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UNITED STATES
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of
ENTERGY NUCLEAR VERMONT YANKEE, LLC
and ENTERGY NUCLEAR OPERATIONS, INC.
(Vermont Yankee Nuclear Power Station)

Docket No. 50-271

ASLBP No. 04-832-02-OLA

**NEW ENGLAND COALITION'S REPLY TO APPLICANT AND NRC STAFF
ANSWERS TO NEW ENGLAND COALITION'S
REQUEST FOR LEAVE TO FILE A NEW CONTENTION**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(2), the New England Coalition hereby replies to Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. ("Entergy") and Nuclear Regulatory Commission ("NRC Staff") Answers to New England Coalition's Request for Leave to File a New Contention. New England Coalition filed its Request for Leave to File a New Contention on September 21, 2005. NRC Staff filed its Answer on October 17, 2005. Entergy filed its Answer on October 19, 2005.

For the reasons discussed below, New England Coalition reaffirms its Request for Leave to File a New Contention.

INCORPORATION NRC STAFF'S ANSWER AND ARGUMENTS

In Reply to Entergy's Answer, New England Coalition avers that the sole question properly raised by the above named filings and now before the Board is whether or not New

England Coalitions Request for Leave to File a New Contention meets the conditions set out for a new contention in 10CFR 2.309 and should therefore be granted. New England Coalition cannot surpass the briefing on this question contained in the NRC Staff's Reply. Therefore, New England Coalition incorporates by reference herein, to the extent they do not contradict the arguments advanced below, the legal and factual arguments of the NRC Staff's Reply to New England Coalition's Request.

BACKGROUND

In its request for hearing, August 30, 2004, New England Coalition submitted seven proposed contentions to this Licensing Board, including the following "Contention 4":

The license amendment should not be approved. Entergy cannot assure seismic and structural integrity of the cooling towers under uprate conditions, in particular the Alternate Cooling System cell. At present the minimum appropriate structural analyses have apparently not been done.¹

The Board issued an Order on November 22, 2004 admitting NEC Contention 4 and restated the admitted contention as follows:

The license amendment should not be approved because Entergy cannot assure the seismic and structural integrity of the cooling towers under uprate conditions, in particular the Alternate Cooling System cell. At present the minimum appropriate structural analyses have apparently not been done

On May 25, 2005, Entergy filed an update to its mandatory disclosures, consisting of a compact disk containing two calculations, including Calculation No. 1356711-C-001, "Cooling Tower Seismic Evaluation" (the "Seismic Evaluation"), dated April 5, 2005, performed by Entergy's contractor, ABS Consulting.

¹ See "New England Coalition's Request for Hearing, Demonstration of Standing, Discussion of Scope of Proceeding and Contentions," August 30, 2004.

On July 13, 2005, Entergy filed a Motion to Dismiss as Moot, or in the Alternative, for Summary Disposition of NEC's Contention 4. NRC Staff supported Energy's motion

On September 1, 2005 the Board issued its Memorandum and Order granting Entergy's motion to dismiss NEC Contention 4 as moot². In its ruling, the Board held that "if NEC moves for leave to file new or amended contentions challenging the adequacy of Entergy's seismic and structural analysis within 20 days of the date of this order, then the motion and contentions will be deemed timely for purposes of 10 C.F.R. § 2.309(f)(2)(iii)."³ The Board also stated that a request for leave to file a new contention filed within the prescribed 20-day period would be deemed to satisfy 10 C.F.R. § 2.309(c)(1)(i)⁴.

NEC filed its request for leave to file a new contention on September 21, 2005.

DISCUSSION

Entergy objects that New England Coalition's Request for Leave to File a New Contention is untimely and fails to propose an admissible contention under 10 C.F.R. §§ 2.309(f)(1), 2.309(f)(2) and 2.309(c).

In support of its argument that New England Coalition's Request for Leave to File a New Contention is untimely, Entergy points to the time elapsed between May 25, 2005, when Entergy filed an update to its mandatory disclosures, consisting of a compact disk containing two calculations, including Calculation No. 1356711-C-001, "Cooling Tower Seismic Evaluation" (the "Seismic Evaluation"), dated April 5, 2005, performed by Entergy's contractor, ABS Consulting and New England Coalition's Request for Leave to File a New Contention, dated September 21, 2005.

² See *Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-05-24, 62 NRC __, slip op. ("Order").

³ *Id.* at 5.

⁴ See Order at 6, n.11.

Here, Entergy seeks to once again litigate arguments settled by the Board when it determined that any new contention on the subject of adequate seismic analysis filed by New England Coalition within 20 days of the Board's September 1, 2005 Order would be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) and 10 C.F.R. § 2.309(c)(1)(i)⁵.

Further, New England Coalition properly and timely responded to the cooling tower evaluation proffered in Entergy's July 13, 2005, Motion to Dismiss as Moot, or in the Alternative, for Summary Disposition of NEC's Contention 4. It was in this instance, on July 13, 2005, the cooling tower evaluation was first identified by Entergy as a proposed fulfillment of the omission identified in contention 4.

New England Coalition had from the onset qualified that "minimum appropriate structural analyses have apparently not been done", such that "can assure the seismic and structural integrity of the cooling towers under uprate conditions, in particular the Alternate Cooling System cell".

Entergy appears to argue that New England Coalition should have recognized on receipt that an analyses, which New England Coalition does not perceive as a "minimum appropriate structural analysis." would be proposed as satisfying or mooted New England Coalition's Contention. Not only do New England Coalition and its experts not share that perception, we believe that any unbiased reviewer would share our view that the proffered analysis, "cannot assure the seismic and structural integrity of the cooling towers under uprate conditions, in particular the Alternate Cooling System cell".

