate as an interested governmental entity, dated December 30, 1998, which included several proposed contentions of its own.

¹The Licensing Board additionally conducted an evening session on January 26, 1999 to hear oral limited appearance statements from members of the public, as authorized by 10 C.F.R. § 2.715(a). Approximately 35 persons presented statements.

II. General Standards Outlined by Commission.

In its Memorandum and Order, CLI-98-21, the Commission set forth standards for contentions in this particular proceeding. Beyond those generally applicable in all formal proceedings, see 10 C.F.R. §§ 2.714(b) and (d), they must relate to the LTP for which YAEK is seeking approval. As stressed by the Commission, "[t]he scope of this proceeding is . . . coextensive with the scope of the LTP itself."

CLI-98-21, supra, 48 NRC at 204.²

Regulatory standards that an LTP must satisfy are set forth in Title 10 of the Code of Federal Regulations (C.F.R.), Part 50 (Domestic Licensing of Production and Utilization Facilities), § 50.82 (Termination of License), which provides, in pertinent part, that an LTP must include:

- (A) A site characterization;
- (B) Identification of remaining dismantlement activities;
- (C) Plans for site remediation;
- (D) Detailed plans for the final radiation survey;

²The LTP (Rev. 0, May 1997) was submitted by the Staff to the Licensing Board on April 21, 1998. A revision (Rev. 1, December, 1997) was also provided to the Board by the Staff on April 21, 1998. That revision modifies the LTP in certain respects. In reviewing claims by petitioners with respect to the LTP, we utilize Rev. 1.

(E) A description of the end use of the site, if restricted;³

(F) An updated site-specific estimate of remaining decommissioning costs; and

(G) A supplement to the environmental report, pursuant to [10 C.F.R.] § 51.53, describing any new information or significant environmental change associated with the licensee's proposed termination activities.

Significantly, the Commission indicated that spent fuel handling and storage and certain other matters are outside the scope of the LTP. In addition, the Commission excluded as subject matter in this proceeding any issues dealing with:

(1) Staff's 'No Significant Hazards Consideration' determination [or] issues pertaining to (2) the conduct of the January 13, 1998 public meeting, (3) spent fuel (including storage, management, and removal), (4) any future application by Yankee Atomic to terminate its Part 50 license, (5) the general ISFSI license currently available to Yankee Atomic pursuant to 10 C.F.R. § 72.210, [or] (6) any possible future application by Yankee Atomic for a site-specific license to establish and operate an ISFSI pursuant to 10 C.F.R. § 72.40. [CLI-98-21, supra, 48 NRC at 213.]

The Commission also pointed to areas that were subject to litigation in this proceeding. In particular, it stressed that the LTP has at least one future consequence which must be litigated now or never--the site survey methodology. As it noted, "[t]he LTP stage . . . is

³The LTP provides (§§ 1.1 and 1.4, at pp. 1-2 and 1-6) that the site will "be returned completely to a 'green field' condition," so this particular criterion will not be involved.

Petitioners' one and only chance to litigate whether the survey methodology is adequate to demonstrate that the site has been brought to a condition suitable for license termination. They are precluded from doing so at the license termination stage." 48 NRC at 206-07.

With these comments in mind, we turn to the contentions proffered by the petitioners.

III. NECNP/CAN Contentions.

NECNP submitted eight separate contentions (labeled A-H), with which CAN has joined. Some of those contentions have multiple bases or subparts, particularly Contention A, with 10 bases, and Contention H, with 6 bases. We hereafter treat seriatim each of the bases and admit consolidated portions of contentions supported by certain bases identified below. (Because of subject-matter overlap among contentions, we consolidate and renumber those NECNP/CAN and CAN contentions or bases that we determine are admissible.)

NECNP/CAN Contention A claims that "YAEC's LTP does not adequately characterize⁴ the site" for 10 separate reasons set forth as differing bases for this contention.

1. A.1: YAEC's LTP does not adequately characterize the site's background radiation.

⁴We do not view the Petitioners' use of the term "characterize" to be limited to the concept in 10 C.F.R. § 50.82(a)(9)(ii)(A), "site characterization." Rather, we view the term "characterize," as used by Petitioners, to be synonymous with "divulge" or "describe."

NECNP/CAN claim that background must be compared to neighboring areas and state that:

YAEC has not detailed the distribution of radionuclides in off-site locations and has not surveyed off-site locations to the same precision as on-site locations.

NECNP Contentions, at 3.

Petitioners augmented this basis at the prehearing conference (Tr. 10):

...Yankee has not determined background with sufficient precision, as we believe is required by the regulation, in order to make the kind of plan that is contemplated in the regulation.

YAEC interprets this contention as "not done yet." Tr. 14-15. That is, YAEC will determine background, but it has not done so yet. YAEC points out that the survey process is an iterative one, with decision points throughout the total process. Tr. 19. The Staff points us to NUREG/CR-5849, Manual for Conducting Radiological Surveys in Support of License Termination, draft dated June 1992, a document that the Staff advises us to use to judge acceptability of the licensee's plan. Tr. 28, 29.

NUREG/CR-5849 does say, in a phrase left out by the Staff in its response, that:

Background is determined by measurements and/or sampling at locations on site or in the immediate vicinity of the site (out to several kilometers from the site boundary), which are unaffected by site operations. (Emphasis added.)

Compare NUREG/CR-5849, § 2.3.1, at p. 2.6, with Staff Response at 7. NUREG/CR-5849 goes on to state, also in § 2.3.1, at p. 2.6, that:

Background samples and measurements for land areas should be collected at locations which are unaffected by effluent releases (upwind and upstream) . . .

See also, generally, the statement concerning background surveys (NUREG/CR-5849, § 2.3.1, at p. 2.5).

