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OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION STAFF

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

YANKEE ATOMIC ELECTRIC COMPANY )

(Yankee Nuclear Power Station) )

Docket No. 50-029-LA

NRC STAFF'S RESPONSE TO NEW ENGLAND COALITION  
ON NUCLEAR POLLUTION'S AMENDED PETITION TO INTERVENE

INTRODUCTION

Pursuant to a "Memorandum and Order" of March 25, 1998, issued by the Atomic Safety and Licensing Board (Board) designated in the above-captioned proceeding, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to "New England Coalition on Nuclear Pollution, Inc.'s Amended Petition to Intervene in License Amendment Proceeding for the Yankee Nuclear Power Station License Termination Plan" (Amended Petition). As discussed below, New England Coalition on Nuclear Pollution, Inc. (NECNP) fails to establish standing to intervene in this proceeding; thus, its request for a hearing and petition for leave to intervene should be denied.

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### BACKGROUND

On May 15, 1997, Yankee Atomic Electric Company (YAEC or Licensee) submitted a License Termination Plan (Plan) pursuant to 10 C.F.R. § 50.82(a)(9) for its Yankee Nuclear Power Station (YNPS). On August 14, 1997, pursuant to 10 C.F.R. § 50.82(a)(9)(iii), the Nuclear Regulatory Commission (Commission) published a notice of receipt of the Plan in the Federal Register. 62 Fed. Reg. 43559 (1997). On December 18, 1997, YAEC submitted a request for a license amendment approving the Plan. On January 28, 1998, the Commission published a Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration, and Opportunity for a Hearing (Notice). *Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts.* 63 Fed. Reg. 4308-09, 4328 (1998).

On February 24, 1998, NECNP wrote the Secretary of the Commission a letter, requesting a hearing on the proposed amendment.<sup>1</sup> YAEC filed its "Answer to Petition to Intervene and Request for Hearing of New England Coalition on Nuclear Pollution, Inc." on March 11, 1998, and on March 16, 1998, the Staff filed its response. "NRC Staff's Response to Requests for Hearing" (Staff's Response). On March 25, 1998, the Board issued an Order directing that any petitioner intending to amend its petition should file such amendment within seven days of the receipt of the

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<sup>1</sup> Citizens Awareness Network (CAN), Nuclear Information and Resource Service (NIRS) and Franklin Regional Planning Board also wrote letters requesting a hearing on the proposed amendment. See Letter to Shirley A. Jackson from Citizens Awareness Network, February 26, 1998, (CAN Letter); Letter to the Office of the Secretary from Nuclear Information and Resource Service, February 27, 1998, (NIRS Letter) and Letter to the Office of the Secretary from Franklin Regional Planning Board, February 27, 1998 (FRPB Letter).

Order. Order at 1. The Board further provided YAEC and the Staff with five days after receipt of any amendment to file a response. *Id.* at 2. On April 6, 1998, in accordance with an extension of time granted by the Board on April 1, 1998,<sup>2</sup> NECNP filed its Amended Petition requesting that a hearing be granted on the License Termination Plan and petitioning for leave to intervene.

### DISCUSSION

#### A. NECNP Fails to Establish Standing to Intervene.

The Commission's regulations provide that a petition to intervene, *inter alia*, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]." 10 C.F.R. § 2.714(a)(2). A petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." *Id.*

In determining whether a petitioner has established the requisite interest, the Commission applies judicial concepts of standing. *Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA). *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985). The alleged interest must be concrete and

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<sup>2</sup> "Motion for Extension of Filing Deadline As to All Parties and Petitioners," granted April 1, 1998 (Motion). The Staff and Licensee were provided with a response time of eight days from receipt of any amendment. Motion; *see also* "Motion for Extension of Filing Deadline(s)," granted March 31, 1998.

particularized, fairly traceable to the challenged action, and likely to be redressed by a favorable decision. *Georgia Power Company* (Vogle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). An organization may establish standing either by demonstrating an injury to its organizational interests or through one of its members who has individual standing and has authorized the organization to represent his or her interest. See *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

In its Amended Petition, NECNP seeks to establish representational standing on the basis of the declaration of one of its members, Jean-Claude van Itallie, who has authorized NECNP to represent his interests. Declaration of Jean-Claude van Itallie, Member of the New England Coalition on Nuclear Pollution, Inc., Supporting Organizational Standing (van Itallie Declaration) at 1, ¶ 3. Mr. van Itallie, who lives within six miles of YNPS, states that, if the amendment were granted, he would suffer adverse consequences due to the release of radiation from the site during the accidents described by David Lochbaum, NECNP's expert, in Mr. Lochbaum's declaration. See NECNP Amendment at 12; van Itallie Declaration at ¶ 9. Mr. Lochbaum's concerns relate to heavy load drops in the spent fuel pit, loss of coolant in the spent fuel pit and the accidents that might ensue from such events. Declaration of David A. Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Concerning Technical Issues and Safety Matters Involved in the Approval of the Yankee Nuclear Power Station License Termination Plan (Lochbaum Declaration) at 3-5, ¶ 8. Mr. Lochbaum correctly notes that the Plan does not describe how irradiated fuel can or will be removed from the spent fuel pit. *Id.*

It appears that Mr. van Itallie's interests fall within the zone of interests protected by the AEA and NEPA. These interests, however, are not interests that could be affected by the outcome of this proceeding, and, thus, do not constitute injury in fact. The scope of this proceeding is limited to whether the License Termination Plan should be approved. *See Florida Power & Light Co (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989)*. Thus, any interest must be fairly traceable to the approval of the Plan and must be able to be favorably addressed by a decision in this proceeding. Interests that cannot be affected by the approval of the Plan are insufficient to provide standing in this proceeding. As discussed below, none of the interests expressed in the Amended Petition are fairly traceable to the approval of the Plan and cannot be addressed by a favorable decision. Thus, NECNP and its member fail to establishing standing.

