

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

SERVED 10/07/04

Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
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)
YANKEE ATOMIC ELECTRIC CO.)
)
(Yankee Nuclear Power Station))
)
License Termination Plan)
)

Docket No. 50-29

CLI-04-28

MEMORANDUM AND ORDER

The Yankee Nuclear Power Station shut down permanently in 1992 and is undergoing decommissioning. On November 24, 2003, Yankee Atomic Electric Company, the facility licensee, requested an amendment to its operating license that would approve a license termination plan (LTP). (Subsequent amendments to the LTP were received on Dec. 10, 2003, Dec. 16, 2003, Jan. 19, 2004, Jan. 20, 2004, Feb. 2, 2004, Feb. 10, 2004, and March 4, 2004.) The requested license amendment also provided criteria for determining when changes to the LTP would require NRC approval. On May 4, 2004, the Commission issued in the Federal Register a notice of receipt of the LTP and its availability for comment. 69 Fed. Reg. 24695. This notice explained that a power reactor licensee's application for license termination must be accompanied or preceded by an LTP submitted for NRC approval. If the NRC staff finds the LTP acceptable, the staff will issue a license amendment approving the LTP, subject to such conditions and limitations that the staff finds appropriate and necessary.

On review the staff found the proposed LTP acceptable. The staff also determined that the license amendment request involved “no significant hazards consideration,” based on review of the licensee’s analysis submitted pursuant to 10 CFR §50.91(a). On June 22, 2004, the NRC published in the Federal Register a notice of this proposed no significant hazards consideration determination and an opportunity for a hearing on the LTP license amendment. 69 Fed. Reg. 34696, 34707-708. In accordance with the time for response specified by 10 CFR §2.309(b)(3)(i), the notice stated: “Within 60 days after the date of publication of this notice...any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.” *Id.* at 34696.

On August 20, 2004 the Citizens Awareness Network (CAN) filed a timely request for a hearing.¹ CAN’s request cited as a basis for standing that two of its members reside within six miles of the Yankee Rowe site “and have legitimate concerns over the need for extensive site clean up beyond what is called for in the License Termination Plan.” CAN noted, correctly, that the subject matter of the hearing would include whether the Commission should amend YAEC’s license by incorporating the LTP. At the same time, however, CAN filed a “Motion to Dismiss Proceedings as Improperly Noticed or Clarify and Re-Notice the Proceeding.” In this motion CAN contended that the notice as written failed to make clear the subject matter of the license amendment at issue and therefore was “neither reasonable [n]or sufficient under federal law.” The motion stated: “CAN does not know exactly what the subject matter of the hearing at issue

¹While there has been no other request for a hearing, Franklin Regional Council of Governments responded to the June 22, 2004 Federal Register notice and requested “an extension to the hearing request periods for the Yankee Rowe License Termination Plan”. Its letter also recognized that the NRC’s Federal Register notice applied to the “end of the comment and hearing request periods and to the acceptance of the LTP...” (Emphases provided). Letter from Bill Perlman, Chair - FRCOG Executive Committee to John Hackman (undated received July 22, 2004.)

will be due to the defective notice.” CAN requested that the Commission either dismiss the proceeding for lack of proper notice or issue “a new notice in plain English that clearly sets forth the terms and conditions for approval of the LTP....” CAN speculates that there may be persons “who would have requested a proceeding, but for the defective notice.” CAN evidently intends that any new notice would start another 60-day period for intervention before the proceeding can begin. Yankee Atomic Electric Company and the NRC staff filed oppositions to CAN’s motion to dismiss the proceedings and CAN filed a “Reply.”²

The Commission referred CAN’s hearing request to the Atomic Safety and Licensing Board for appropriate action but retained for its own consideration CAN’s “Motion to Dismiss Proceedings as Improperly Noticed...” The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel issued a memorandum on September 14, 2004 stating that appointment of a hearing board is being deferred pending the Commission’s resolution of CAN’s motion to dismiss the proceedings.

In this order the Commission denies CAN’s motion for reasons that we now discuss. The NRC’s June 22, 2004 notice described the subject matter of the proceeding as follows:

Description of amendment request: The licensee has proposed to amend its license to incorporate a new license condition addressing the license termination plan (LTP). The new license condition would document the date of NRC approval of the LTP and provide criteria to determine the need for NRC approval of changes to the approved LTP.

The notice went on to describe in detail the NRC staff’s reasons for concluding that under the standards of 10 CFR §50.92(c) the amendment request involved no significant hazards consideration.

²CAN did not ask permission to file its “Points in Reply” which is not authorized under our rules. Accordingly, we do not consider it. See 10 CFR §2.323(c).

The NRC Staff in its opposition argues that this notice “is sufficient to put any interested party on notice that a hearing, if granted, will encompass the staff’s approval of the LTP.” In any case, the staff adds, “a reading of the referenced and associated documents and regulations would put any interested party on notice that a hearing, if granted, would encompass approval of the LTP for Yankee-Rowe.” Yankee Atomic’s opposition asserts that “[t]he notice accurately described the LTP *amendment...*” (emphasis by Yankee Atomic). This opposition concludes that “[i]n total, there is little ambiguity in the hearing notice, when taken as a whole, that approval of the LTP is the licensing issue that is the subject of the hearing requirement.” Yankee Atomic views CAN’s motion for re-noticing as simply an attempt to delay the proceeding by an additional sixty days.

This dispute places before us the question whether the June 22, 2004 notice adequately informed interested persons that the requested amendment would incorporate Yankee Atomic’s license termination plan in the facility license. It must be conceded that the language of the notice, quoted above, does not in so many words describe the amendment request that way. The notice describes the proposed new license condition as “addressing” the license termination plan and says the condition “would document the date of NRC approval of the LTP.” We would characterize this imprecise description as less than a model of clarity. The fact remains, however, that the notice was clear enough to alert CAN that this license amendment proceeding affected CAN’s interest in the Yankee Rowe LTP. The notice enabled CAN to file a timely request for a hearing. CAN’s longstanding interest in Yankee Rowe decommissioning kept CAN aware of regulatory developments like the pending approval of the LTP. For CAN the notice was obviously sufficient. The Franklin Regional Council of Government demonstrated its awareness of the license amendment and the due date for a hearing request on the acceptance of the LTP. See footnote 1, *supra*.

We would expect that other persons with similar interests would have recognized the significance and thrust of the June 22, 2004 notice and responded appropriately or reviewed at the very least, the underlying documents referenced in the series of Federal Register notices cited above. Although we have noted that the notice in question might have been clearer,³ we find that the notice in this case was adequate and renote is not necessary.

For the above reasons the Commission denies CAN's motion to dismiss these proceedings as improperly noticed.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of October, 2004.

³In our supervisory capacity, we remind the staff that it should make its best efforts to ensure its notices of proposed action are clear and in plain English.