

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

December 13, 2004 (4:38pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFBefore the Commission*In the Matter of*
YANKEE ATOMIC ELECTRIC COMPANY

Docket No. 50-29-OLA

(Yankee Nuclear Power Station LTP)

December 12, 2004

CITIZENS AWARENESS NETWORK'S
REPLY TO LICENSEE'S MOTION FOR STAY

The Atomic Safety and Licensing Board Panel suspended the proceeding prior to reviewing Citizens Awareness Network's response to the licensee's Motion for Stay. Memorandum/Order (December 6, 2004). Citizens Awareness Network agrees with the rationale underlying the Panel's "memorandum" on this matter and accepts the Panel's judgment that, under its scenario, a stay is not unreasonable. CAN, however, disputes a number of alleged facts in the licensee's Motion for Stay and the granting of a stay based upon the criteria addressed in the licensee's Motion for Stay. CAN has addressed these issues in the brief opposing Yankee Atomic's petition for interlocutory appeal as they are identical with what CAN contends to be the need of Yankee Atomic to show harms in order to warrant interlocutory review.

CAN disputes YAEC's claim that it will suffer economic harm absent some supporting document or copy of the FERC order allegedly binding Yankee to a limited amount of money for the decommissioning. CAN is aware that such FERC order are routinely redone as needed in order to continue to supply the money for decommissioning. Such orders involve not only ordinary ratepayers, but also secondary purchasers of electricity under supply contracts who may have become liable for decommissioning costs. Courts have routinely held that there is a continuing obligation to pay for the costs of decommissioning. *See, e.g., Town of Norwood v. FERC*, 80 F.3d 526, 533 (D.C.Cir. 1996).

CAN also disputes YAEC's claim that it is under the gun to finish its decommissioning work, again without any evidence to back up an otherwise empty assertion. YAEC's work is unlikely to be halted by any proceeding or providing discovery under the new disclosure rule. The NRC Staff already made a finding that approval of the LTP involved no significant hazards. Theoretically, the discovery they must provide is what they have already assembled to get the NRC Staff to approve the LTP--they just need to make and provide a couple of additional sets of copies of their filing.

That the NRC Staff would have to prepare a hearing file should also be out of consideration as the content of the file would need to be prepared just for the approval process--again, it is a matter of access.

YAEC alleges that CAN does not lose hearing rights from a temporary stay. That may be true, but CAN, comprised of persons living in and about the Yankee Rowe community and adjacent communities, does not want to wait to go forward with this case. People with the standing of CAN and its representative members have a right to know what is going on with the extensive tritium contamination at the Yankee Rowe site. Harm in this regard is certainly in the eye of the proverbial beholder.

YAEC also mentions that ADAMS is unavailable. That allege harm, too, has passed.

Finally, YAEC also alleges that the "public interest" favors a limited stay. Which public would this be? Ratepayers who might conceivably suffer some very minor economic change in their bills--a few mils perhaps? Certainly the alleged harm to taxpayers through increased costs to the NRC is laughable. The NRC is the regulatory agency set up to provide, among other paths of compliance with the Atomic Energy Act, hearings to qualified interested persons--such as CAN and its members. The same questions hang on YAEC's alleged saving of staff resources. Surely, they must have built such contingencies into their budget--but if they did not, they should be able to get readjustments in their decommissioning collection as needed to see them through. Again, without any documentation, the Commission should cast a jaundiced eye on all of these alleged harms.

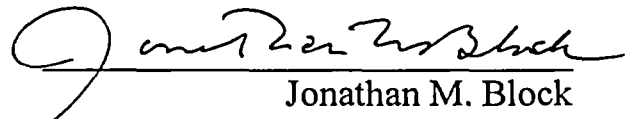
All that being said, CAN find itself in the awkward position of replying to this Motion for Stay when the Board below has already granted the stay. Granted, the Commission could lift it, but CAN contends, as stated at the outset, that Judge Rosenthal's reasoning (and weather report) on the direction of the case is, in all likelihood, accurate.

CONCLUSION AND REQUESTED RELIEF

CAN requests, therefore, that the Commission deny the stay on the basis requested by YAEC, but impose one (or allows the Board's stay to stand) for the reasons Judge Rosenthal articulated in his Memorandum/Order (December 6, 2004).

Dated at Putney, Vermont, this 13th day of December, 2004.

Respectfully submitted:



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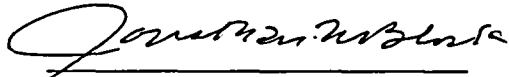
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YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station LTP)

Docket No. 50-29-OLA

ASLBP No. 04-831-01-OLA

I hereby certify that copies of "Citizens Awareness Network's reply to YAEC's Motion for Stay in the above-captioned proceeding have been served on the following by deposit in the United States mail first class; within twenty four hours of this date, and by e-mail as indicated by a asterisk (*), this 13th day of, December 2004.


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Counsel for Citizens Awareness Network

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ATT: Rulemakings and Adjudications Staff

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YANKEE ATOMIC ELECTRIC COMPANY
(Yankee Nuclear Power Station LTP)

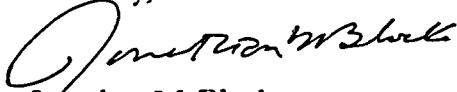
Docket No. 50-029-OLA
ASLBP No. 04-831-01-OLA

Dear Rulemakings and Adjudications Staff:

Enclosed for filing on behalf of Citizens Awareness Network in the above referenced matter please find the original and two copies of CAN's opposing briefs to the NRC Staff's and Yankee Atomic Electric Company's petition to the Commission for interlocutory review of LBP-04-27 in the above referenced matter. In addition, there is also a response to Yankee Atomic's Motion for Stay.

Thank you for your cooperation in this matter.

Sincerely,



Jonathan M. Block
Attorney for Citizens Awareness Network

cc: Service List