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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 MAY -6 P3:26

Before the
Atomic Safety and Licensing Board

Administrative Judges:
Chairman James P. Gleason
Dr. Thomas S. Elleman
Thomas D. Murphy

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS

In the Matter of	Docket No. 50-029-LA
YANKEE ATOMIC ELECTRIC COMPANY	ASLBP No. 98-736-01-LA
(Yankee Nuclear Power Station)	

FRANKLIN REGIONAL PLANNING BOARD'S (FRPB'S) CONDITIONAL MOTION FOR LEAVE TO REPLY AND MOTION TO STRIKE YANKEE ATOMIC ELECTRIC COMPANY'S (YAEC'S) UNAUTHORIZED MOTION TO STRIKE AND CONDITIONAL MOTION FOR LEAVE TO REPLY THERETO

MOTION TO STRIKE

This Board's *Order* of March 25, 1998, directed petitioners--whether or not they believed they had filed petitions--to take, if they chose, the opportunity to amend their filings to date in *Order* to provide the Panel in this matter with proper filings. *Order* (March 25, 1998). Due to subsequently filed and granted motions for enlargement of time for filings, the Panel in this matter granted the would-be parties until April 6, 1998, to amend their petitions. The parties used this time to attempt to follow the Panel's *Order*.

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Despite the *Order*, which follows the broad grant of discretion given to the Panel and its presiding officer under 10 CFR 2.718, 2.720, 2.721, YAEC continues to try to persuade this Panel that the *Order*, which recognized the filings as petitions, was not within the Panel's jurisdiction. The existence of this Panel's jurisdiction under Nuclear Regulatory Commission (NRC) regulations is, in fact, the rational basis (as opposed to the "headstand" position, per YAEC's Motion to Strike and Conditional Motion at 1 (April 30, 1998)) of this Panel's authority. *Compare* Motion of YAEC To Strike and Conditional Motion at 1-2 (April 30, 1998) *with* 10 CFR 2.718, 2.720, 2.721.

The *Order* at issue in YAEC's filing merely provided the would-be parties with a reasonable opportunity to amend filings. Such an opportunity is consistent with the jurisdiction of this Panel under 10 CFR Part 2, as well as jurisprudence controlling the extent of this Panel's authority. *Compare* powers granted under 10 CFR 2.718, 2.720, 2.721 *and* the holding in *American Trucking Association v. United States*, 627 F. 2d 1313, 1318-19 (D.C. Cir. 1980) (proper test of agency's regulation is whether a fair and normal interpretation will deny people the rights they are otherwise entitled to under the controlling statute).

YAEC's motion, on its face, is unwarranted, unnecessary, cumulative of its previous arguments and filings, contemptuous of this Panel's jurisdiction, and continues to fail to comply with filing requirements of 10 CFR 2.708 (YAEC's

filings utilize 1 1/2 spacing rather than the required double spacing, and do not use 1 1/4" margins all the way around the type space). Admittedly, the last point elevates form over substance. However, that is just what YAEC is trying to do. YAEC wants to convince this Panel to deny the representatives of the citizens of Franklin County their rights under the Atomic Energy Act and federal laws protecting civil rights. YAEC is trying to do this by making these rights seem far less important than mere procedures. Yet, by this Panel's own *Order*, FRPB has met (or tried its best to meet) such requirements in order to carry out its mission.

Furthermore, YAEC again uses case citations which do not really support its arguments. The *Duquesne Light Co.* case (YAEC's Motion to Strike and Conditional Motion at 1-2) deals with the lack of a basis for intervention by a State when no litigable contention has been submitted. ~~If~~^{In} fact, the Panel in this case has not even decided the issue of standing, hence, petitioners are not yet required to submit contentions. 10 CFR 2.714(a)(3)(b)(1). Thus, the case cited leads the Panel down the wrong road. Similarly, the *Duke Power* case (YAEC's Motion to Strike and Conditional Motion at 2-3)--which YAEC claims "interred" the notion that this Panel has discretion to interpret the rules in a way that would permit parties to amend filings after initial time periods have run--is really quite limited in its applicability. An examination of this case reveals that it, like the *Duquesne*

case, deals with late-filed contentions, rather than the matters now before this Panel.

FRPB urges this Panel to take its cue from the democratic expressions of the majority of the representatives of the people of Franklin County. *See* Declaration of Jay DiPucchio, Executive Director of the Franklin Regional Council of Governments (May 1, 1998), Exhibit 'A' , attached hereto. (Mr. DiPucchio declares under penalty of perjury, in his capacity as Executive Director of the Franklin Regional Council of Governments, that the two other branches of the Franklin Regional Council of Governments voted to officially endorse the FRPB's application to participate in this proceeding, and unequivocally state that the FRPB represents the interests of the Franklin County region in this matter). Thus, while FRPB recognizes that there is a substantial interest in expeditious and efficient administrative hearings, fundamental principles of democracy require that such an interest be subordinated to the rights of persons living in the towns surrounding Yankee Nuclear Power Station to have their elected representatives make sure that the health, safety, and quality of the environment is assured in the final site clean-up plan for the reactor. These are the same interests that the FRPB's Charter requires it to pursue for the citizens of Franklin County. These interests are also the same ones which the NRC has recognized as the expression of Congress' intentions in creating the NRC and providing it with the authority to

enact and enforce regulations. The NRC has also long recognized that Congress intended that the agency obey laws protecting the environment in the enactment and enforcement of its regulations. The purposes of such laws are also consistent with the objectives of FRPB's Charter. Although procedure is important, as a merely formal element used to assure the fairness of proceedings, it must be subordinate to the substantive rights of the 70,000 citizens of Franklin County.

