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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*  
ENERGY NUCLEAR VERMONT YANKEE, LLC  
and ENERGY 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 HEARING,  
DEMONSTRATION OF STANDING, DISCUSSION OF SCOPE OF  
PROCEEDING AND CONTENTIONS**

**I. PRELIMINARY ISSUES.**

**A. Incorporation of DEP Arguments; Reasonable Contentions;  
Treatment Of A Pro se Litigant; The Panel's Authority.**

**1. Incorporation of DEP arguments.**

New England Coalition incorporates by reference herein, to the extent they do not contradict the arguments advanced below, the legal and factual argument of the Vermont Department of Public Service [DEP] concerning the defects, inadequacies and legal maneuvers of the attorneys for ENVY and the NRC Staff in their answers to DEP and, as herein incorporated, New England Coalition.

## 2. What constitutes a reasonable contention?

An adequate basis for a Contention, in contradistinction to the position of the attorneys for ENVY, does not require provision of the proponent's entire case. This Panel's preliminary assay of the sufficiency of the proffered contentions is neither a summary judgment hearing nor a hearing on the merits. Rather, the question properly before the Panel is whether New England Coalition's Contentions provide *some* evidence that an issue based upon ascertainable facts is in dispute with the applicant, and the disputed issue is material to the question of whether the Commission should approve the application as one properly complying with the Act and Commission's regulations.

The NRC regulations under Part 2 require that a contention be reasonably specific. This means that it should include reasonably specific articulation of its rationale. If ENVY believes that it can disprove New England Coalition's contentions as facially inadmissible, the proper course is for ENVY to move for summary disposition following admission of the contention(s), rather than asserting a lack of specific basis at the pleading stage. *Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-1 1 9A, 16 NRC 2069, 2070-2071 (1982). Moreover, when dealing with pro se petitioners, a Panel's finding regarding a contention's specificity should include consideration of the contention's bases. *See*

*Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) (Panel should consider both contention and stated bases when questions arise regarding admissibility arise); see also *General Public Utilities Nuclear Corp.*(Oyster Creek Nuclear Generating Station), LBP-96-23,44 NRC 143, 162 (1996).

This means that New England Coalition need only provide *some* evidence, even where that evidence points to deficiencies or absences in the application, that the application does not meet the requirements of the Act and/or Commission regulations. Any other position on the requirements for Contentions is inconsistent with the language of 10 CFR 2.309 in this regard. ENVY's attorneys' attempts to subvert the current requirements with strained interpretations of prior cases to make it appear that a higher standard applies are, in fact, the only real requests that this Panel change Commission regulations. As such, the Panel should ignore them as beyond the scope of the matter at hand. Further, some consideration should be given for the fact that at hearing the applicant carries the burden of proof on safety issues. *Duke Power Co.* (Catawba Nuclear station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983), citing, *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-283, 2 NRC 11, 17 (1975). Given that fact, the applicant should have to do more than provide the unsworn statements of its lawyers to attempt to refute

New England Coalitions experts' opinions on matters affecting occupational and public health and safety due to an improvident granting of the application at issue.

NEC is aware that when, as in this case, it is attempting to litigate unresolved safety issues, it must do more than offer a mere checklist of unresolved matters. For that reason, NEC has tried to show that the issues in its contentions have specific safety significance for VYNPS and that the EPU application does not satisfactorily resolve these issues. *See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-729, 17 NRC 814, 889 (1983), affirmed on other grounds, CLI-84-11, 20 NRC 1 (1984), citing Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-73 (1977).*

Where issues of radiological safety are concerned, as in NRC's proffered contentions, the Panel should decide those issues put in controversy by the parties. 10 CFR Part 2, Appendix A, § VIII(b). Moreover, the Panel also has an obligation to require evidence and resolution of any significant safety matter of which it becomes aware even if the parties do not put the issue in controversy. 10 CFR Part 2, Appendix A, § VIII(b); *see also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-1 38, 6 AEC 520, 524-25 (1973); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 362 (1973).*

### 3. Treatment of a pro se litigant.

There has been a goodly history of Atomic Safety and Licensing Board Panels behaving quite differently from the way the attorneys for Entergy, and, to an extent, NRC Staff attorneys, have behaved in this case toward New England Coalition's pro se representative. Although ENVY's attorneys are experienced and from a law firm that has a lengthy history of nuclear regulatory practice solely on behalf of the nuclear industry, they have subjected New England Coalition's pro se representative to unusual pressure to allow them to rewrite his contentions. ENVY's Answer at 10 *et seq.* ENVY's counsel apparently visited similar behavior upon the highly experienced nuclear regulatory attorney assisting in-house counsel to the Department of Public Service [DEP], provoking a response specifically decrying Entergy's counsel's tactics. DEP Reply at 1-3. NRC Staff counsel, to their credit, chose to wash their hands of Entergy's redactions.

