

RAS 8930

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY
(Yankee Nuclear Power Station LTP)

Docket No. 50-29-OLA

ASLBP No. 04-831-01-OLA

December 6, 2004

MEMORANDUM

This Licensing Board has had an opportunity to review the appeals that were filed on December 2, 2004 by the Licensee, Yankee Atomic Electric Company, and the NRC Staff from its November 22, 2004, memorandum and order in this proceeding involving the Licensee's license termination plan (LTP) for its Yankee Nuclear Power Station (Yankee-Rowe). LBP-04-27, 60 NRC _____. In that decision, the Board granted the hearing request of Citizens Awareness Network (CAN) addressed to the LTP and admitted to the proceeding certain of the contentions contained in that request.

The Licensee's appeal was accompanied by a motion to stay all further proceedings in this matter to await a Commission decision on its appeal. In normal circumstances, we might nevertheless now move forward with the case unless and until the Commission acted affirmatively on the stay application. In the unusual circumstances confronting us, however, there appears to be good reason to suspend all further action on our own initiative pending a Commission decision on the appeals (or, alternatively, a direction from it to commence the consideration of the contentions on the merits without waiting for the appellate resolution). That belief is based upon the following considerations:

The grant of the CAN hearing request in LBP-04-27 rested first and foremost on the Board's reading as a matter of first impression of 10 C.F.R. § 50.82(a)(9)(ii), the portion of the Commission's regulations concerned specifically with the required content of license termination plans for power reactors such as Yankee-Rowe. In the Board's view, that provision unambiguously directed the Licensee to include in its LTP a completed site characterization, together with whatever site remediation plans might be dictated by the characterization. Given the Licensee's stress in its opposition to the hearing request upon the fact that the characterization remained an-ongoing process, the Board determined that CAN had advanced a sufficient basis for its challenge to the LTP.

On its appeal, the Licensee renews its insistence that we have misread the relevant regulation and that, contrary to our conclusion, it was not required to include in the LTP a complete site characterization and any remediation plans that might be necessitated by a full characterization. For its part, just as it did in the November 8 prehearing conference, the Staff apparently has eschewed taking a position on its appeal respecting the proper interpretation of section 50.82(a)(9)(ii). Rather, it simply reiterates its argument before the Board (rejected in footnote four in LBP-04-27) that the hearing request should have been denied, without regard to whether the LTP is fatally flawed, because none of the contentions met the pleading requirements found in 10 C.F.R. § 2.309.

Whether or not it finds merit in the Staff's line of attack on the hearing request, we think it is likely that the Commission will wish also to entertain the question of the correct interpretation of section 50.82(a)(9)(ii) that is at the center of the Licensee's appeal. Once again, that question appears to be one of first impression and, additionally, clearly has precedential importance. And, no matter the answer given to it by the Commission, this proceeding is likely to become academic, irrespective of how the Staff's appeal might be

decided. Should the Commission accept the Licensee's interpretation of the section, then an essential underpinning of the grant of the hearing request would be removed. On the other hand, should the construction given that section in LBP-04-27 be upheld, the necessary consequence would appear to be that the Staff would have to treat the LTP on file as incomplete without regard to the fate of the hearing request itself. That, in turn, would presumably require the Licensee to resubmit the LTP once the site characterization had been completed, whereupon there almost certainly would be a need to extend a fresh opportunity for hearing to CAN and other members of the public.

In short, the Board believes there to be a very substantial possibility that, whatever its content, Commission action on the pending appeals will render the proceeding moot as a practical matter. For that reason, absent the receipt of contrary Commission instructions, the proceeding will now be held in suspension to await the outcome of the appeals.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD ¹

/RA/

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
December 6, 2004

¹ Copies of this memorandum were sent this date by Internet electronic mail transmission to counsel for the parties.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of |) | |
| |) | |
| YANKEE ATOMIC ELECTRIC CO. |) | Docket No. 50-29-OLA |
| YANKEE NUCLEAR POWER STATION, |) | |
| FRANKLIN COUNTY, MASSACHUSETTS |) | |
| |) | |
| (Operating License Amendment) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM DATED DECEMBER 6, 2004 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

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Dated at Rockville, Maryland,
this 6th day of December 2004