The Board agrees with YAEC that the petitioners cannot at this time challenge whether the LTP has been or is being adequately implemented. Petitioners can and, as indicated by the Commission itself, should take advantage of this occasion to challenge the methodology and the plans for the survey. See CLI-98-21, supra, 48 NRC at 206-07. This is the time to challenge the plan, not how the plan is implemented. NECNP/CAN raise a specific and valid question whether the LTP adequately plans to determine background radiation necessary to determine radiation and radioactivity levels required to meet the requirements of 10 C.F.R. § 50.82(a)(11)(ii). We accept this basis, combined with related bases from other contentions, as an acceptable contention. (Contentions that we are accepting, which consolidate acceptable related portions of several contentions, are set forth in Part VI of this Order, infra.)

2. A.2: YAEC's LTP does not adequately characterize the site [because] YAEC cannot show that onsite

locations have direct gamma exposure rates of ≤ 5 micro-Roentgens per hour ($\mu\text{R/h}$) above background.

NECNP/CAN assert that, according to the LTP, YAEC has not yet conducted a complete survey of the YAEC site (NECNP Contentions, at 5). They mention certain surface soil samples that have been taken and in situ gamma spec measurements that have been conducted (citing LTP at p. 2-4 for both) and acknowledge their usefulness for identifying local areas with higher than background γ -emitting radionuclides. NECNP/CAN conclude that YAEC needs to conduct a complete survey of the entire site using specified equipment to determine the presence and location of higher than background radiation readings. Id.

YAEC attributes this contention to "a plain misreading of the LTP" (YAEC Response to NECNP, at 6). YAEC portrays NECNP/CAN as claiming that a particular type of measurement device will be utilized, when the type of device has not yet been selected. See Tr. 46. The Staff indicates that site surveys are ongoing and that NECNP/CAN have failed to demonstrate why the particular methodology they advocate for such surveys is necessary or appropriate (Staff Response, at 7-8).

We reject NECNP/CAN's basis A.2, as set forth in NECNP Contentions, at 5, as outside the scope of this proceeding. YAEC is not required to have conducted a complete survey of

the site at this time. To the extent that this basis seeks to challenge the methodology of YAEC's survey, NECNP has not provided any support that YAEC's plan is inadequate with respect to the type of measuring instruments to be used. In that connection, Table 4.2 of the Final Status Survey Plan (FSSP), LTP at p. A-38, identifies several gamma ray detecting instruments to be used in the site survey that have sensitivities of less than 5 micro R/hr, implying a capability of detecting radiation levels in the stated range.

3. A.3: YAEC's LTP does not adequately characterize the site [because] direct γ [gamma] exposure rates of 5 μ R/h are not protective.

A.4: YAEC's LTP does not adequately characterize the site [because] direct γ [gamma] exposure rates at 1 meter above ground will not protect children and other persons.

E.1: YAEC's LTP is designed only to maintain doses to an adult male below 15 mrem per year; doses to children will likely be higher. [Emphasis in original.]

H.4: YAEC's Final Status Survey Plan (FSSP) [part of the LTP] permits radiation exposures to exceed 15 mr/y.

CAN Contention 1: Site release.

Contentions A.3, A.4, E.1 and H.4, as well as CAN Contention 1, are related and are considered collectively. All include as support the affidavit of an expert, Dr. Marvin Resnikoff, who attended the prehearing conference and

had participated in the preparation of the contentions (Tr. 96-97).

In A.3, NECNP/CAN contend that, under the LTP, YAEC proposes to determine where areas of the site with direct gamma readings greater than 5 μ R/H above natural background are located. They contend that the exposure rate in these areas is not protective of public health and safety and, in addition, will not maintain the total effective dose equivalent (TEDE) to less than 15 mrem/yr for a full-time resident. NECNP/CAN calculate that, under the YAEC methodology, the TEDE would equal 17 mrem/yr for a full-time resident and hence would exceed the 15 mrem/yr standard. The 15 mrem/yr standard could only be satisfied, in their view, by a residential scenario in which an adult male spends 55% of his time indoors, 20% outdoors and 1% gardening--unrealistic, in their opinion, for the particular site. They add that the dose rate of 5 μ R/H over background is only protective in the foregoing scenario. They further claim that a person such as a child, a stay-at-home parent or home-bound individual would receive a direct gamma dose greater than 15 mrem/yr. See NECNP Contentions, at 5-8.

In A.4, NECNP/CAN similarly claim that the direct gamma dose at the site posed by the LTP, 5 μ R/H at 1 m above ground, provides a higher (effective) dose for children than

for an adult and that the dose for children must be taken into account in determining LTP dose levels. In support of this claim, NECNP/CAN state that children (and other small persons) are closer to the radiation source (direct gamma radiation from contaminated land surfaces, i.e., groundshine) than are adult males, and they cite scientific authority to the effect that "the dose to organs of the body from external radiation increases with decreasing body size." They seek inclusion in the LTP of a requirement that YAEC evaluate the likely radiation dose to a child and that it consider such information in determining release criteria for the site. See NECNP Contentions, at 8-9.

In E.1, NECNP/CAN maintain, relative to the site remediation plans, that YAEC's LTP is designed to maintain doses to an adult male below 15 mrem/yr, and that doses to children will likely be higher. This is essentially the same claim as in A.4 (although not limited, as there, to gamma doses) since, they claim, it neglects to adequately take into account children.

In H.4, NECNP/CAN claim that the LTP's Final Status Survey Plan (FSSP) permits radiation exposures to exceed 15 mrem/yr, for the same reasons (e.g., failure to adequately consider children) as set forth for Contention A.3 above. See NECNP Contentions, at 35.

The Licensee opposes all these contentions on the ground that they are attempts to reassert the challenge to the "average member of the critical group" site release criterion that the Commission has already ruled to be impermissible. See CLI-98-21, supra, 48 NRC at 211 n.14. The Licensee cites 10 C.F.R. § 20.1402 as defining the permissible site release criteria in terms of a TEDE of 25 mrem/yr above background to an "average member of the critical group" and it refers to 10 C.F.R. § 20.1003 for a definition of "critical group"--i.e., "the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances [emphasis supplied]."