New England Coalition agrees with, and has incorporated by reference herein above, the DEP's position on Entergy's attorneys employing rewriting contentions both to create straw-men to more easily dispose of than the substance of the actual contention and to ridicule New England Coalition's pro se representative for not letting them rewrite New England Coalition's contentions. Aside from the fact that it appears to New England Coalition's pro se

representative that allowing such an interaction prior to the filing of the contentions would mean that Entergy's lawyers were representing both Entergy and New England Coalition, it is also the case that careful scrutiny of NRC cases does not reveal such conduct as common practice in NRC or AEC proceedings. New England Coalition's pro se representative, disabled as he may be by lack of legal training and economic resources, was able to find only cases in which Atomic Safety and Licensing Board Panels rephrased or reworked contentions. *See, e.g., Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3) (2001); Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF-49) (2001); Yankee Atomic Electric Company (Yankee Nuclear Power Station) License Termination Plan LBP-99-14 (1999); Public Service Company Of New Hampshire, et al. (Seabrook Station, Units 1 and 2) (1987); Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant) ALAB-856, 24 N.R.C. 802 (1986); Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 1) LBP-83-66 (1983); Consumers Power Company (Midland Plant, Units 1 and 2) LBP-82-118 (1982); Consolidated Edison Company Of New York (Indian Point, Unit No. 2) and Power Authority Of The State Of New York (Indian Point, Unit No. 3) LBP-82-105 (1982); Public Service Company Of New Hampshire, et al. (Seabrook Station, Units 1 and 2) LBP-82-76 (1982);*

*Consumers Power Company* (Midland Plant, Units 1 and 2) LBP-82-63 (1982); *Louisiana Power & Light Company* (Waterford Steam Electric Station, Unit 3) LBP-81-48 (1981); *Consumers Power Company* (Big Rock Point Nuclear Plant) LBP-80-4 (1980). In all such instances, the intent of the Panel appeared to be doing justice by effectuating the purposes of the hearing requirement of the Atomic Energy Act and 10 CFR Part 2. As one Panel explained:

We address the matter of construing the language of contentions at some length because the language of the accepted Mitchell contention, as we explain in the discussion of it below, would not survive a strict construction. At the outset, we note that our task here is first, to construe appropriately the intent of the contention and its bases, then, once construed, to apply the high-threshold substantive requirements for pleading contentions.

In determining whether the fundamental purposes of contention pleading are satisfied, the Peach Bottom decision, *supra*, cited by the Staff, teaches that a reasonable construction of a proposed contention must be made. ALAB-216, 8 AEC at 21. Nothing in the amended rule overrules that longstanding concept.

In the case of a *pro se* petitioner whose effort to state a contention contained curable procedural defects, an Appeal Board permitted an opportunity to amend the petition and accepted an unartfully drafted contention. The fact that the petitioner was *pro se* was material. *Virginia Electric Power Company* (North Anna, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973).

Another Appeal Board observed that a petitioner to intervene in NRC proceedings is called upon to express "technical matters beyond the ordinary grist for the legal mill" and empathized "with petitioners who must of necessity proceed ... with counsel new to the field..." In such circumstances, licensing boards have "leeway in judging the sufficiency of intervention petitions." *Kansas City Gas and Electric Company* (Wolf Creek Unit No. 1), ALAB-279, 1 NRC 559, 576-77

(1975). We too note that practice before NRC adjudicators is often difficult and unusual. We do no discredit to counsel for the Mitchell Petitioners in observing that he is new to NRC practice and should not be held to the same drafting standards as experienced counsel.

The Appeal Board in *Houston Lighting and Power Company, et al.* (South Texas, Units 1 and 2), ALAB-549, 6 NRC 644 (1977), explained:

It is neither Congressional nor Commission policy to exclude parties because the niceties of pleading were imperfectly observed. Sounder practice is to decide issues on their merits, not to avoid them on technicalities.

