

DOCKETED
USNRC

'98 APR -9 P2:41

UNITED STATES OF AMERICA
before the
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

Docket No. 50-029-LA

(Yankee Nuclear Power Station)

AMENDMENT TO FRANKLIN REGIONAL PLANNING BOARD'S REQUEST FOR
HEARING

Background

On January 28, 1998, the Commission published a notice of opportunity for hearing under 10 C.F.R. S. 2.105 in respect to 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 ("FRPB") mailed a letter addressed to the Secretary of the Commission and the office of the General Counsel, with a copy to counsel for YAEC. This letter (the "Planning Board Letter") requested the granting of a hearing on the LTP, which is presently before the Staff for approval under 10 CFR S. 50.82 (a)(10). On March 11, 1998, YAEC answered through its counsel to the FRPB's request for hearing. On March 16, 1998, NRC's staff answered through its counsel. FRPB responded to

SECY-041

DS03

1 18942

U.S. NUCLEAR REGULATORY COMMISSION
RULEMAKINGS & ADJUDICATIONS STAFF
OFFICE OF THE SECRETARY
OF THE COMMISSION

Document Statistics

Postmark Date ill
Copies Received 1
Add'l Copies Prepared 1
Special Distribution RIDS

YAEC's Answer on March 25, 1998. On the same date, NRC's Atomic Safety and Licensing Board (ASLB) issued a Memorandum and order allowing FRPB and the three other petitioners a right to amend their original filings within seven days of the receipt of the order. The time for filing was extended until April 6, 1998 by the allowance of a motion by FRPB by the ASLB on March 31, 1998. A subsequent motion by the other three petitioners was allowed to extend the time to file for them as well. FRPB's Amendment follows.

FRPB respectfully requests that it be granted a hearing on the License Termination Plan (LTP) and petition the NRC for leave to intervene.

Standing

In FRPB's original filing, the FRPB was identified as "a broad based coalition." The FRPB is one of three bodies that comprises the Franklin Regional Council of Governments formed on July 1, 1997 to replace Franklin County's previous form of county government. The Executive Committee and the Council (the representative body) are the two other branches. All three bodies "shall jointly have and may exercise any and all authority for regional planning as may be authorized by current and future federal and state laws."¹ The purpose and objective of the FRPB "shall be to promote,... and to protect public health, safety and welfare and the natural and cultural resources of the Regional Planning District." The Regional Planning District is defined as "the municipalities within the boundaries of the former Franklin County." Rowe, Massachusetts is but one of twenty-six

1

towns within the District. This purpose mandates that the FRPB protect not only the people and property located at the nuclear plant site in Rowe, but also the people and property within the ten mile evacuation zone, the Deerfield River Basin, and the entire region downwind or otherwise which could be affected by activity at the site. The FRPB cannot carry out its governmental mandate to protect the “public health, safety and welfare” as stated in the purpose clause of the FRCOG charter, would be derelict in its duties and bring harm to its organizational interests were it not to seek formal public hearings on this matter.

Discretionary Standing.

The FRPB should be granted standing on a discretionary basis under the factors outlined in the Pebble Springs proceeding. The factors are:

(a) Weighing in favor of allowing intervention -

(1) the extent to which the petitioner’s participation may reasonably be expected to assist in developing a sound record.

(2) The nature and extent of the petitioner’s property, financial, or other interests in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner’s interests.

(b) Weighing against intervention -

(4) The availability of other means whereby the petitioner’s interest will be protected.

(5) The extent to which the petitioner’s interest will be represented by existing parties.

(6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

As to the first factor, it is FRPB's intent to develop a sound record so that its concerns will be addressed within the scope of the LTP process. The FRPB is well versed in the matters at stake and is in the process of securing legal representation and expert witnesses to assert its concerns in a proper fashion. FRPB's request for funding will assure that it is represented fully and will be an important party to the process of developing a sound record.

As the body that is entrusted with reviewing matters of regional concern and that can potentially impact the citizens of Franklin County, it is crucial that the FRPB take part in the proceeding. The purpose of the FRPB is to protect the priceless commodity of health and welfare of its citizenry and its natural resources. It therefore has a direct interest in the results of the proceeding and satisfies factors (2) and (3) above.

It is not apparent how FRPB's interests will be afforded any protection without direct participation in the proceeding. Presently, there other petitioners are seeking intervention status, but their interests appear to be in a broader sense, while the consequences of the LTP process potentially can have direct impact on the people and property the FRPB is entrusted to protect, a more direct and meaningful nexus to the end result of this process. It is not anticipated that FRPB's involvement will be an impediment in this proceeding, but crucial in developing a complete and full record germane to the LTP process. It is only with this degree of participation, that the citizens of Franklin County and the bodies that

are entrusted with their welfare can feel confident that the LTP be completed with all its concerns addressed.