Based on the Board's review, the LTP indicates, at p. 1-2, that the methods governing the final status surveys are derived from regulatory guidance, specifically Regulatory Guide 1.86, Draft NUREG/CR-5849 and Draft NUREG-1500. The LTP references the "critical group" as being based on the residential scenario set forth in NUREG-1500, "Working Draft Regulatory Guide on Release Criteria for Decommissioning: NRC Staff's Draft for Comment," dated August 1994. LTP, at p. 2.1; FSSP, at p. A-11. "The average member of the critical group in [that] scenario is represented by an individual who lives on the site, ingests groundwater

produced from beneath the site, and ingests food grown on site." NUREG-1500, at p. F-2. (These scenarios are described in greater detail in NUREG/CR-5512, Vol. 1, to which NUREG-1500 refers.)

Under the LTP (Rev. 1, at p. A-50), "[a]ll realistic pathways for exposure, including direct exposure, drinking water, and agriculture, will be included." (Pathways are defined in NUREG-1500, at pp. F-2 and F-3.) The LTP further states (Rev. 1, p. A-50) that the "objective of this analysis will be to demonstrate that the annual dose to any real individual will be well below the 15 mrem. [T]he dose calculated shall be the peak annual TEDE expected within the first 1000 years after decommissioning."

According to the Licensee, NECNP's contentions here under review do not attack either the "critical group" or the exposure model for the average member; rather, they are portrayed by Y/IC as contending that, for purposes of calculating a per-hour dose rate (which can be converted into TEDEs) "one must use hypothetical persons [e.g., children] with personal circumstances that render them atypically susceptible to radiation." Y/AEC Response to NECNP Contentions, at 7 n.8. The Licensee adds that NECNP would have the required showing to be that everyone in the critical group would receive less than 25 mrem/yr. The

Licensee notes in this regard that it should be obvious that if every member were to receive less than 25 mrem/yr, then the average must therefore be less than 25 mr/yr and less than permissible under NRC rules. In addition, YAEC observes that, by setting a standard based on average exposure, the regulation necessarily contemplates that some individuals receive more and some less than the regulatory standard. In short, according to the Licensee, these contentions would constitute a challenge to a regulatory standard that is impermissible under 10 C.F.R. § 2.758.

The Staff also views these contentions as a challenge to NRC regulations, but it reasons that the applicable standard is not that established by 10 C.F.R. § 20.1402 but, instead, the criteria imposed under the Site Decommissioning Action Plan (Site Decommissioning Management Plan) (SDMP), for LTPs submitted prior to August 20, 1998, such as that under consideration here.⁵ The SDMP includes a cleanup criterion of less than 5 microrentgen/hr above natural background at 1 meter for cobalt-60, cesium-137 and europium-152 that may exist in concrete, components and structures. 57 Fed. Reg. 13,389, 13,390 (1992). The claim

⁵The Commission, in 10 C.F.R. § 20.1401(b), exempts from current regulatory standards sites complying with the "Site Decommissioning Management Plan (SDMP) Action Plan of April 16, 1992 (57 FR 13389)." See, in particular, 10 C.F.R. § 20.1401(b)(3).

that the 5 μ R/H above background is not adequately protective, in the Staff's view, constitutes an impermissible challenge to NRC regulations--i.e., to the SDMP criteria referenced above. See Staff Response, at 9.

In reviewing all these proposed contentions, it is apparent that the governing regulatory standard for the LTP here is that set forth in the SDMP, as asserted by the Staff. Any claim that the standard is not adequately protective would amount to an impermissible challenge to regulations. Contention A.3, to the extent it seeks criteria more restrictive than 5 μ R/h above background, would constitute such a claim and hence (to the extent it seeks more restrictive criteria) is rejected as a challenge to governing regulations.

On the other hand, the Licensee additionally has committed, in the LTP, to site-release criteria that require that the TEDE to the average member of the critical population group from residual contamination be maintained at less than 15 mrem/yr, criteria that we recognize would conform to the dose criteria set forth in 10 C.F.R. § 20.1402. LTP, § 4.1, at p. 4-1. Those criteria define dose to a critical group. Because the LTP in fact commits to the 15 mrem/yr dose criteria that is consistent with 10 C.F.R. § 20.1402, we will also treat that standard as

governing (as well as the SDMP release criteria). Thus, to the extent these contentions attempt to substitute a defined individual (e.g., child) for an average member of a critical group, they also constitute a challenge to NRC regulations, particularly the dose criteria defined in 10 C.F.R.

§ 20.1402. To the extent they attempt to substitute a defined individual for a critical group, these contentions are also rejected because they challenge 10 C.F.R.

§§ 20.1402 and 20.1003. The Commission has already ruled in this regard that such challenges are not permissible. See CLI-98-21, supra, 48 NRC at 211 n.14.

There is one aspect of Contention A.3, however, that does not appear to be a challenge to governing regulations-- i.e., the NECNP/CAN assertion (NECNP Contentions, at 6-7) that:

A full-time resident, spending time indoors and outdoors, would receive a direct gamma dose of 17 mrem/yr; . . . Thus, for a full-time resident, the TEDE would exceed 15 mrem/yr, under the YAEF survey methodology. A dose rate of 5 μ R/h greater than background is only protective under a residential scenario in which an adult male spends 55% of the time indoors, 20% outdoors and 1% gardening. This restricted scenario for direct exposure level, together with other pathways, will maintain TEDE below 15 mrem/year [as set forth in the LTP] for a hypothetical adult male, according to NUREG-1500, using DandD software. [Emphasis in original.]

