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USNRC

United States of America  
before the  
Nuclear Regulatory Commission

'98 MAR 16 P3:47

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of  
  
YANKEE ATOMIC ELECTRIC COMPANY  
  
(Yankee Nuclear Power Station)

Docket No. 50-029-LTP

ANSWER TO PETITION TO INTERVENE AND REQUEST FOR HEARING  
OF CITIZENS AWARENESS NETWORK, INC.

On January 28, 1998, the Commission published a notice of opportunity for hearing under 10 C.F.R. § 2.105 in respect of the approval of the License Termination Plan ("LTP") for Yankee Nuclear Power Station ("YNPS") submitted by Yankee Atomic Electric Company ("YAEC"). 63 Fed. Reg. 4300, 4327. Under date of February 26, 1998, Citizens Awareness Network, Inc. ("CAN") mailed a letter addressed to the Chairman of the Commission, the Commissioners, and other Commission personnel, with a copy to counsel for Yankee Atomic Electric Company ("YAEC"). This letter (the "CAN Letter") purports to request the granting of a hearing on the LTP, which is presently before the Staff for approval under 10 C.F.R. § 50.82(a)(10). To the extent that it might be considered a request for a hearing and petition for leave to intervene under 10 C.F.R. § 2.714, YAEC responds to the CAN Letter as follows:

1. **Standing.** The Commission's rules for standing to intervene are well defined. The CAN Letter does not demonstrate standing to intervene on the part of CAN as an organization (nor does CAN claim to have ever acquired organizational standing in any prior proceeding). Likewise, the CAN Letter does not contain the information, and is not accompanied by the instruments, necessary to demonstrate that CAN may exercise standing on behalf of one or more of its members. *Virginia Electric & Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979); *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9

NRC 73, 77 (1979). Consequently, any request in the CAN Letter for leave to intervene and for a hearing must be denied.<sup>1</sup>

2. **Aspects of the Proceeding.** Under 10 C.F.R. § 2.714(a)(2), a petitioner for leave to intervene must identify "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." The CAN Letter appears to have identified the following "aspects" that do not constitute a part of the "subject matter of [this] proceeding:"

- a. **Conduct of the Public Meeting.** The conduct by the Staff of the public meeting is not an issue litigable in an adjudicatory licensing proceeding. *Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-812, 22 NRC 5, 56 (1985), quoting *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807, *review declined*, CLI-83-32, 18 NRC 1309 (1983).
- b. **Spent Fuel Storage.** The LTP is not application by YAEC for any additional authority for the storage of spent fuel at YNPS. YAEC already possesses authority under its Part 50 license for storage in the spent fuel pool. Likewise, the stated concerns about the storage of spent fuel in dry casks under either YAEC's existing authority *perforce* 10 C.F.R. § 72.210 or under authority for which YAEC may someday in the future apply is not within the scope of the LTP proceeding.<sup>2</sup> Nor is the LTP approval an appropriate proceeding by which to complain about the provisions of 10 C.F.R. § 72.210.

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<sup>1</sup>It is sometimes the practice of the Commission and its Boards to allow oversight in standing documentation to be cured after objection has been lodged. However, Yankee respectfully submits that CAN is not a novice in this area, and it is therefore not entitled to a relaxation of the Commission's well-known (and well-known to CAN) Rules of Practice.

<sup>2</sup>The CAN Letter (at 6) contains this statement:

"Moreover, the [License Termination] Plan plainly violates the letter and spirit of Part 72 *by allowing* the licensee to build and operate an ISFSI under a Part 50 license."

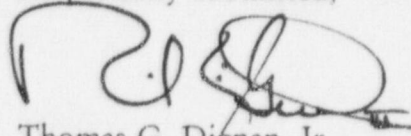
(Emphasis added.) As a matter of law, this assertion is false, for whatever Yankee is "allowed" to do under Part 50, it is "allowed" *perforce* the promulgation by this Commission of the Part 50 regulations, not *perforce* approval of the LTP.

- c. "No Significant Hazards" Considerations. Whether or not a "no significant hazards" finding should be made under 10 C.F.R. § 50.91(a)(2) is not a topic litigable in an adjudicatory license amendment proceeding. 10 C.F.R. § 50.58(b)(6).<sup>3</sup> "There is no right to appeal the 'no significant hazards determination' itself to the licensing boards or any other body within the agency." *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-89-15, 29 NRC 493 (1989), citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 4 (1986), *rev'd in part on other grounds, San Luis Obispo Mothers for Peace v. NRC*, 799 F.2d 1268 (9th Cir. 1986).

3. **Contentions.** As CAN has not yet submitted any contentions, no response as to whether any admissible contentions have been proffered can be made.

WHEREFORE YAEC says that, insofar as it constitutes a petition for leave to intervene and request for a hearing, the CAN Letter should be **denied in its entirety** for lack of standing and **denied in part** insofar as it has identified non-litigable subjects in respect of which CAN desires to intervene.

Respectfully submitted,



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Dated: March 11, 1998.

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<sup>3</sup>"No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination."


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CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for Yankee Atomic Electric Company, hereby certify that on March 11, 1998, I served the within pleading in this matter by United States Mail (as well, where indicated, by facsimile transmission) as follows: 98 MAR 16 9 3:47

Shirley Ann Jackson, Chairman U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Kenneth C. Rogers, Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Greta J. Dicus, Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Dr. Nils Diaz, Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555
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