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ADJUDICATION

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)

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Docket No. 50-029-LA

NRC STAFF'S RESPONSE TO CITIZENS AWARENESS NETWORK'S
REPLY TO NRC STAFF'S ANSWER TO AMENDED PETITION TO INTERVENE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to "Citizens Awareness Network Inc., Reply to the Nuclear Regulatory Commission Staff's Answer to Amended Petition to Intervene," May 4, 1998 (CAN's Reply).¹ In its Reply, the Citizens Awareness Network, Inc. (CAN), asks the Atomic Safety and Licensing Board (Board) to strike certain portions of the "NRC Staff's Response to Citizens Awareness Network's Amended Petition to Intervene" (Staff's Response). CAN's Reply at 4. For the reasons set forth below, CAN's request to strike portions of the Staff's Response should be denied.

¹ The Staff views CAN's Reply as a motion and, therefore, pursuant to 10 C.F.R. § 2.730, provides this response.

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BACKGROUND

In response to a notice in the *Federal Register*, the Commission received four letters requesting hearings regarding the License Termination Plan for the Yankee Nuclear Power Station.² The Staff and Yankee Atomic Electric Company (YAEC) filed responses to these letters.³ On March 25, 1998, the Board issued a Memorandum and Order directing that any petitioner intending to amend its petition should file such amendment within seven days of the receipt of the 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, CAN filed an amended petition. "Citizens Awareness Network's Amended Petition to Intervene in License Amendment Proceeding for the Yankee Nuclear Power Station License Termination Plan." In accordance with the Board's Order, the Staff filed its Response on April 20, 1998.⁴ On May 4, 1998, CAN filed its Reply.⁵

² These letters were from New England Coalition on Nuclear Pollution, Citizens Awareness Network, Nuclear Information and Resource Service, and the Franklin Regional Planning Board. *See* Letter to the Secretary of the Commission from the New England Coalition on Nuclear Pollution, February 24, 1998; Letter to Chairman Shirley A. Jackson from Citizens Awareness Network, February 26, 1998; Letter to the Office of the Secretary from Nuclear Information and Resource Service, February 27, 1998; and Letter to the Office of the Secretary from Franklin Regional Planning Board, February 27, 1998.

³ "NRC Staff's Response to Requests for Hearing," March 16, 1998; "Answer to Petition to Intervene and Request for Hearing of Franklin Regional Planning Board," March 11, 1998; "Answer to Petition and Request for Hearing of New England Coalition on Nuclear Pollution, Inc.," March 11, 1998; "Answer to Petition to Intervene and Request for Hearing of Nuclear Information and Resource Service," March 11, 1998; "Answer to Petition to Intervene and Request for Hearing of Citizens Awareness Network, Inc.," March 11, 1998 (YAEC's responses).

⁴ YAEC filed its response on April 13, 1998. "Response of Yankee Atomic Electric Company to Amendments to Petitions to Intervene."

⁵ On April 22, 1998, CAN, although claiming to be replying to the Staff's Response, instead, filed an unauthorized reply on behalf of the Franklin Regional Planning Board. *See* (continued...)

DISCUSSION

CAN's request that portions of the Staff's Response be stricken should be denied. CAN claims, without any discussion and with only one specific reference to the Staff's Response,⁶ that the Staff inappropriately addressed the merits of the proceeding in its Response. CAN's Reply at 4. CAN fails, however, to demonstrate how any of the Staff's arguments inappropriately discussed the merits of the proceeding.⁷ Rather, it appears that CAN does not agree with the Staff's conclusion that CAN had failed to raise any aspects within the scope of the proceeding. *See id.* at 4-8. Since a petition for leave to intervene must set forth "the specific aspect or aspects of the subject matter

⁵(...continued)

"Citizens Awareness Network, Inc. Reply to Nuclear Regulatory Commission Staff's Answer to Amended Petition to Intervene." CAN also filed an unauthorized reply to YAEC's responses. "Citizens Awareness Network, Inc. Reply to Yankee Atomic Electric Company's Answer to Amended Petition to Intervene," April 22, 1998.