NECNP/CAN object to the use in the LTP of the above-stated residential scenario. Beyond their claim to have

children considered, which we have discussed earlier and rejected, they seek a gardening scenario in which the exposed individual spends more of his time outside, performing gardening-type activities. As further explained at the prehearing conference:

. . . the residential scenario is different for the critical groups that are involved who may be present 100 percent of the time . . . (Tr. 52)

. . . the rule that Yankee is following or would like to follow in the way that it does is to protect the average member of the most affected population, and this for them is an adult male weighing over 200 pounds who resides at the site only eight hours a day, is indoors 55 percent of the time, and is outdoors gardening one percent of the time.

This standard has no relevance to our community.
(Tr. 67.)

Contrary to the Licensee's assertion, this portion of Contention A.3 in fact does take issue with the "critical group" scenario.

Although Commission rules do contemplate prescribed doses to average members of a critical group, they do not limit the scenarios in which the exposed individual must be placed. As set forth in NUREG-1500, "Working Draft Regulatory Guide on Release Criteria for Decommissioning: NRC Staff's Draft for Comment," which is incorporated into the LTP (see, e.g., pp. 1-2, A-vii, A-29), "[t]he NRC staff anticipates that alternative exposure scenarios may be appropriate based on site-specific factors that affect the

likelihood and extent of potential future exposure to residual radioactive contamination." NUREG-1500, at 12-13.

To the extent NECNP/CAN Contention A.3 challenges the scenario used in conjunction with the critical group referenced in the LTP, it sets forth an acceptable contention which, if proved, would require the LTP to be amended to define the average member of the critical group to be a gardener. We accept that portion of NECNP/CAN Contention A.3, as well as the related portion of CAN Contention 1.

4. A.5: On-site subsurface contamination not characterized.

H.1: On-site subsurface contamination not surveyed.

CAN Contention 2: Soil remediation.

CAN Contention 7: Investigation of Handling of Rad Waste.

CAN Contention 8: Waste Contamination
Investigation: Groundwater, Soil and River Sediment Contamination.

NECNP/CAN Contentions A.5 and H.1, and CAN Contentions 2, 7 and 8, are all related and are considered collectively. NECNP/CAN challenge the plan for subsurface soil surveys by stating:

YAEC has not characterized the full extent of on-site subsurface contamination.

NECNP Contentions, at 3.

NECNP/CAN contend that subsurface contamination be determined to assure adequate input into the NRC's DandD computer code (used for calculating screening values to demonstrate compliance with dose limits) and that YAEC appears to be sampling soil only to a depth of 15 cm. They argue that unless YAEC determines the full extent of soil contamination, it cannot determine the full costs for remediating the site. NECNP Contentions, at 9, 10.

YAEC and the Staff exhort us to reject this basis. The Board agrees with YAEC (YAEC Response to NECNP, at 10, 23-24) and the Staff (Staff Response, at 23-24) that NECNP cannot use costs as a basis for this contention. Prior case law at CLI-96-1, 43 NRC 1, 9 (1996) appears controlling. In addition, in response to a Board question, YAEC advised (Tr. 17-19) that there may not be a clear division in the LTP between site characterization surveys and the FSSP. See LTP generally, at 2-1 to 2-9.

The Board has reviewed the FSSP of the LTP. At Section 4.4.4, YAEC provides some information on surface soil sampling but, as asserted by the Petitioners, criteria for subsurface soil sampling do not appear to be demonstrated. In that regard, 10 C.F.R. § 50.82(a)(9)(ii)(D) requires "[d]etailed plans for the final radiation survey" (emphasis supplied). A plan that does not address the general

strategy for the measurement of subsurface radioactivity cannot be viewed as adequately meeting the requirements of 10 C.F.R. § 50.82. We are thus admitting a contention on subsurface soil sampling.

To the extent that CAN Contention 7 and CAN Contention 8 challenge the methodology for determining subsurface soil contamination, they are resolved by our ruling on this contention that permits consideration of the appropriate methodology. To the extent that CAN Contention 7 challenges the need for a NEPA analysis, it is discussed under CAN Contention 6, in Item IV.6, infra, and is there rejected.

CAN Contention 8 appears to express a concern that areas offsite in the Deerfield River beyond the site boundary and in Sherman Pond require monitoring. CAN Contentions at 23, 24. The Licensee, however, has committed to modify the LTP to conduct sediment analyses at the discharge point in the south end of Sherman Pond. See Attachment 1 to letter from YAEC to Staff, BYR 97-064, dated December 18, 1997, at response to Question 3. In addition, the LTP at Section 2.4.6, p. 2-7, discusses surveys conducted on the Deerfield River and Sherman Pond. The FSSP at § 4.4.4 also requires monitoring of observation wells for tritium and other radionuclides. FSSP, at pp. A-29, A-30.

To the extent that CAN Contention 8 challenges alleged

YAEC radioactivity releases to offsite areas and a concomitant need to clean up those releases, it does not reflect adversely on the adequacy of the LTP, which in fact deals with the particular releases identified by the petitioners. The LTP is only intended to assure that "the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 C.F.R. Part 20, Subpart E." 10 C.F.R. § 50.82(a)(11)(ii) (emphasis supplied). The discharge points may be deemed part of the facility but are in fact covered by the LTP. Presumably monitoring at these locations define the highest levels at the offsite boundary. These levels will then be compared to the site release criteria. Accordingly, this portion of CAN Contention 8 has not established a "genuine dispute" with the Licensee with respect to the monitoring of offsite discharge points and is thus rejected.

On the basis of our review of the LTP and the arguments of the parties and petitioners, the Board determines that NECNP/CAN have raised a specific and valid question whether the LTP adequately plans for determining on-site subsurface radioactive contamination to the extent necessary to meet the requirements of 10 C.F.R. § 50.82(a)(11)(ii). We therefore accept as a contention the bases set forth under NECNP/CAN A.5 relative to that topic.