*Id.* at 649. We also look to the new contention-pleading rule for guidance in construing imperfectly drafted contentions. The concept that a contention-pleader must now confront factual material, in this case the application for an amendment, with a showing that a genuine dispute exists, is analogous to opposing a motion for summary disposition. The Commission discussed such a relationship in the Supplementary Information to the rule, and explained that the quality of the evidentiary showing at the summary disposition stage is expected to be of a higher level than at the contention filing stage. 54 Fed.Reg. at 33171. It follows, then, that the contention-pleader is entitled to at least the same benefit of construction as a party opposing a summary disposition motion. Thus, as is the case under Rule 56 of the Rules of Civil Procedure, a pleading opposing summary judgment must be indulgently treated with inferences of fact drawn in the pleader's favor. 6 MOORE'S FEDERAL PRACTICE, ¶ 56.15[3] (2D ED 1990). Therefore, the Mitchells' pleading must be viewed in the light most favorable to accepting it. *See Poller v. Columbia Broadcasting System*, 368 U.S. 464, 473 (1962). *See also Public Service of New Hampshire, et al.* (Seabrook Station, Units 1 and 2), LBP-74-36, 8 AEC 877, 878-79 (1974).

As we discuss below, implicit in one aspect of the Licensees' opposition to Mitchell Contention 1 is that, if proven, the contention would not entitle the Petitioners to relief. The relevant portion of the new rule, codified at Subsection 2.714(d)(2)(ii), "was intended to parallel a standard for dismissing a claim under Rule 12(b)(6) of the

Federal Rules of Procedure.” Supplementary Information, 54 Fed.Reg. at 33171. Here again the Board finds guidance under the Federal Rules. In that the Petitioners here are in a position akin to defending against a motion under Rule 12(b)(6), they are entitled to a liberal construction of their contention, and their allegation should be construed most favorably to them. Dismissal under this rule is generally disfavored. 2 MOORE’S FEDERAL PRACTICE, ¶12.07[2] (2d ed 1990).

We are also mindful of the guidance of Rule 8(f) of the Rules of Civil Procedure: “Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.”

Finally, we note that the contention-pleading rule requires a “brief” explanation of the bases, and a “concise” statement of the allegations in support of the contention. Subsections 2.714(b)(2)(i) and (ii). Thus, if sufficient information is provided to demonstrate that a genuine dispute with the Licensees exists, we would not penalize Petitioners for being briefer and more concise than others might have been.

*In the Matter of Arizona Public Service Company, et al.* (Palo Verde Nuclear Station, Unit Nos. 1, 2 and 3) LBP-91-19 at 4-5 (May 9, 1991); *see also International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204,207-208 (2001) (petitioner acting pro se not always expected to meet same high standards to which the Commission holds entities represented by lawyers); *Wisconsin Public Service Corp.*, (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78,82 (1978) (Licensing Board Panels should be lenient for petitions drawn by pro se persons or inexperienced counsel); *see also, Kansas Gas & Electric Co.*, (Wolf Creek Generating Station), ALAB-279, 1 NRC 559, 576-577 (1975); *Public Service Electric and Gas Company* (Salem Nuclear Generating

Station, Units 1 and 2), ALAB-1 36, 6 AEC 487, 489 (1973) (pro se petitioner not held to standards of clarity and precision which lawyer might be expected to adhere), *cited in Houston Lighting and Power Co.* (Aliens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 646 (1980); *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 578 (1982).

New England Coalition's pro se representative does not want any special favors, just as level a playing field as the Panel can provide under the circumstances.

#### **4. The Panel's authority.**

New England Coalition also argues that, contra ENVY's position emphasizing the Commission's limited delegation of authority upon Licensing Board Panels, ENVY Answer to NEC at 4, 9-11, 48-51, in addition to the powers and authorities described in the Atomic Energy Act, 42 U.S.C. §§2231-2239, 2240-2242, the Administrative Procedure Act, 5 U.S.C. §551, 554, 556-559, and 10 CFR Part 2, an Atomic Safety and Licensing Board Panel must carry out the responsibilities of other federal statutes, such as the National Environmental Policy Act [NEPA]. Each Panel has a mandate, when necessary, to raise significant occupational and public health and safety issues on its own recognizance (*sua sponte*) in order to effectuate the purposes of the Atomic Energy Act.