New England Coalition did not challenge the analysis when it appeared because, on its own, it is what it is. Rhetorically: What is to challenge? Only when Entergy identified this

⁵ See, Order at 5 and 6.

analysis as, in its view, satisfying the need for adequate assurance that the alternate cooling system tower cells would not fall down, be pulled down, or pushed down in a seismic event, could New England Coalition, or for that matter any reasonable reviewer, measure and ascertain that the proffered analysis would not, could not provide adequate assurance of “the seismic and structural integrity of the cooling towers under uprate conditions, in particular the Alternate Cooling System cell”.

In its Answer, Entergy provides long argument and a number of documents to support its position that the analyses that have been performed are adequate. This is wrongly placed as the only issue before the Board at this time is whether the New England Coalition’s new contention meets the regulatory and legal criteria to be accepted for adjudication. Entergy’s argument is worthy of debate and should be debated. Entergy’s witness, Mr. Paul Baughman does not specify in his declaration, for example, the numbers of hours given to a “walkdown” inspection of various components of the cooling towers; nor does he indicate that any tests, other than eyeballing, were done to determine the physical condition and strength of various members and components. No mention is made of the cooling tower cell tie-rod’s capacity to push as well as pull. Mr. Baughman characterizes the header pipe serving water to all the cooling towers as relatively “weak” without any quantification; without any identification of the strength of its connections to the cooling tower cells or its compression strength, tensile strength or resistance to torsion.

If anything, Entergy’s arguments, testimony, and exhibits verify and underscore that a real, valid material dispute exists between the intervener, New England Coalition and the licensee, Entergy.

Entergy also argues that New England Coalition's expert witness, Dr. Ross Landsman, is not qualified to discuss, so as to meaningfully contribute to the record, seismicity and cooling towers. As provided in Dr. Landsman's resume attached to New England Coalition's Request for Leave to File a New Contention, Dr. Landsman holds a doctorate as a civil engineer and has had almost three decades of experience reviewing nuclear power plant construction, licensing, and operation for the U.S. Nuclear regulatory Commission. Dr. Landsman is amply qualified to assist in building the record in this proceeding.

As the NRC Staff pointed out in its Answer, New England Coalition did not, in its Request for Leave to File a New Contention, address subsection iv - the possible effect of any order that may be entered in the proceeding on its interests or subsection v - the availability of other means whereby its interests will be protected. New England Coalition believes that these criteria were adequately addressed in New England Coalition's initial Petition for Leave to Intervene and that little or no weight should be given on consideration of going forward to review the adequacy of cooling tower seismic analysis for uprate conditions. On the question of subsection vii - the extent to which litigation of this issue will broaden the issues or delay the proceeding, New England Coalition respectfully reminds the Board that this issue has been before the Board in one permutation or another since the onset of this proceeding; thus any consideration is largely a conservation of the original anticipated scope and schedule as opposed to any question of broadening the issues or delaying the proceeding. Further, the one interest that should trump all interests in this proceeding is the adequate protection of public health and safety. New England Coalition contends that the basis for this proffered new contention is just that, adequate assurance that in the event of an accident in which there is a seismic component nuclear power plant accident mitigation systems will perform as specified in design and licensing

documents. New England Coalition holds, and encourages the Board to embrace with the range of its discretionary powers, that the aforementioned design and licensing basis document are a inviolable covenant between the US Nuclear Regulatory Commission and the affected public.

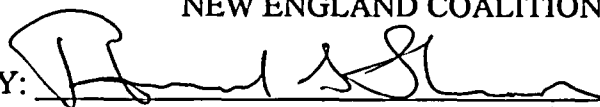
CONCLUSION

For all of the reasons stated above, and incorporating the sound reason and argument of the NRC Staff, New England Coalition now respectfully requests that the Board accept for adjudication New England Coalition's new contention, as follows:

The Entergy Vermont Yankee [Entergy] license application (including all supplements) for an extended power uprate of 20% over rated capacity is not in conformance with the plant specific original licensing basis and/or 10 C.F.R. Part 50, Appendix S, paragraph I(a), and/or 10 C.F.R. Part 100, Appendix A, because it does not provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that the Vermont Yankee Nuclear Power Station Alternate Cooling System [ACS] in entirety, in its current actual physical condition (or in the actual physical condition [Entergy] will effectuate prior to commencing operation at EPU), will be able to withstand the effects of an earthquake and other natural phenomena without loss of capability to perform its safety functions. [Entergy] must be able to demonstrate that the actual structures, systems and components comprising the ACS will perform satisfactorily at the requested increased plant power level

Respectfully submitted:

NEW ENGLAND COALITION

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT YANKEE))	Docket No. 50-271-OLA
LLC and ENTERGY NUCLEAR)	
OPERATIONS, INC.)	ASLBP No. 04-832-02-OLA
)	
(Vermont Yankee Nuclear Power Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "New England Coalition's Reply to NRC Staff and Entergy Answers to New England Coalition's Request for Leave to File a New Contention" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (**), this 26th day of October, 2005.

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Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
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Washington, DC 20555-0001

Dear Rulemaking and Adjudications Staff,

Please find for filing in the above captioned matter one original and two copies of
**NEW ENGLAND COALITION'S REPLY TO APPLICANT AND NRC STAFF
ANSWERS TO NEW ENGLAND COALITION'S REQUEST FOR LEAVE TO
FILE A NEW CONTENTION.**

Thank you for your kind assistance in making this filing,



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