5. A.6: YAEC has not detected all α -emitters likely to be present at Yankee-Rowe.

H.2: YAEC must survey all α -emitters likely to be present at the Yankee-Rowe site.

In support of this contention, NECNP/CAN claim that YAEC is not surveying for α -emitters [alpha-emitters], such as plutonium isotopes and americium-241. NECNP also contends that YAEC should take soil samples and, specifically, measure for gross α . Further, YAEC "should conduct an α -spec for all α -emitters on soil samples YAEC takes from over the entire 2000-acre site." NECNP Contentions, at 10.

YAEC would characterize this basis as "not done yet." Tr. 101-103. The Staff argues that the report referenced by NECNP (see NECNP Contentions at 10, n.17) is not sufficient basis for surveying the site for α -emitters.

Again the Board agrees with NECNP/CAN that they have raised a specific and valid contention whether the LTP adequately plans for determining the extent of α -emitter radioactive contamination to the extent necessary to meet the requirements of 10 CFR 50.82(a)(11)(ii). The Board's view is that the issue raised by NECNP/CAN is that the plan is not complete with respect to its description of the survey methodology. The bottom line is the validity and acceptance of the final site survey which will be the final

basis for terminating the license. Neither YAEC nor the Staff at this contention stage have demonstrated that the LTP and site survey plan, in their present form, meet the acceptance criteria established by the NRC. A "genuine dispute" between YAEC and the petitioners is here present, and an accepted contention on this subject is set forth in Section VI, infra.

6. A.7: YAEC's LTP does not adequately characterize the site [because] YAEC's designation of affected versus non-affected areas of the site is arbitrary.

NECNP/CAN argue that, based on a review of NRC inspection reports, YAEC impermissibly reclassified an area from affected to non-affected. NECNP Contentions, at 10, 11. YAEC responds that the LTP explains in detail how the site is divided into gross classifications for survey purposes, how the gross classifications are tested, and how reclassification may be triggered based on survey results; and, whether one agrees or disagrees, the process is far from arbitrary (YAEC Response to NECNP, at 11). The Staff claims NECNP has misinterpreted the inspection report. Both YAEC and the Staff fault NECNP/CAN for failing to satisfy the contention criteria set forth in 10 C.F.R. § 2.714(b).

A reading of both the inspection report and the LTP indicates that the reclassification clearly was based on criteria contained in the LTP and thus cannot be classified

as an arbitrary decision. There is accordingly not an adequate basis for the NECNP/CAN contention that YAEC has arbitrarily characterized the site. In any event, this claim does not challenge the LTP but the future implementation of the LTP. It is thus not a permissible challenge that can be asserted in this proceeding. For these reasons, the contention is rejected.

7. A.8: YAEC's LTP does not adequately characterize the site [because] YAEC has averaged out high soil concentrations of radiation.

NECNP/CAN claim that, rather than investigating the cause of high soil concentrations, YAEC takes the occurrence as reason to take more samples until the average of all samples falls below guideline values. They assert that, by such averaging, YAEC philosophy is not consistent with NUREG/CR-5849. NECNP Contentions, at 12.

In response, YAEC claims the methodology is not as portrayed by NECNP/CAN but, rather, that the LTP does indeed follow precisely the NUREG/CR-5849 methodology. As further pointed out by YAEC and the Staff, this challenge stems in part from a misinterpretation of an NRC inspection report, which pertains to an example of implementation of the plan, not the adequacy of the plan itself. YAEC Response to NECNP, at 12; Staff Response at 13, 14.

We agree with YAEC and the Staff that NECNP/CAN have misinterpreted the inspection report. Our reading of the LTP is that it appears to track NUREG/CR-5849. See FSSP at § 4.3.3 and NUREG/CR-5849 at Fig. 4-4. The survey data and direct sampling results discussed in the inspection report are for the purpose of locating regions that require remediation and for measuring radioisotope concentrations that are the inputs to the dose calculation model.

We conclude that this basis does not challenge the LTP but only an aspect of the implementation of the LTP. It is not a permissible challenge in this proceeding and thus is rejected.

8. A.9: YAEC's LTP does not adequately characterize the site [because] YAEC's scan surveys are consistently biased toward low readings.

Citing an NRC Inspection Report, NECNP/CAN claim that side-by-side comparisons between YAEC's energy compensated Geiger Mueller [GM] detector with Oak Ridge's much more precise Pressurized Ionization Chamber [PIC] showed a low bias by 10% to 20%. They further assert that YAEC employed a conversion factor to correct GM rates, without having identified the basis for the discrepancy. NECNP Contentions, at 12.

YAEC (YAEC Response to NECNP, at 12) and the Staff (Staff Response at 14, 15) point out that the Petitioners

give no reason why such a bias causes the LTP to be inadequate. Specifically, why the conversion factor used is inadequate. YAEC adds that the "discrepancy" lies in the differing response tendencies of the two types of detectors.

In our view, this basis does not challenge the LTP but the implementation of the LTP. It is not a challenge for which we could grant meaningful relief in this proceeding. Accordingly, we reject this contention.

9. A.10: YAEC's LTP does not adequately characterize the site [because] YAEC has not evaluated scanning sensitivity for field survey instruments.

Under basis A.10, NECNP/CAN claim, citing an NRC inspection report, that YAEC has performed a site survey but has not yet evaluated the scanning sensitivity for field survey instruments. NECNP Contentions, at 12, 13. As YAEC (YAEC Response to NECNP, at 13) and the Staff (Staff Response, at 15) point out, however, this basis does not challenge the adequacy of the LTP but rather the implementation of what already exists in the plan. Because only the adequacy of the LTP, and not its implementation, is at issue in this proceeding, this topic is not open for litigation in this proceeding and, for that reason, we reject this contention.