Constitutional Standing.

A most recent look at judicial or constitutional standing by the US Supreme Court was in Bennett v. Spear, 520 U.S. , 117 S.Ct. 1154, 1163 (1997). The minimum standards of standing require that (1) the party suffer injury in fact, both actual and imminent; (2) there is a causal connection between the injury and the conduct in question; and (3) the injury likely will be redressed by a favorable decision. Also, the party's injuries must fall within the "zone of interest" protected or regulated by the statutory constitutional provisions invoked in the proceeding.

There seems to be no question that if the site of the Yankee Nuclear Power Station is not decommissioned in a complete and proper fashion, that the citizens of Franklin County can be impacted by radioactivity and radionuclides present in the air and water proximate to and in the area of the plant's operation. Any mishap, failure or malfunction could result with injury to any or all of the County's 70,000 inhabitants and its thousands of yearly visitors. Such an event could also result with prime resources contaminated and beyond human use. Certainly this imminent injury suffices to be an injury in fact. The decommissioning of one of the oldest operating nuclear plants in the country where its operation and dismantling could result in an injury in fact satisfies the causal connection between its activity and injury as a result of such activity. By allowing the FRPB to participate in the hearing process, its citizens will be assured that all its concerns are addressed and that the plant's closure is completed without a threat of potential injury to

the public or its resources. Participation is critical to attain this level of assurance.

Groundwater contamination, surface water contamination, seepage of waste material into the bedrock, further radioactive releases and the like all fall within the zone of interests arguably protected by the NRC in this proceeding. Exposure from any of these scenarios could adversely affect Franklin County citizens, their health, and their resources and ultimately, the county's economics.

Motion to Intervene:

The FRPB seeks formally to intervene in the above entitled case.

The FRPB, as stated elsewhere and reiterated here, represents Boards of Selectmen and the Planning Boards of the 26 towns of Franklin County. The FRPB is mandated by law to promote economic development while protecting the county's natural and cultural resources; and by its own legal Charter, it must "protect the public health, safety and welfare. While the interests of the eastern county towns might seem indirect, they are a) down wind, and b) part of a county whose economic survival and success (or injury and/or failure) could well be dramatically affected by the manner and then ultimate resolution of the dismantling and termination of the Yankee Rowe nuclear site.

However, west county towns, so-called, are directly affected both by their close proximity to the Rowe nuclear site, and being abutters of the Deerfield River. As such, for example, if any reputation or "common knowledge" were to spread throughout America that the Deerfield River - a major tourist attraction bringing millions of dollars to the economy of

Franklin County - was "radioactive" (or even potentially so) would be financially ruinous to hundreds of businesses, and to the county as a whole.

For the FRPB itself, a major question is raised as to whether a nuclear site of unknown "quality" or "safety" could have an impact on the county which could lower, or at least make more difficult, our ability to raise staff funds and grants to continue FRPB staff work, especially during an era of tight budgets.

The FRPB absolutely believes the long term economic consequences of having a potentially radioactive industrial site in its region could be harmful to the county's ability to increase jobs, industrial expansion, tourism, etc., if a full analysis and review of the impacts of the LTP on the towns and the county and the Deerfield River are not completely and satisfactorily explored and resolved.

Not only does the FRPB do long range economic development planning but also resource conservation, preservation and development as well. No long range planning in any of these areas would be effective, useful or have any validity without absolute assurance that a radiation-free site will be left behind when YAEC leaves Rowe, Mass.

The FRPB renews its contentions with regard to certain aspects of the LTP, which the Board finds severely lacking in merit and scope, and in need of major improvement and further investigation. Among these are:

1. Decommissioning activities employ methods and techniques that are experimental, untested and unproven;
2. Surveys and monitoring of site contamination do not include appropriate random sampling and data collection methods;

3. Contamination of ground water and their sampling methodologies remain at issue;
4. The impacts of radiation releases on the fish and the ecology of the Deerfield River have been poorly explored, if at all, by either YAEC or the NRC;
5. Poor, if any, sampling of sediments of the Deerfield River Sherman Pond, and especially near outfall pipes, has been done;
6. Questions remain regarding final site cleanup.

... all these aspects of the YAEC application for amendment need to be addressed.

In conclusion, the various interests and mandates of the FRPB fall within the “zone of interests” seeking to be protected by the hearing process before the ASLB. Without the full and considered involvement of the FRPB, injury to its legal interests would occur, and the citizens of Franklin County ill-served by the process.

