

United States of America
before the
Nuclear Regulatory Commission

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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 FRANKLIN REGIONAL PLANNING BOARD**

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 27, 1998, "Franklin Regional Planning Board" mailed a letter addressed to the Secretary of the Commission and the Office of General Counsel, with a copy to counsel for Yankee Atomic Electric Company ("YAEC"). This letter (the "Planning Board 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 letter as follows:

1. **Standing.** The Commission's rules for standing to intervene are well defined. The Planning Board Letter does not demonstrate standing to intervene on the part of the Planning Board as an organization (nor does the Planning Board claim to have ever acquired organizational standing in any prior proceeding). Likewise, the Planning Board Letter does not contain the information, and is not accompanied by the instruments, necessary to demonstrate that the Planning Board may exercise standing on behalf of one or more of its members. *Virginia Electric & Power Co.* (North Anna

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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 Planning Board Letter for leave to intervene and for a hearing must be denied.

(The Planning Board letter does not specifically address 10 C.F.R. § 2.715(c), nor does it demonstrate that the Planning Board, described only as “a broad-based coalition comprised of a representative from the Selectboard and Planning Board of each of the twenty-six (26) towns of Franklin County, eighteen (18) at large members living within the County, and the members of the Franklin Regional Council of Governments Executive Committee,” is a municipal government representative within the meaning of § 2.715(c). In Massachusetts, the Board of Selectmen is an elected collegial group having certain powers with respect to the collection of taxes, the appointment of town officers, and the like,¹ and the Planning Board exercises certain functions with respect to the approval of plans for the subdivision of land.² There is no indication in the Planning Board Letter either that the Planning Board has any governmental function of its own, or that it has been authorized to speak for any other governmental agency. See *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 146 (1987).³ Therefore, there is no basis in the Planning Board Letter for the Commission to approve § 2.715(c) status for the Planning Board (assuming such status has been requested).)

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

¹G. L. (1996 ed.) ch. 41, §§ 20 *et seq.*

²G. L. (1996 ed.) ch. 41, §§ 81K *et seq.*

³Affirming a Licensing Board order ruling that “[Section 2.715(c)] contemplates that a government *unit* of a State, county, municipality or agency will be provided a forum for expression of concerns.” (Emphasis in original.) Whether a petitioner for § 2.715 status has the legal authority to speak for a state or municipal government body is a question of state law. Under Massachusetts law, the county of Franklin County was abolished as a municipal corporation by St. 1996, ch. 151, § 567, effective July 1, 1997. The Franklin Regional Council of Governments was created to perform certain functions, and the Franklin Planning Board appears to have merely an advisory function to the Council. *Id.*

the proceeding as to which petitioner wishes to intervene.” The Planning Board Letter appears to have identified the following “aspects” that do not constitute a part of the “subject matter of [this] proceeding:”

- a. **Funding.** The Planning Board requests funding from the Commission in the amount of \$100,000 “forthwith.” The Commission is not empowered to fund prospective or actual intervenors. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-19, 11 NRC 700, 702-03 (1980); *Nuclear Regulatory Commission* (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, 4 NRC 494 (1976).
- b. **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).
- c. **Dismantlement.** YAEC has an approved Decommissioning Plan for the dismantlement of YNPS. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86 (1996), *rev'd denied*, *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-9, 44 NRC 112 (1996). The LTP is not application by YAEC for any additional authority for the dismantlement of YNPS, and issues relating to dismantlement are therefore not within the scope of any LTP proceeding.
- d. **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

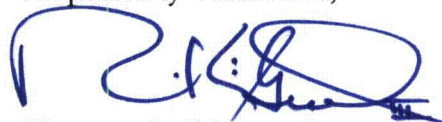
the scope of the LTP proceeding. Nor is the LTP approval an appropriate proceeding by which to complain about the provisions of 10 C.F.R. § 72.210.

- e. **"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).⁴ "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 the Planning Board 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 Planning Board 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 the Planning Board desires to intervene.

Respectfully submitted,



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Dated: March 11, 1998.

⁴"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, do 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:

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
Edward McGaffigan, Jr., Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Jonathan M. Block, Esquire Main Street Post Office Box 566 Putney, Vermont 05346 FAX: 802-387-2667
Mr. Adam Laipson, Chairman Franklin Regional Planning Board 425 Main Street Greenfield, Massachusetts 01301	Mr. James L. Perkins President of the Board New England Coalition on Nuclear Pollution, Inc. Post Office Box 545 Brattleboro, Vermont 05302
Mr. Paul Gunter Nuclear Information and Resource Service 1424 16th St., NW Suite 404 Washington, D.C. Phone: 202-328-0002 Fax: 202-462-2183	Anne B. Hodgdon, Esquire Office of the General Counsel U. S. Nuclear Regulatory Commission Washington, D.C. 20555 FAX: 301-415-3725
Office of Commission Appellate Adjudication U. S. Nuclear Regulatory Commission Washington, D.C. 20555	Office of the Secretary U. S. Nuclear Regulatory Commission Washington, D.C. 20555 FAX: 301-415-1672


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