10. E: YAEC's LTP Contains Unreviewed Safety Questions.
- D: Inadequacy of YAEC's Plans for Final Site Survey.
- G: Inadequacy of YAEC's Remaining Cost Estimate.
- CAN-3: NRC Oversight and Abdication of Authority.
- CAN-4: Security.
- CAN-5: Monetary Security.

These contentions, including all four parts of NECNP/CAN B and both parts of NECNP/CAN D, focus upon and challenge portions of YAEC's plans for handling and disposal of spent fuel. As such, they are barred from consideration in this proceeding by the Commission's Order in CLI-98-21 and hence are rejected for litigation.

In seeking admittance of the foregoing contentions, NECNP/CAN recognize that they might well be rejected (as they have been) because of the Commission's ruling in CLI-98-21. They seek our advice as to when such contentions might be litigated, particularly those pertaining to dry storage. NECNP/CAN also ask us to present these questions to the Commission, if we do not know the answers. NECNP Contentions, at 17-19.

We do not know the answer to the questions in this regard posed by NECNP/CAN. We are highlighting the questions so that the Commission may be aware of them and

may wish to respond in the context of determining any possible petitions for review of this Prehearing Conference Order (to the extent that review may be available, see 10 C.F.R. § 2.714a) or of our final Initial Decision.

11. C.: YAEC's Site Remediation Plans are Inadequate.

NECNP/CAN claim that, contrary to the requirements of 10 C.F.R. § 50.82(a)(9)(ii), YAEC's site remediation plans are based upon inadequate data and will not protect public health and safety. NECNP Contentions, at 19. They support this claim by asserting that, during the site characterization process, subsurface soil contamination monitoring has been inadequate and will continue to be inadequate through the FSSP. NECNP then asserts that the inadequacy in these monitoring activities means that YAEC has not determined the full volume extent of radioactive contamination on the site. NECNP Contentions, at 19-20.

NECNP concedes that this contention is basically additional justification for its Basis A.5 discussed above. See Tr. 146. YAEC and the Staff urge us to exclude this contention. YAEC asserted in its defense against admitting Contention A (see Tr. 17-19) that site characterization surveys and final site surveys are concurrently performed. Thus, according to YAEC, this contention addresses implementation and is not admissible.

However, to the extent that the basis for this contention supports NECNP/CAN Contention A.5, we accept it as an additional basis for Contention A.5. To the extent that it is critical of YAEC's implementation of its site characterization plan, we reject this basis. In summary, we have included the substance of this contention in Content A.5 and this portion of Contention C is consolidated with, and will be litigated as part of, that contention.

12. E.: Inadequacy of YAEC's Site Remediation Plans.

E.1: See discussion under item 3.

E.2: YAEC's Guideline Values are not supported and, in any case, are too high.

H.3: YAEC's FSSP method for determining Guideline Values is vague.

NECNP/CAN claim YAEC Guideline Values are not supported and are too high. With regard to this basis, YAEC and the Staff appear to agree that NECNP/CAN's concern about Ag-108m is a non-issue, since in fact, the FSSP does require summing ratios. See FSSP at A-10, Eq. 3.1.

Based on our review of the FSSP, the concerns expressed in the basis for Contention E.2 appear to us to be non-issues for the reasons expressed by YAEC and the Staff and do not appear to present a controversy. We accordingly reject this contention.

13. E.: Inadequacy and Insufficiency of YAEC's LTP ALARA Analysis.

H.5: YAEC's ALARA analysis is completely ad hoc and vague.

NECNP/CAN claim that the ALARA analysis in the LTP is inadequate. They claim that, contrary to NRC regulations, the YAEC LTP does not show that the "residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA)." 10 C.F.R. § 20.1402.

NECNP bases this contention on the supposition that YAEC uses an ad hoc and flawed cost benefit analysis with respect to determining whether soil remediation activities YAEC proposes are ALARA. NECNP Contentions, at 27-29; Tr. 149-150. Both the Staff and YAEC counter that NECNP's arguments are not directed to an inadequacy in the methodology of performing the ALARA analysis. The Staff points out that the methodology used by YAEC follows the general approach outlined in NUREG-1500. Staff Response, at 21. YAEC asserts that the values that NECNP would use in the cost benefit analysis are just not realistic. YAEC Response to NECNP, at 20-23; Tr. 150-152.

We agree that the bases put forth by NECNP/CAN for this contention are inadequate to demonstrate a genuine dispute concerning YAEC's methodology in determining whether the site remediation work to be done at Yankee Rowe will be

ALARA. See 10 C.F.R. § 2.714(b)(2)(iii). To the extent that NECNP's bases challenge the implementation of YAEC's ALARA strategy, that matter is not at issue in this proceeding. This contention is rejected.

14. H.: Inadequacy of YAEC's Final Status Survey Plan. [All five bases for this contention discussed and resolved through related contentions, as indicated below.]

H.1: On-site subsurface contamination not surveyed. [See Item III.4, NECNP/CAN Contention A.5.]

H.2: YAEC must survey all α -emitters likely to be present at Yankee Rowe site. [See Item III.5, NECNP/CAN Contention A.6.]

H.3: YAEC's FSSP method for determining Guideline Values is vague. [See Item III.12, NECNP/CAN Contention E.2.]

H.4: YAEC's FSSP permits radiation exposures to exceed 15 mr/y. [See Item III.3, NECNP/CAN Contention A.3.]

H.5: YAEC's ALARA analysis in the FSSP is completely ad hoc and vague. [See Item III.13, NECNP/CAN Contention F.]

H. Additional Bases: The full extent of site contamination has not been determined, based on (1) below-building contaminated piping is sitting within the water table, and (2) the estimated background Cs-137 soil concentration of zero pCi/g should be memorialized in the FSSP.