Additional Standing:

The FRPB hereby applies for and states that it enjoys standing under 10 CFR 2.715 (c) because the Planning Board is “an interested County [body]” and:

- a. is recognized by both the federal and state governments as the critical review body within the Regional Planning Agency (RPA) through which many regional actions of the FRCOG must pass; for example, all ISTEAs funding must be pre-approved by the FRPB;
- b. is a municipal (regional) governmental body acknowledged to exist under the Massachusetts enabling legislation which created it, and holding “joint” authority along with the Franklin Regional Council of Governments (FRCOG) - the replacement for the former Franklin County Commission (see S. 5 & 7 of Chapter 151 of the Acts of 1996);

- c. raises and expends the vast majority of its own budget through grants from local, state and federal sources;
- d. enjoys the right to elect its own representative to the FRCOG Executive Committee (see S. 7.2.6 of the FRCOG Charter);
- e. is a stand-alone governmental body, with its own bylaws, budget, voting rights, organization, and general and specific authority and responsibility (see generally Art. 7 of the FRCOG Charter);
- f. is a "Council Agency" of the FRCOG (see FRCOG Charter at sec 1.1(d)), thereby again meeting the requirements of said 'participation regulation,' 10 CFR 2.715(c);
- g. see also, the attached Affidavit of Mr. Daniel B. Hammock, said document cited approvingly in 1995 WL 135732 (NRC), Advanced Medical Systems, Inc. 3/13/95.

The Planning Board includes as members the most immediately effected (potentially endangered) towns of Rowe and Monroe, and the 5 down-river towns along the Deerfield River which provides cooling water to the plant, and receives effluent releases.

The Planning Board's own Charter requires it to promote economic development while protecting the natural and cultural resources of its region. These important interests would be directly and negatively affected by a poor termination plan, and/or poor management of an approved termination process; and the Planning Board has an urgent and explicit interest in seeing that the site is returned to its pre-nuclear, pristine condition such that there be no negative legacy or impact on the future of Franklin County's economic development and resource protection. Furthermore, the FRPB is able to draw upon the

resources of long-term residents as a part of its base of information, a unique and important source of questions to be addressed.

The Planning Board not only represents the interests of its various constituent boards and its at-large members, but also the individual citizens of the municipalities within the Planning Board's region. By their vote of February 26, 1998, the individual members of the Planning Board granted their derivative authority to the Planning Board Executive Committee through its Chairman to represent their interest before the NRC ASLB.

Funding:

The FRPB hereby requests \$100,000 (one hundred thousand dollars) for it to be able to intervene in this legal process. The granting of funding is necessary and appropriate under the present (unfunded) circumstances confronted by the Planning Board.

- a. It would be unjust not to grant funding to the Planning Board for it to make an effective and substantively useful appearance.
- b. 5 USC 504 is wrongfully cited by the NRC staff, and does not cover this funding issue -- rather, the statute cited regards the "awarding of fees and other expenses" in an "adversary adjudication," yet,

1. the Planning Board is not required by CFR 2.715(c) "to take a position with respect to the issue," and in this section of this filing, has no interest in taking any position, and
2. wants and requested a full, fair and open proceeding and not an adversarial one.

c. Funding a Planning Board independent review of the petitioner's application could well confirm most of the scientific findings and procedures, thus quickening and not delaying YAEC's proposed work.

d. Substantive justice and an open, thorough, and believable review process militates for granting the Planning Board participation funding.

e. Funding indigent intervenors is not without precedent; and would insure a more efficient proceeding for all participants.

The request for funding in the amount of \$100,000 to underwrite FRPB's involvement in this proceeding would be a small portion of the millions of dollars held in trust to fund decommissioning activities and would ensure fair and full participation by the region's residents. Under the broad discretion granted ASLB judges, approving the FRPB funding request would not be an abuse of discretion but rather its wise use with the result being greater public confidence in the process and in the final results.

No Significant Hazards:

YAEC contends that a "no significant hazards" finding under 10 C.F.R. Section 50.91 (a) (2) is not a litigable topic in a license amendment proceeding under 10 C.F.R. Section 50.58 (b) (6). However, a review of this determination by the Commission is within its own discretion, on its own initiative. 10 C.F.R. Section 50.58 (b) (6). Therefore, YAEC's argument against the inclusion of this issue within the parameters of this proceeding is not 100% accurate as the subject matter of this proceeding still clearly lies within the

discretion of the Commission. Furthermore, the Federal Register notice, at V. 63, no. 18, dated January 28, 1998, at page 4309 clearly states:

“If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.”

