

August 6, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT YANKEE, LLC)	Docket No. 50-271-LR
AND ENTERGY NUCLEAR OPERATIONS, INC.)	
)	ASLBP No. 06-849-03-LR
(Vermont Yankee Nuclear Power Station))	

NRC STAFF ANSWER TO NEC MOTION
TO FILE A TIMELY NEW OR AMENDED CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(h)(1) and 2.323(c), the Staff of the Nuclear Regulatory Commission ("Staff") the NRC Staff ("Staff") herein answers "New England Coalition, Inc.'s (NEC) Motion to File a Timely New of Amended Contention" filed by NEC on July 12, 2007. For the reasons set forth below the Staff does not oppose NEC's request.

BACKGROUND

On May 26, 2006, NEC filed a timely "Petition for Leave to Intervene, Request for Hearing and Contentions" ("Petition") regarding Entergy's License Renewal Application ("LRA") seeking a 20-year renewal of the Vermont Yankee Nuclear Power Station (VYNPS) license.¹ Among NEC's proffered contentions was Contention 2, which alleges that Entergy's LRA does not include an adequate plan to monitor and manage the effects of aging due to metal fatigue on key reactor components that are subject to both

¹ Vermont Yankee Nuclear Power Station, License Renewal Application, dated January 25, 2006 (Agency Document Access and Management System (ADAMS) Accession No. ML060300085 [LRA]).

aging management review under 10 C.F.R. § 54.21(a) and time limited aging analysis (“TLAA”) under § 54.21(c). See Petition at 14. Entergy opposed admission of NEC’s contention. See Entergy Response to New England Coalition’s Petition for Leave to Intervene, Request for Hearing, and Contentions (June 22, 2006), at 18-25. The Staff did not oppose admission of Contention 2 to the extent it was limited to: 1) whether Entergy has provided information on how cumulative usage factor (“CUF”) values are calculated and 2) whether Entergy’s aging management plan includes a monitoring plan with an inspection schedule and criteria for the inspection frequency. See NRC Staff Answer to Request for Hearing of New England Coalition (June 22, 2006), at 11.

On September 22, 2006, the Atomic Safety and Licensing Board (“Board”) admitted Contention 2. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 183-187 (2006).² In so doing the Board stated, “NEC demonstrates a genuine, material dispute with the Application . . . by raising the question of whether Entergy’s ‘plan to develop a plan’ to manage environmentally assisted fatigue is sufficient to meet the license renewal requirements.” *Id.* at 186.

During a pre-hearing conference on June 12, 2007, NEC requested, and the Board granted, 30 days from June 12, 2007, to file a new or amended contention based on Entergy’s reanalysis of environmentally assisted fatigue. See Transcript of Pre-Hearing Conference (June 12, 2007) at 584-85. NEC filed the instant motion on July 12, 2007. Attached thereto was “Fourth Declaration of Dr. Joram Hopenfeld” (“Fourth

² Also in its September 22, 2006 Order, the Board granted NEC’s and Vermont Department of Public Service’s (DPS) notices of adoption of each other’s contentions to the extent NEC’s and DPS’s contentions were admitted. *Id.* at 208.

Hopenfeld Declaration”) and Exhibits labeled A-P.

DISCUSSION

I. Legal Standards for Admission of Late-Filed Contentions

The first step in addressing a new contention under NRC regulations is to determine if it is timely and otherwise meets the requirements of 10 C.F.R. § 2.309(f)(2). *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 672 (2006). Late-filed contentions may be admitted with leave of the presiding officer only upon a showing that:

- (i) the information upon which the amended or new contention is based was not previously available;
- (ii) the information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2).

In addition to fulfilling the requirements of 10 C.F.R. § 2.309(f)(2), a petitioner must also show that the late-filed contention meets the standard contention admissibility requirements. See *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 362-363 (1993). The NRC strictly limits the contentions that may be raised so that individual licensing adjudications are limited to deciding "genuine, substantive safety and environmental issues placed in contention by qualified intervenors." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999) (quoting H.R. Rep. No. 97-177, at 151 (1981)). In applying this standard, the Commission has noted that “to begin with, the subject of the contention must be appropriate for adjudication in an individual licensing proceeding,” and that “[n]o contention is to be admitted for adjudication if it attacks

applicable statutory requirements or Commission regulations, if it raises issues that are not applicable to the facility in question, or it raises a question that is not concrete or litigable.” *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 129 (2004). In addition to these substantive requirements a petitioner seeking to raise a contention in an adjudicatory hearing must meet the strict pleading standards found in § 2.309(f)(1). *Id.*

This regulation requires a petitioner to:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing . . . ; and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reason for the petitioner’s belief.

10 C.F.R. § 2.309(f)(1). Failure to comply with any of these requirements may be grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

II. NEC’s Proposed New or Amended Contention

NEC now contends that the analytical methods employed by Entergy’s

cumulative usage factor reanalysis “were flawed by numerous uncertainties, unjustified assumptions and insufficient conservatism, and produced unrealistically optimistic results.” See NEC Motion at 3. Therefore, NEC asserts, Entergy’s reanalysis does not demonstrate that reactor components subject to environmentally assisted metal fatigue will not fail due to metal fatigue during the license renewal period and NEC’s contention that Entergy’s plan to monitor and manage metal fatigue is inadequate remains valid. See *Id.*

III. NEC’s Proposed New or Amended Contention Is Admissible

The Staff does not object to admission of NEC’s proposed contention. NEC’s proposed contention meets the requirements of 10 C.F.R. § 2.309(f)(2) and ¶ 5 of the Board’s Initial Scheduling Order dated November 17, 2006. The Staff does not contest NEC’s representation that its proposed contention is based upon materially different information that was not previously available and that it was submitted in a timely fashion. See Motion at 1-2.

NEC’s Contention meets the requirements of § 2.309(f)(i) through (vi). The Staff does not contest that NEC’s contention provides a statement of the issue to be raised (Entergy’s CUF reanalysis does not demonstrate that the reactor components assessed will not fail) and a brief explanation of basis (the analytical techniques employed by Entergy’s reanalysis were “flawed by numerous uncertainties, unjustified assumptions and insufficient conservatism”). See Motion at 2-3. Nor does that Staff contest that NEC’s proposed contention is within the scope of the proceeding, is material to the findings the Staff must make, is supported by expert opinion, and demonstrates a genuine dispute with Entergy concerning the validity of Entergy’s CUF reanalysis.

CONCLUSION

For the reasons set forth above the Staff does not object to admission of NEC's proposed contention.

Respectfully submitted,

/RA/

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/RA/

Mary C. Baty
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of August, 2007

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO NEC MOTION TO FILE A TIMELY NEW OR AMENDED CONTENTION" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or, as indicated by an asterisk, by electronic mail, with copies by U.S. mail, first class, this 6th day of August, 2007.

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