These additional bases (NECNP/CAN Contentions, at 36, 37) are each derived from NRC Inspection Report No. 50-29/98-03. The Licensee, in its response to the NECNP contentions, fails to address these additional bases. The

Staff, however, contends that the asserted bases do not support these claims. The first claim relates to the discovery of piping, but the report does not indicate that the piping is contaminated. Nor does the report provide any basis for NECNP's "speculation" regarding contamination of the water table. We agree with the Staff and reject the contention for failing to demonstrate that a genuine dispute exists with YAEC on a material issue of law or fact. 10 C.F.R. § 2.714(b)(2)(iii).

The second of these bases cites the inspection report to the effect that YAEC had prepared a study of background soil at offsite locations to obtain background readings for Cs-137. NECNP/CAN note that YAEC stated that for affected areas it will assume a background radiation level of zero for Cs-137. NECNP/CAN applaud this assumption but seek to have it memorialized in the FSSP. The Staff asserts (Staff Response, at 26-27) that there is no requirement that YAEC assume a background radiation level of zero for Cs-137, and faults the contention for failing to provide an explanation why it should be incorporated in the FSSP. Thus, according to the Staff, the basis fails to explain why a genuine dispute exists, as required by 10 C.F.R. § 2.714(b)(2)(iii).

We perceive a dispute between YAEC and NECNP/CAN on this matter but, lacking any regulatory requirement that the FSSP include any such assumption, we could not grant the relief sought by NECNP/CAN and reject the contention on that basis. This will not, of course, preclude YAEC from assuming a background radiation level of zero for Cs-137 in the FSSP, if it elects to do so. And, indeed, at the prehearing conference, YAEC committed to apply a zero Cs-137 background for disturbed soil areas as well as to asphalt in the affected areas. Tr. 258.⁶

IV. CAN CONTENTIONS.

1. CAN Contention 1. Site Release.

This contention is discussed and resolved under NECNP/CAN Contention A.3, Item III.3, supra.

2. CAN Contention 2. Soil Remediation.

This contention is discussed and resolved under NECNP/CAN Contention A.5, Item III.4, supra.

3. CAN Contention 3. NRC Oversight and Abdication of Authority.

This contention, which is among those challenging the Commission's handling of spent fuel handling and storage, is

⁶The transcript of the prehearing conference should be corrected to reflect that this commitment was made by Thomas Dignan, Esq., representative of YAEC.

discussed and resolved under NECNP/CAN Contention B, Item III.10, supra.

4. CAN Contention 4, Security.

This contention, which is another raising an aspect of spent fuel handling and storage, is discussed and resolved under NECNP/CAN Contention B, Item III.10, supra.

5. CAN Contention 5, Monetary Security.

This contention relates to costs of an ISFSI and is included among those discussed and resolved under NECNP/CAN Contention B, Item III.10, supra.

6. CAN Contention 6, Waste Issues.

This contention asserts that the NRC Staff violated the National Environmental Policy Act (NEPA) by failing to prepare a supplemental Environmental Impact Statement (EIS) for the cleanup of the Yankee Rowe site. In support, it claims that there is both documented and undocumented contamination of the site and that a further study is necessary to determine the sources, extent and potential for plumes of contamination (including tritium) under the surface of the soil.

YAEC and the Staff each urge us to reject this contention. YAEC claims that CAN fails to comprehend the nature of an EIS by claiming that one is required whenever a new impact is discovered. YAEC adds that approval of the

LTP is not a major federal action involving increased environmental risk that might trigger the need for an EIS; rather, the LTP will eventually result in a reduction of environmental impact.

YAEC also references the Commission's Final Generic EIS for decommissioning as including all the potential effects to which CAN refers. YAEC asserts that, where a supplemental EIS is sought, a petitioner must show both that the federal action is one that would require an EIS in its own right and that, for some specific reason, the conclusions of the generic EIS are not applicable to the particular licensing action in question. Further, YAEC questions our jurisdiction to determine that a supplemental EIS is required--although it concedes that a hearing record and decision (as could be created if we were to admit this contention) might in effect serve as an addendum to an EIS. See New England Coalition v. NRC, 582 F.2d 87, 93-94 (1st Cir. 1978); Citizens for Safe Power v. NRC, 524 F.2d 1291, 1294 & n.5 (D.C.Cir. 1975); Ecology Action v. AEC, 492 F.2d 998, 1000-02 (2d Cir. 1974). See YAEC Response to CAN, at 15, 16.

For its part, the Staff asserts that CAN's claims are groundless, that the Commission's regulations clearly set forth when an EIS must be prepared (see 10 C.F.R. §

51.20(a)) and none of the reasons set forth by CAN meet these requirements. Staff Response, at 36, 37.

Leaving aside the jurisdictional arguments propounded by the Licensee, we agree both with the Staff analysis and with YAEC's assertions that CAN has not provided adequate justification to warrant our consideration of the environmental impacts of the LTP. We accordingly reject this contention.

7. CAN Contention 7, Investigation of Handling of Rad Waste

This contention is discussed and resolved under NECNP/CAN Contention A.5, Item III.4, supra.

8. Waste Contamination Investigation: Groundwater, Soil, and River Sediment Contamination.

This contention is discussed and resolved under NECNP/CAN Contention A.5, Item III.4, supra.

V. FRCOG Participation. By Motion dated December 30, 1998, FRCOG filed a motion to permit it to participate as an interested governmental entity, pursuant to 10 C.F.R. § 2.715(c). FRCOG identifies itself as the regional government created by the Massachusetts legislature to replace the Franklin County Commission, the former county government, and it sets forth several areas of interest that it wishes to have explored in the proceeding. In the cover letter to its motion, FRCOG advises that it will utilize the

services of the FRPB, which the Commission had found not to be a governmental entity and to lack standing to intervene.

Both YAEC and the Staff offer no opposition to FRCOG participation, so long as a hearing were granted on at least one of the contentions proffered by NECNP or CAN. They both oppose any of FRCOG's areas of interest as being considered appropriate contentions.