YAEC'S authorization to move and otherwise manage spent fuel is not affected by the granting or denial of the proposed amendment, as YAEC'S Part 50 license gives it the authority to manage spent fuel and, in fact, gives it the authority under a general license to construct and operate an Independent Spent Fuel Storage Installation (ISFSI). *See 10 C.F.R. § 72.210*. Thus, the granting or denial of the License Termination Plan will not affect YAEC's authority under Part 50 to manage spent fuel. Accordingly, Mr. van Itallie's interest cannot be redressed by a favorable decision, as the proposed amendment does not concern the management of spent fuel.

Mr. van Itallie also identifies a concern about the long term effects an ineffectual cleanup of the Yankee Rowe site would have on the value of his property and states "[t]hat the final site condition projected under the License Termination Plan indeed satisfy the NRC's criteria for general release is of continuing concern to [him]." Van Itallie Declaration at 2. ¶¶ 6, 8. It is difficult to understand how Mr. van Itallie and his representative, NECNP, would seek to protect this interest

in a hearing that might be held on the proposed amendment. YAEC states in its License Termination Plan that the site - specific release criteria presented in the Plan are consistent with the criteria identified in the NRC Site Decommissioning Management Plan (SDMP) Action Plan of April 16, 1992 (57 Fed. Reg. 13389). License Termination Plan, Appendix A, A-7. YAEC, therefore, is in compliance with 10 C.F.R. § 20.1401(b). *See id.* It appears that Mr. van Itallie is not challenging the criteria in the Plan, but is rather concerned about whether YAEC will in fact meet the criteria in the Plan. Since the scope of this proceeding is limited to whether the Plan should be approved, Mr. van Itallie has failed to identify an interest that could be affected by the outcome of this proceeding. Mr. van Itallie, therefore, fails to identify an injury in fact.

B. Aspects

As noted above, the Commission's regulations in 10 C.F.R. § 2.714(a)(2) require a petitioner for intervention to set forth the specific aspect(s) of the proceeding with respect to which he wishes to intervene. NECNP devotes some twenty pages of its Amended Petition to "aspects." *See* Amended Petition at 17-37. Under "Outline Aspects," it reproduces the Table of Contents of the License Termination Plan and questions the adequacy of each item in that table. Amended Petition at 17-21. Under "B. Descriptive Aspects," NECNP addresses "inadequacies dealing with high-level waste remaining on site;" "inadequacies dealing with environmental issues;" "YAEC's trustworthiness to conduct accurate analyses;" "hazards unanalyzed in the LTP;" "inadequate evaluation of likely accidents;" "ALARA compliance;" "LTP does not adequately define crucial terms;" "financial/economic aspects: lack of adequate funding assurance;" "site characterization and final survey plan inadequacies;" "inadequacies in LTP proposed contamination sampling;" "LTP relies on questionable bases for determining background radiation;" and "LTP inadequately

addresses possible continuing contamination.” Amended Petition at 21-38. Several of these aspects concern management of spent fuel, which, as discussed above, is not part of the proposed action. Others would urge different criteria than those required by the Commission’s regulations. For example, NECNP states that YAEC makes reference to measuring cesium-137 “with the disclaimer that cesium-137 is by and large the result of nuclear weapons - testing fallout.” Amended Petition at 36. NECNP observes, “the fact that this measurement continues as a part of site characterization gives little confidence that area background levels. . . have been established to provide a benchmark against which to determine residual dose over background.” *Id.* A look at the definitions in 10 C.F.R. § 20.1003 clarifies this matter. “Background radiation” is defined as

“...radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee.”  
*Id.*

Thus “background radiation” is a defined term in Part 20, subpart E, and includes fallout.

Some of these broad topics NECNP labels as aspects might arguably be appropriate aspects of the proceeding. Assuming NECNP had established standing, however, NECNP would still need to provide at least one acceptable contention as required by 10 C.F.R. § 2.714(b).

CONCLUSION

Although, arguably, NECNP may have identified an "aspect" of the proposed action, as required by 10 C.F.R. § 2.714(a)(2), NECNP has not shown that it might suffer injury-in-fact from the proposed action through injury to its member, Mr. van Itallie, if the license amendment is granted. Thus, NECNP has failed to show that it has standing to intervene in a hearing concerning the proposed action. Thus, its request for a hearing and petition for leave to intervene should be denied.

Respectfully submitted,

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Dated at Rockville, Maryland  
this 17th day of April, 1998



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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO NEW ENGLAND COALITION ON NUCLEAR POLLUTION'S AMENDED PETITION TO INTERVENE" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk this 17th day of April, 1998:

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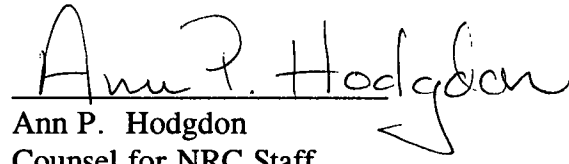
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