And as the NRC staff filing, dated March 16, 1998, at page 6 under footnote 3 also states:


“The staff determination is final, subject only to the Commission’s discretion, on its own initiative, to review the determination.”

The FRPB strongly urges and requests the Commission exercise their discretion and critically review said staff determination. In addition, the FRPB has demonstrated in its filing that several issues do exist that refutes or negates a no significant hazards consideration. Thus, the Commission should not allow YAEC to proceed under this status.

WHEREFORE, the Franklin Regional Planning Board says that the request for a public hearing should be approved.

Respectfully submitted,

Adam B. Laipson
Chair, Franklin Regional Planning
Board
April 6, 1998



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman
Thomas D. Murphy
Dr. Thomas S. Elleman

In the Matter of

Docket No. 50-029-LA

YANKEE ATOMIC ELECTRIC COMPANY

ASLSP No. 98-736-01-LA

(Yankee Nuclear Power Station)

April 6, 1998

RE: Amendment and Consolidation of Filings of the Franklin Regional Planning Board

AFFIDAVIT

I, Daniel B. Hammock, of 16 Wheelock Street, Erving, Franklin County, Massachusetts, 01344, being 47 years old and being of sound mind,
do depose and attest as follows:

1. I have been involved in Franklin County government for the last 8 years.
2. Prior to the self-initiated legislative dissolution of Franklin County government in July, 1997, I was one of three elected County Commissioners. Under the authority of the same legislation, I currently sit as one of two regionally elected members on the five member Executive Committee of the Franklin Regional Council of Governments.

One of the three bodies that comprise the present government of Franklin County is the Franklin Regional Planning Board.

4. With regard to the application of the Franklin Regional Planning Board to participate fully before the recently-constituted Atomic Safety and Licensing Board, I hereby declare and attest that the Franklin Regional Planning Board is representing the interests of Franklin County on the issues pertinent to the above-entitled matter.

Therefore, on this 6th day of April, 1998, I, Daniel B. Hammock, do put my hand and seal, signed under the pains and penalties of perjury:

Daniel B. Hammock

Commonwealth of Massachusetts

Franklin ss:

Now did one Daniel B. Hammock appear before me this 6th day of April, 1998, and he did acknowledge the foregoing to be his free act and deed.

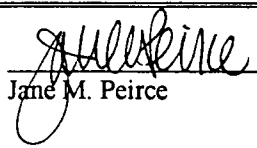
[Signature]
notary

7-17-98
my commission expires

CERTIFICATE OF SERVICE

I hereby certify that copies of AMENDMENT TO FRANKLIN REGIONAL PLANNING BOARD'S REQUEST FOR HEARING have been served on the following by deposit in the United States mail, first class, or by fax as indicated by asterisks, or both, on this day, April 6, 1998:

James P. Gleason, Chairman Administrative Judge Atomic Safety and Licensing Board Mail Stop T 3-F-23 US Nuclear Regulatory Commission Washington, DC 20555	Thomas D. Murphy Atomic Safety and Licensing Board Mail Stop T 3-F-23 US Nuclear Regulatory Commission Washington, DC 20555
Adjudicatory File (2) Atomic Safety and Licensing Board Mail Stop T 3-F-23 US Nuclear Regulatory Commission Washington, DC 20555 FAX: 301-415-5599	Dr. Thomas Elleman Atomic Safety and Licensing Board Mail Stop T 3-F-23 US Nuclear Regulatory Commission Washington, DC 20555
Office of the Commission Appellate Adjudication US Nuclear Regulatory Commission Washington, DC 20555	Jonathan M. Block, Esquire Main Street Post Office Box 566 Putney, VT 05346 FAX: 802-387-2667
Mr. R.K. Gad, III, Esquire Ropes & Gray One International Place Boston, MA 02110-2624 *FAX: 617-951-7050	Mr. James L. Perkins President of the Board New England Coalition on Nuclear Pollution, Inc. Post Office Box 545 Brattleboro, VT 05302 FAX: 207-685-9604
Mr. Paul Gunter Nuclear Information and Resource Service 1424 16th St., NW Suite 404 Washington, DC 20555 FAX: 202-462-2183	Marian Zobler, Esquire Office of the General Counsel US Nuclear Regulatory Commission Washington, DC 20555 *FAX: 301-415-3725
Debra Katz, President Citizens' Awareness Network FAX: 413-339- 8768	Office of the Secretary ATTN: Rulemaking and Adjudications Staff Mail Stop O 16-C-1 US Nuclear Regulatory Commission Washington, DC 20555 FAX: 301-415-1672


Jane M. Peirce

April 6, 1998

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF