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LBP-99-22

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 JUN 14 P1:36

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION STAFF

Before Administrative Judges:

Charles Bechhoefer, Chairman  
Dr. Thomas S. Elleman  
Thomas D. Murphy

SERVED JUN 14 1999

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY  
(Yankee Nuclear Power Station)

License Termination Plan

Docket No. 50-029-LA-R

ASLBP No. 99-754-01-LA-R

June 14, 1999

MEMORANDUM AND ORDER

(Requesting Replies to NECNP Response to Termination Motion)

1. Background.

Pending before this Atomic Safety and Licensing Board is the request of Yankee Atomic Electric Company (YAEC or Licensee) for approval of a License Termination Plan for the Yankee Nuclear Power Station, a nuclear reactor that is located in Rowe, Massachusetts (hereinafter, Yankee-Rowe). The Commission, in CLI-98-21, 48 NRC 165 (1998), determined that two petitioners for intervention--the New England Coalition on Nuclear Pollution (NECNP) and the Citizens Awareness Network (CAN)--had standing to challenge the LTP, and it remanded the proceeding to the Licensing Board to determine whether the petitioners had any viable contentions

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(with respect to which it spelled out a number of standards, both generic and specific, that would be applicable).

In a Prehearing Conference Order issued following the holding of a prehearing conference in Greenfield, Massachusetts, the Licensing Board extensively analyzed all of the 33 contentions proffered by NECNP and CAN and admitted four that had been consolidated from those sponsored jointly by both intervenors. LBP-99-14, 49 NRC 238 (March 17, 1999). (We also permitted the Franklin Regional Council of Governments to participate as an interested governmental entity under 10 C.F.R. § 2.715(c)).

Shortly thereafter, on March 29, 1999 (prior to the telephone conference on scheduling of discovery and the evidentiary hearing that we had set for March 31, 1999), YAEC filed a motion for us to reconsider one of the four contentions that we had admitted. On April 1, 1999, the day following the scheduling conference, YAEC appealed to the Commission our admission of all four contentions (not merely the one for which it had sought reconsideration). On April 6, 1999, we issued a Notice of Hearing, based on our approval of the four contentions together with the Commission's earlier determination of standing for the two intervenors. See 64 Fed. Reg. 17689 (April 12, 1999). On April 22, 1999, we denied YAEC's above-referenced motion for reconsideration of one of the four admitted contentions.

LBP-99-17, 49 NRC \_\_\_\_\_. The Licensee's appeal of all four contentions has not yet been acted upon.

On April 1, 1999, the NRC Staff issued an Environmental Assessment and Finding of No Significant Impact for the LTP that is the subject of this proceeding. (The EA/FONSI was published in the Federal Register on April 12, 1999, 64 Fed. Reg. 17690.) On May 17, 1999, NECNP filed proposed late-filed contentions based on the EA. Presumably reflecting other developments in this proceeding, as described below, no responses to these contentions have been filed, and we have not taken any action with regard to them.

2. Motion to Terminate Proceeding.

On May 13, 1999, YAEC filed a Board Notification advising the Commission, Licensing Board and parties that it would be modifying its plan for the final status survey of the site (a significant portion of the LTP) so as to employ a so-called MARSSIM survey methodology (see NUREG-1575/EPA 402-R-97-106, dated December, 1997) in lieu of the survey methodology based on NUREG/CR-5849 (draft dated June, 1992). The Board Notification indicated that YAEC had not yet determined the implications of this change for this proceeding and that a further notification would follow when that determination was made.

Subsequently, on May 26, 1999, YAEC filed another Board Notification with the Commission (with copies to this Board and the parties), advising that YAEC had withdrawn its

application for an operating license amendment approving the LTP and that no date had been set for submission of a new LTP. (YAEC indicated that, in its opinion, it could submit its new LTP concurrently with its license termination request, which it did not envision as being filed "for at least a decade." YAEC also moved, in accordance with 10 C.F.R. § 2.107, for the proceeding to be terminated, noting that all contentions dealing with its existing LTP would be moot with respect to a new LTP. In passing, YAEC suggested to the Commission that its appeal of the four contentions admitted in LBP-99-14 had become moot and likewise should be dismissed.

Two separate responses have been filed by NECNP on behalf of the joint intervenors. By a filing dated June 5, 1999, NECNP supported YAEC's dismissal motion but sought dismissal with prejudice. NECNP construed the dismissal motion as being filed both with the Commission and this Licensing Board, and it construed 10 C.F.R. § 2.107 as placing responsibility for termination conditions with this Board. (NECNP also construed "Presiding Officer" in that section to refer to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, but inasmuch as this Licensing Board has been named Presiding Officer for this proceeding (see 10 C.F.R. § 2.721), we shall construe NECNP's references to "Presiding Officer" to refer to us.)

YAEC, by filing dated June 7, 1999, opposes the "with prejudice" portion of NECNP's response.

NECNP's second response to the termination motion, dated June 7, 1999, was filed directly with this Board. It opposes the termination motion absent YAEC's reimbursement to it of listed costs and expenses, including attorneys' fees (totaling \$56,494 for NECNP and \$3,363 for CAN) and fulfillment of certain other tasks such as responding to certain interrogatories, production of certain documents to intervenors (with the responses and documents to be both provided to intervenors and placed in the local public document room), and conduct of a geological investigation to respond to the claims made by its expert, Robert Ross, of Ross Environmental Associates, Inc. (submitted in support of the intervenors' proposed contentions on the Environmental Assessment).

3. Jurisdiction to Decide Termination Motion and Request for Information


Given our prior issuance of a Notice of Hearing, we deem that, pursuant to 10 C.F.R. § 2.107, the authority not only to rule on the terms and conditions that may accompany termination but on the termination motion itself lies with this Board. See Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-668, 15 NRC 450 (1982). (Only the Commission, of course, has authority to dismiss as moot the appeal pending before it.) Before reaching the termination

motion and related relief sought by NECNP, however, we invite the parties, in accordance with 10 C.F.R. § 2.730(c), to reply to NECNP's June 7, 1999 response that seeks the above-described terms and conditions for termination. We also would like parties to reply to YAEC's opposition to termination with prejudice (which appears to deal only with the viability of the current accepted contentions in a future proceeding involving a different LTP), commenting in particular on the impact of a dismissal with prejudice on the Commission's rulings concerning NECNP's and CAN's standing to participate, particularly with respect to a proceeding involving a future LTP submitted by or on behalf of YAEC.

Replies and further responses, as set forth above, should be submitted (mailed) to this Board no later than 10 days following service of this Memorandum and Order (15 days in the case of the NRC Staff).

IT IS SO ORDERED.

For the Atomic Safety and  
Licensing Board

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
June 14, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY

(Yankee Nuclear Power Station)

Docket No.(s) 50-029-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO AND ORDER (LBP-98-22) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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LB MEMO AND ORDER (LBP-98-22)

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Dated at Rockville, Md. this  
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