⁶ CAN provides one page reference to the Staff's Response. *See* CAN's Reply at 7. Although CAN correctly references page 7 of the Staff's Response, the reference to "n.19" is incorrect. The Staff's Response does not contain a footnote 19.

⁷ CAN's Reply also contains many procedural errors. CAN's request to strike portions of the Staff's Response is included in a filing entitled merely as a reply. CAN has no authority to file such a reply. Neither the Commission's regulations nor the Board's Order authorizes the filing of replies to either the Staff's or YAEC's Responses. Nor did CAN request or receive permission from the Board to file a reply. In addition, since CAN is not a party in this proceeding, it cannot file motions. *See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1 and 2), CLI-92-1, 35 NRC 1 (1992).* Further, even if CAN could file a motion, nowhere in the title or in the introduction of its Reply does CAN indicate that this filing contains a motion to strike. In fact, CAN does not make its request that the Board strike "all of the Staff's arguments on the merits as untimely and irrelevant to the Panel's decision of the standing issue" until page 4 of its Reply. CAN's Reply at 4. Affirmative requests for relief, such as a motion to strike, should be set forth prominently and include the word "motion." *See Long Island Lighting Co., ALAB-827, 23 NRC 9, 11 n.1 (1986); Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-457, 7 NRC 70, 71 (1978).*

of the proceeding as to which the petitioner wishes to intervene,” the Staff properly addressed CAN’s aspects in order to respond to its request for leave to intervene. *See* 10 C.F.R. § 2.714(a)(2).

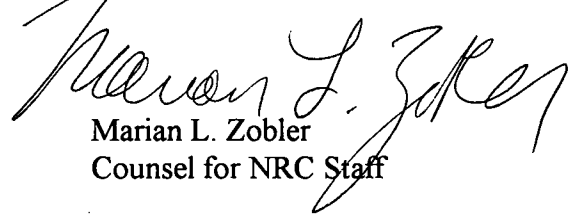
For example, with respect to the issue of “soil remediation,” the Staff argued that CAN’s assertions regarding this issue were not required by the regulations and therefore could not be appropriate aspects of the proceeding. *See* Staff’s Response at 7. Similarly, the Staff argued that without more support, CAN’s assertion that an environmental impact statement was needed was not an appropriate aspect. *See id.* Nor could CAN’s assertions regarding NRC oversight of spent fuel storage be an appropriate aspect of this proceeding because YAEC’s authority to manage spent fuel storage is not affected by the outcome of this proceeding, *i.e.*, whether or not the License Termination Plan should be approved.⁸ *See id.* The Staff, therefore, did not improperly discuss the merits of this proceeding, but rather demonstrated in its Response that none of CAN’s proposed aspects in support of its petition for leave to intervene were appropriate aspects of this proceeding. Thus, CAN’s request that portions of the Staff’s Response be stricken should be denied.

⁸ CAN also claims that the Staff’s standing argument as it related to spent fuel was improper. CAN’s Reply at 6. The Staff argued that CAN could not establish standing based on an injury to its interest due to YAEC’s authority to manage spent fuel since YAEC’s authority was not affected by whether the Licence Termination Plan was approved. Staff’s Response at 5-6. The Staff’s argument in this regard related to CAN’s standing and did not inappropriately address the merits of this proceeding.

CONCLUSION

For the reasons set forth above, CAN's request, contained in its Reply, to strike portions of the Staff's Response should be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marian L. Zabler".

Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of May, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'98 MAY 19 P5:12

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)

YANKEE ATOMIC ELECTRIC COMPANY)

(Yankee Nuclear Power Plant))

Docket No. 50-029-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO CITIZENS AWARENESS NETWORK'S REPLY TO NRC STAFF'S ANSWER TO 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 19th day of May, 1998:

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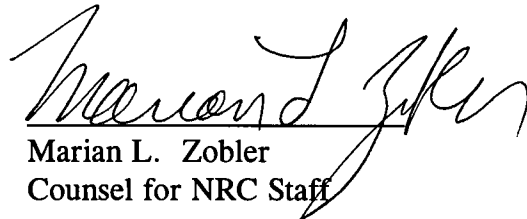
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