Having considered the FRCOG statement of its organization, we find it to qualify as an interested governmental entity and permit it to participate under 10 C.F.R. § 2.715(c). FRCOG has not submitted formal contentions in this proceeding but has listed certain areas of interest. Because these areas of interest do not qualify as contentions, we do not admit them as such but only note that, to a large extent, they involve issues similar to those that we have admitted (or, with respect to spent fuel storage, rejected) earlier in this order. See Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-769 (1977). FRCOG will, of course, be permitted to participate in the adjudication of any of the issues that we are admitting as contentions.

FRCOG requests additional relief in the form of \$100,000 to support its efforts. As this Board ruled in LBP-98-12, 47 NRC 343, 358 (1998), NRC does not possess the

authority to grant such a request. (This ruling was not modified by the Commission in CLI-98-21.)

With regard to FRCOG's request that YAEC conduct no activity "furthering" the LTP, this is outside the authority of this Board. See 10 C.F.R. § 50.91(a)(4). Finally, FRCOG requests 30 days' notice before a hearing or a meeting. Commission regulations do not establish such a requirement for meetings, and we lack authority to impose one for meetings not directly tied to the adjudication before us. With regard to hearings, this Board has authority to set schedules for hearings (10 C.F.R. § 2.718), and will exercise this authority consistent with the needs of all parties or participants such as FRCOG. As appropriate, we also will be guided by the Commission's recent Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18 (1998).

VI. Admitted Contentions:

Based on our discussion above, we are consolidating various bases relating to similar subject matter and admitting the following four contentions:

Contention 1. Contrary to the requirements of 10 C.F.R. § 50.82, the methodology YAEC employs in its LTP Final Site Survey Plan to determine background radiation is not adequate to demonstrate that the LTP will assure the protection of public health and safety.

Contention 2. Contrary to the requirements of 10 C.F.R. § 50.82, the methodology YAEC employs in its LTP Final Site Survey Plan to determine subsurface soil contamination is not adequate to demonstrate that the LTP will assure the protection of public health and safety.

Contention 3. Contrary to the requirements of 10 C.F.R. § 50.82, the methodology YAEC employs in its LTP Final Site Survey Plan to determine alpha emitting radioactivity is not adequate to demonstrate that the LTP will assure the protection of public health and safety.

Contention 4. Contrary to the requirements of 10 C.F.R. § 50.82, the methodology YAEC employs in the LTP for the selection of applicable scenarios for the calculation of its final release doses is not adequate to demonstrate that the LTP will assure the protection of the public health and safety.

In the litigation of these contentions, NECNP and CAN are both considered sponsors and are hereby consolidated for that purpose.

VII. Settlement.

In its regulations, the Commission recognizes that it is in the public interest for particular issues or an entire proceeding to be settled, and it encourages parties and Licensing Boards to seek fair and reasonable settlements. 10 C.F.R. § 2.759. We believe that the issues in this proceeding are amenable to settlement and encourage the parties to seek a fair and reasonable settlement of any or all of the contentions that we are approving in this Order.

VIII. Order.

In light of the foregoing discussion, and based on the entire record of this proceeding, it is, this 17th day of March, 1999

ORDERED:

1. NECNP/CAN Contentions A.1, a portion of A.3, A.5, A.6, a portion of C, and portions of H, as discussed above, are hereby admitted as contentions in this proceeding, as set forth in Part VI of this Order. The requests of NECNP and CAN for a hearing on those contentions are hereby granted. NECNP and CAN are admitted as parties to this proceeding. The Licensing Board will issue a Notice of Hearing in the near future.

2. The remaining NECNP/CAN and CAN contentions or bases are hereby rejected.

3. The motion for FRCOG to participate as an interested governmental entity is hereby granted to the extent indicated earlier in this Order.

4. NECNP and CAN are hereby consolidated for the purposes of litigation of the admitted contentions.

5. A telephone prehearing conference will be convened on Wednesday, March 31, 1999, at 10 a.m. EST, to work out schedules for discovery, other prehearing conferences and the evidentiary hearing.

6. This Order is subject to appeal in accordance with the provisions of 10 C.F.R § 2.714a. Any petitions for review meeting applicable requirements set forth in that section must be filed within 10 days of service of this Prehearing Conference Order.

The Atomic Safety and
Licensing Board

Charles Bechhoefer
Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Thomas S. Elleman
Dr. Thomas S. Elleman
ADMINISTRATIVE JUDGE

Thomas D. Murphy
Thomas D. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 17, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No.(s) 50-029-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PREH. CONF. ORDER (LBP-99-14) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas S. Elleman
704 Davidson Street
Raleigh, NC 27609

Ann P. Hodgdon, Esq.
Marian L. Zobler, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg
2001 S Street, N.W., Suite 430
Washington, DC 20009

Thomas Dignan, Esq.
Ropes and Gray
One International Place
Boston, MA 02110

Jonathan M. Block, Esq.
Main Street
P.O. Box 566
Putney, VT 05346

Docket No.(s)50-029-LA
PREH. CONF. ORDER (LBP-99-14)

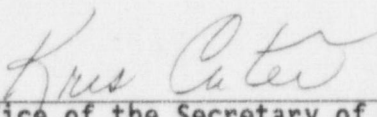
James L. Perkins, President
New England Coalition on
Nuclear Pollution, Inc.
P.O. Box 545
Brattleboro, VT 05302

Adam Laipson
Franklin Regional Council
of Governments
425 Main St.
Greenfield, MA 01301

Samuel H. Lovejoy, Chairman, FRPB
Franklin Regional Council
of Governments
425 Main St.
Greenfield, MA 01301

Deborah B. Katz, President
Citizens Awareness Network, Inc.
P.O. Box 3023
Charlemont, MA 01339

Dated at Rockville, Md. this
18 day of March 1999


Office of the Secretary of the Commission