The Panel should also take note that the attached Declaration of Jay DiPucchio puts the lie to all of YAEC's arguments (and those of the NRC Staff) that the Charter, or other aspects of the FRPB's authority, are questionable. Now, the Panel can see that FRPB's representations concerning its jurisdiction have been--unlike those of the opponents--direct, simple, and honest. The Panel now has a plain affirmation of FRPB's authority to act in this proceeding.

Regarding timeliness as taken from the original Notice, FRPB also requests that this Panel take note of the portion of the Notice YAEC chose to omit (as did the NRC staff in its filings). As the other petitioners have already pointed out, on its face, the missing portion of the Notice seems to condition the availability of a hearing upon YAEC's requesting one. YAEC's omission of this clause is clearly intentional, as it forms the substantive basis for a reasonable person believing that hearings would only be granted were YAEC to request them.

The FRPB asks the Panel to refer to the petitioners' arguments on this point, and hereby joins and incorporates these arguments by reference.

FRPB also takes this opportunity to reassert its arguments for funding--just as YAEC took the opportunity for making cumulative arguments in its motion.

MOTION FOR LEAVE TO REPLY

In the event that this Panel does not grant our motion to strike YAEC's filing, FRPB requests leave to make the reply it has set forth above.

CONCLUSION

For the foregoing reasons, and those previously placed before this Panel, FRPB requests that YAEC's motions be denied, and that this Panel strike all portions of their filings which are cumulative, unwarranted, unnecessary, and contemptuous of this Panel's jurisdiction. Finally, FRPB requests again that it be admitted as a party, that the aspects it has tendered be accepted, and that the Panel allow it to go on to submit contentions.

Respectfully submitted,-



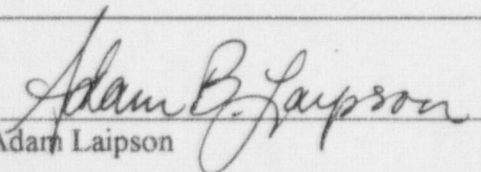
Adam B. Laipson
Chair, Franklin Regional Planning
Board

May 2, 1998

'98 MAY -6 P3:26

CERTIFICATE OF SERVICE	
<p>I, Adam Laipson, Chair of the Franklin Regional Planning Board, certify that on May 2, 1998, service of the within documents was made by U.S. mail, pre-paid first class postage, upon the following:</p>	
<p>James P. Gleason, Chairman Administrative Judge Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555</p>	<p>Thomas D. Murphy, Atomic Safety and Licensing Board US Nuclear Regulatory Commission Washington DC 20555</p>
<p>Dr. Thomas Elleman Atomic Safety and Licensing Board 704 Davidson Street Raleigh, North Carolina 27609</p>	<p>Adjudications File (2) Atomic Safety and Licensing Board US Nuclear Regulatory Commission Washington, DC 20555</p>
<p>Office of Appellate Adjudication (1) U.S. Nuclear Regulatory Commission Washington, D.C. 20555</p>	<p>Jonathan M. Block, Esq. Post Office Box 566 Putney, VT 05346</p>
<p>Thomas G. Dignan, Jr. Esq. R.K. Gad, III, Esq. Ropes & Gray One International Place Boston, MA 02110-2624</p>	<p>Rulemakings and Adjudications Staff (O+2) Office of the Secretary US Nuclear Regulatory Commission Washington, DC 20555</p>
<p>Debby Katz, President Citizens Awareness Network, Inc. P.O. Box 3023 Charlemont, MA 01339-3023</p>	<p>Ann B. Hodgdon, Esq. Marian Zabler, Esq. Office of the General Counsel US Nuclear Regulatory Commission Washington, DC 20555</p>

OFFICE OF SECRETARY
RULEMAKINGS
AND
ADJUDICATIONS
STAFF


Adam Laipson

May 2, 1998

FRANKLIN REGIONAL

Executive Director • Jay DiPucchio

COUNCIL OF

Director of Finance • Carolyn Olsen
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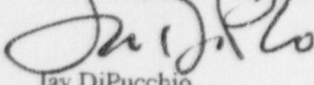
Community Health and Education • Data Management • Engineering
Municipal Assistance • Planning and Development • Purchasing

RECORD OF VOTES

Motion adopted by vote at a regular bi-weekly meeting of the Executive Committee of the Franklin Regional Council of Governments, 29 April 1998:

The Executive Committee of the Franklin Regional Council of Governments hereby officially endorses and supports the application of the Franklin Regional Planning Board to participate fully before the recently constituted Atomic Safety and Licensing Board (in the matter of Yankee Atomic Company's Docket #50-029-LA ASLSP #98-736-01-LA); and further states for the record that the Franklin Regional Planning Board is representing the interests of the Franklin County region in this matter.

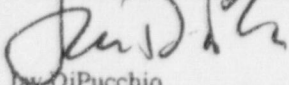
A true record: 1 May 1998


Jay DiPucchio
Executive Director

Motion adopted by vote at a regular quarterly meeting of the full Council of the Franklin Regional Council of Governments, 30 April, 1998:

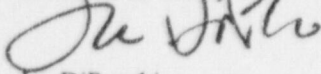
The Franklin Regional Council of Governments hereby officially endorses and supports the application of the Franklin Regional Planning Board to participate fully before the recently constituted Atomic Safety and Licensing Board (in the matter of Yankee Atomic Company's Docket #50-029-LA ASLSP #98-736-01-LA); and further states for the record that the Franklin Regional Planning Board is representing the interests of the Franklin County region in this matter.

A true record: 1 May 1998


Jay DiPucchio
Executive Director

I, Jay DiPucchio, declare under the pains of perjury that the foregoing is true and correct.

Executed on 1 May 1998.


Jay DiPucchio