A panel's use of this *sua sponte* prerogative to raise serious issues and, in fact, its responsibility to review all filings before it to determine if parties ignored significant health and safety issues, is extremely important when an issue may be excluded because it was not properly raised (in contradistinction to an issue rejected for lack of merit). *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-79, 16 NRC 1116,1119 (1982). Although the Commission has cautioned Panels to use *sua sponte* authority sparingly, Panels are free to raise issues on their own where significant environmental or safety issues exist in an operating license hearing. *Consolidated Edison Co. of N.Y., Inc.* (Indian Point Nuclear Plant, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976); *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516, 519 (1985). This may also be necessary in order for the Panel to carry out the requirements of the National Environmental Policy Act [NEPA]. A Panel's independent responsibilities to follow and enforce NEPA could necessitate the Panel's raising environmental issues that no party chose to raise. *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units A, 2A, 1 B & 2B), ALAB-380, 5 NRC 572 (1977). *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691, 697 (1981) (Licensing Board [Panel] can raise safety issue *sua sponte* where sufficient evidence of serious safety matter presented such that reasonable minds would inquire further; detailed

findings not required as that could trigger prejudice; [Panel] need only give reasons for addressing the issue).

While the incompleteness of an NRC Staff review alone--such as the independent safety assessment taking place in this case--is not sufficient to trigger a Panel's *sua sponte* review, a Panel can weigh the *pendency* and probable *efficacy* of such an NRC Staff "non-adjudicatory" review when deciding whether to exercise its *sua sponte* review authority. Compare *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516, 519 (1985), citing, *Comanche Peak*, *supra*, 14 NRC at 1114, and *Houston Lighting and Power Co.*, *supra*, 21 NRC at 519-523, citing, *Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982), reconsideration denied, CLI-83-4, 17 NRC 75 (1983), and *Cleveland Electric Illuminating Co.*, LBP-83-75, 18 NRC 1254 (1983).

Thus, rather than being hog-tied by Commission orders, the Panel in this case may--and should--do all it can to see that justice is done under the NRC regulations and applicable federal laws, that no party is unduly disadvantaged in presenting significant occupational and public health and safety issues due to inexperience, lack of legal training, or lack of resources, and that any significant occupational and public health and safety issues which, after careful review of the

materials filed in the case, the Panel perceives as requiring examination, will be fully vetted in the hearing process.

**B. Lack of Expert Declarations Submitted By ENVY or NRC Staff.**

It is significant that neither the attorneys for NRC Staff nor ENVY's attorneys offer any declaration of expert opinion refuting the bases provided by New England Coalition's experts. They do, however, at many points offer unsubstantiated, unsworn attorney testimony on the subjects in dispute. The Panel should carefully take note of this fact--which is also discussed by the DEP in its reply--when considering how much weight to give to the NRC Staff and ENVY answers at those points where they claim, without expert support or reference to the application and other documentation, that New England Coalition's contentions and expert declarations are incorrect.

**C. Request for Scope of the Proceeding; Hearing Should Conform to New England Coalition's Requests.**

Neither the Applicant nor the NRC Staff properly answered New England Coalition's request for hearing and discussion of the scope of the proceeding. Any objections of the NRC Staff and Applicant on this issue should, therefore, be deemed waived. The Panel should, therefore, base its decision on the request for hearing and scope of the proceeding solely upon the uncontroverted allegations of the New England Coalition.

## 1. Scope

The scope of this proceeding, regardless of how narrow ENVY's attorneys would have it, is quite broad. The Commission's notice of the proceeding does not limit the scope in any way other than to say:

The proposed amendment would change the VYNPS operating license to increase the maximum authorized power level from 1593 megawatts thermal (MWt) to 1921 MWt. This change represents an increase of approximately 20 percent above the current maximum authorized power level. The proposed amendment would also change the VYNPS technical specifications to provide for implementing uprated power operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Opportunity For A Hearing. It is significant that this notice mentions, in addition to the quite general subject matter of the hearing opportunity, that approval is contingent on the Commission making findings that the application complies with the Act and Commission regulations. Thus, it is reasonable to conclude that the scope of this proceeding is the adequacy, substance and consequences of the proposed Extended Power Uprate and the extent to which applicant ENVY's is in compliance with Commission regulations and the Act as is necessary to effectuate the proposed license amendment without jeopardizing occupation and public health and safety.

## **2. Need For A Subpart G-Type Hearing**

An additional consideration, given the broad scope of this proceeding, is the appropriate type of hearing to accommodate the subject matter. In this case, New England Coalition's hearing application discussed several factors that are important for the Panel's consideration of how best to exercise its discretion under the authority delegated by the Commission in this case to provide the interested public with an appropriate forum to adequately vet the subject matter. That this case is entirely novel to Commission adjudication is not an insignificant factor in choosing to provide the more formal structure and greater hearing rights provided by a Subpart G type proceeding. Moreover, beyond novelty, there is a highly technical subject matter in dispute that has become highly controversial in the communities surrounding VYNPS and throughout the state of Vermont.

On the uprate issue and related safety concerns, the NRC has heard from members of the Congressional delegations in Vermont, New Hampshire and Massachusetts. The head of the Vermont Public Service Board and the Commissioner of the Vermont Department of Public Service have also voiced concerns. The State of Vermont has requested a hearing and permission to intervene in this proceeding, raising significant contentions of its own. New England Coalition, unlike the State of Vermont, provides representation in the proceeding for its interests and those of representative members from three states:

Vermont, New Hampshire and Massachusetts. Thus, the public interest in this matter is extremely high and one of great urgency.

There is, finally, evidence New England Coalition placed before the Panel on a series of incidents in which ENVY's potential witnesses in this proceeding were shown to be of questionable veracity under oath or, in one instance, made to NRC staff a direct, material misrepresentation upon which that NRC staff person relied in making statements to the public on a matter of grave health and safety concern. New England Coalition Hearing Request at 7-9. Surely such incidents should be carefully considered along with the other factors mentioned above in arriving at the conclusion that this proceeding needs to be a more formal one under Subpart G. False statements could represent a lack of management character sufficient to deny a license, so long as the irresponsible individuals retained any control of the project. *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1297 (1984), *citing*, *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-84-13, 19 NRC 659, 674-75 (1984), *and* *Consumers Power Co.* (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69,70 (1983).

All of the factors the Commission has acknowledged as significant in utilizing Subpart G are in play here, and all parties and the public will benefit from the potential reassurance provided by a higher level of due process in this matter.

**D. New England Coalition Has Organizational Standing In This Matter.**

All of the parties have conceded New England Coalition's representational and organizational standing to proceed as a party in this matter. New England Coalition rests on the declarations and argument provided in support of its standing in its initial submission.

**II. New England Coalition's Contentions Are Admissible**

Contrary to the Applicant's assertions, New England Coalition's contentions meet all requirements for contentions as set forth in the Commission's Notice Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing, as issued June 25, 2004 (hereinafter "Notice of Opportunity for a Hearing"). The foregoing statement is important to determining acceptance of New England Coalition's contentions because in those instances where the Applicant and NRC Staff have failed to take exception or claim that any of New England Coalition's contentions fail to meet any of the **individual** requirements listed in the Notice of Opportunity for a Hearing, then, insofar as that **individual** requirement is concerned, the contention is uncontested and must stand.

The individual requirements, as contained in the Notice of Opportunity for a Hearing are enumerated and titled (for purposes of discussion) below:

1. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted (hereinafter titled **“Issues of Law or Fact”**).
2. The petitioner/requester shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing (hereinafter titled **“Bases”**).
3. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion (hereinafter titled **“Sources and Documents”**).
4. The petition must contain sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact (hereinafter titled **“Dispute”**).
5. Contentions shall be limited to matters within the scope of the amendment under consideration (hereinafter titled **“Scope”**).
6. The contention must be one, which, if proven, would entitle the petitioner/requester to relief (hereinafter titled **“Relief”**).

**Replies and Discussions of Individual Contentions**  
**And Contention Requirements**

New England Coalition's Replies to the Answers of the Applicant and NRC staff on individual contentions is made more difficult than it needs to be in that these parties do not address the contention requirements in orderly, coherent fashion. Where New England Coalition cannot find specific language in the Replies to address particular requirements, New England Coalition must, perforce, assume that the contention meets that particular requirement.

**Contention One-** It is New England Coalition's understanding that Entergy has undertaken a fleet effort to transition quality assurance and quality control from freestanding programs into the various departments such as, engineering, maintenance, in-service inspection, and so forth. This is troubling in that a manager responsible for cost cutting may then also be responsible for quality control. However, it appears that Entergy is taking these changes through appropriate channels, except for Vermont Yankee. New England Coalition finds no historic record of an application to NRC for this purpose.

Yet, an internal Entergy memorandum dated April 15, 2004 [Exhibit F] shows on page two, that at Vermont Yankee, "There is no QC inspection group to transition." Whereas the extended power uprate launches from the assumption that the base plant has a minimum number of defects, there is no assurance of that without stand alone, or at least NRC approved and integrated, QA/QC programs.

### Issue of Law or Fact

**Applicant** – The applicant complains that 10 CFR §50.54 refers only to “quality assurance program description and not quality control functions. “ This is incorrect.

As 10 CFR § 50.54, “Conditions of Licenses” states, in pertinent part:

Each nuclear power plant or fuel reprocessing plant licensee subject to the quality assurance criteria in Appendix B of this part shall *implement*, pursuant to §50.34 of this part, the quality assurance program described or referenced in the Safety Analysis Report, including changes to that report.

*Id.* at 50.54(a)(1).

New England Coalition has diligently searched the publicly available documents, but can find no record of an NRC review of an amendment or exemption detailing Vermont Yankee’s transition from a stand-alone QA/QC program to a “sub-department” QA/QC. New England Coalition contends that delegation of QC/QA to members of any department (e.g., Engineering, Maintenance, In-service Inspection, etc.), which would ordinarily be audited by an independent QA/QC organization, undermines the integrity, objectivity, and detachment from cost-consideration of QA/QC, and therefore undermines its effectiveness. Further a reduction in independence is a reduction in commitment--independence being a positive quality of a QA/QC program. This quality of independence, for which the Entergy Memorandum submitted as New England

Coalition Exhibit F provides an epitaph, and its purpose is described in 10 CFR

**Appendix B under (I) Organization:**

The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. Such persons or organizations shall report to a management level such that this required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

*Id.*

The applicant further states that this contention is a challenge to NRC regulations and that it calls for sanctions (denial of EPU license amendment) beyond the requirements of 10 CFR §50.54. It is not a challenge to any NRC regulations; does not point out error or insufficiency in any regulation. Nor does it call for change in any regulation. The Contention does not call for denial of the application. It does point out that without NRC review of the QC/QA program applied to extended power uprate application and implementation activities, NRC cannot credibly place reliance on the information in the application. Nor has NRC reasonable assurance that modifications and other work done in preparation for the proposed EPU comply with current QC/QA standards. NRC Staff at 12-16.

The NRC Staff is correct to interpret New England Coalition's assertion to mean (in part) that the Entergy QA program is in violation of 10 CFR 50.54. More directly, New England Coalition's Contention conveys, in plain language, that the

Applicant's QA/QC program has been altered, and in fact, weakened, without NRC review. Insofar as the NRC's review of the application relies on the assumption that the Applicant has an approved program and/or one compliant with regulation, that review is flawed and cannot in turn provide legitimate assurance of public safety. (Please see New England Coalition reply to Applicant on this subject above.)

### Bases

**Applicant-** Applicant's Answer has it that New England Coalition provides no factual basis, but Applicant says this supporting its assertion with argument as to New England Coalition's interpretation of the document New England Coalition provided. This might fly were the Applicant's arguments overwhelming. They are not. Rather, they are circumspect. New England Coalition has studied the Entergy Memorandum at length and subjected it to the review of experts. The document was provided by a nuclear industry whistleblower, who expressed concern that QA/QC would be greatly compromised by the Entergy fleet transition.

The applicant's offer that New England Coalition's basis is not "factual" is based on not on supporting documentation or law, but solely on the applicant's reading and interpretation of the memorandum. The applicant thus brazenly offers to try the facts before arguments and evidence are presented. All that the applicant makes clear is that there exists a material dispute between New England Coalition

and the Applicant about what the memorandum means to an essential element of EPU safety analysis, EPU-related modifications, aging management, and so on. New England Coalition made plain its bases for contending that the Vermont Yankee QA/QC program had at some point in the plant's history lapsed into a less independent reviewer, one less in keeping with that described in the opening sentence of 10CFR §50.54 and that described in Appendix B, referenced by §50.54).

**NRC Staff** – NRC Staff argues that New England Coalition does not offer “sufficient” basis for its contention, but nowhere cites law to identify a standard or measure of “sufficiency”. Moreover, in its Answer, NRC staff has now pointed out that the “Entergy fleet transition” referenced in the Memorandum that New England Coalition provided, is confirmed by the Applicant:

The QA program used for the EPU safety analysis oversight was originally the Vermont Yankee Operational Quality Assurance Manual (VOQAM). As part of an Entergy fleet wide transition, the governing QA program is now the Entergy Quality Assurance Program Manual (QAPM). For VYNPS, this transition occurred in June 2003, and the VOQAM was revised to reference the comparable Entergy QAPM sections that establish the equivalent level of control. The Operational Quality Assurance Program described in the Entergy QAPM is now in effect at VYNPS, and is applicable to all work performed on safety-related structures, systems and components.

Supplement 8 of the Application (ADAMS package number ML042080462), Attachment 2 at 187.

New England Coalition's case is bolstered by the fact that the excerpt provided by the staff plainly indicates that Entergy Nuclear/Vermont Yankee changed quality assurance programs during the EPU safety analysis. The old program, without a "QC group to transition" and the "Maintenance Group already performing peer inspection" was in place, according to Supplement 8, until "June 2003." However the Entergy Memorandum, referenced by New England Coalition and dated April 15, 2004, ten months later, still refers to ongoing transition and the continuing lack of a stand-alone QC group.

The question begged is, "Did Entergy, by omission, make another material misrepresentation to NRC and to EPU reviewers?" Surely, the questionable and shifting nature of the Vermont Yankee QC program and the questionable nature of the Applicant's response to the NRC's Request for Additional Information in Supplement 8 is grist for the hearing process and apropos the full inquiry inherent in a subpart G hearing.

New England Coalition would have provided this selection from the Entergy Application Supplement along with its August 30, 2004 filing of this contention but did not because the subject document was unavailable at the time this contention was prepared and, though dated July 2, 2004, was not made publicly available until July 28, 2004.

## **Sources and Documents**

**Applicant** - The applicant complains that the “sole basis” for New England Coalition’s Contention One is a single document.

**NRC Staff** – NRC staff complains that in Contention One New England Coalition does not reference the Application.

New England Coalition has offered not just any document, but New England Coalition has offered an internal, not public and most likely candid, Entergy memorandum. Staff has now provided corroborating documentation of which New England Coalition was previously unaware. New England Coalition did not directly reference the Application because to the best of New England Coalition’s knowledge QA/QC is not, but for Supplement 8, mentioned in the application. When hundreds of Vermont residents called for an Independent Safety Assessment as prerequisite to uprate, NRC spokesmen let it be known that NRC had confidence in the as-found condition of the plant and that the EPU review would, for the most part, not be reaching back into a plant that NRC had assurance was sound. This assumption is not supported by a QA/QC program of demonstrably weakened independence, and especially one where changes with the potential to reduce the program’s effectiveness have, over time, gone unreported to NRC.

## **Dispute**

**Applicant-NRC Staff-** Both applicant and NRC argue that there is not no genuine dispute with the applicant on a material issue of law or fact. Both take the opportunity to argue with New England Coalition's plain reading of the Entergy Memorandum. The Applicant's argument regarding the interpretation of the Memorandum, though unsupported by evidence or citation of law, is lengthy and detailed and rises to an effective demonstration of a genuine dispute on the facts. It is a dispute, which is material, as New England Coalition has shown under the preceding discussion of Contention One.

## **Scope**

**Applicant –** The Applicant argues “New England Coalition Contention1 is inadmissible because New England Coalition has failed to identify how an alleged programmatic non-compliance with the reporting requirements of 10 CFR §50.54 has any relevance to the proposed EPU or is within the scope of an EPU proceeding.” This is simply untrue. “Reporting requirements” and much more of the relevance of 10CFR §50.54, as well as Appendix B, are discussed above in the section titled, **Issues of Law or Fact**. In conclusion of Contention One, New England Coalition states, “Whereas the extended power uprate launches from the assumption that the base plant has a minimum number of defects, there is no assurance of that without stand alone, or at least NRC approved and integrated,

QA/QC programs.” Poorly stated though this may be, the portent and relevance to assurance of public health and safety in this statement needs no subtle discernment. An average or reasonable person on reading New England Coalition’s conclusion and gauging the volume of calculations and analyses contained in the EPU application would understand in a trice that a professional, dedicated, independent QA/QC program is prerequisite to assurance of public health and safety in evaluating the EPU application.

**NRC Staff – On Contention One, NRC Staff is silent with regard to scope.**

### **Relief**

**Applicant-** The Applicant answers that “to extent that New England Coalition is asserting that an unreported change in the description of the quality assurance program of a license applicant should result in the rejection of a license amendment request, the contention is an improper challenge to the Commission regulations. 10CFR §50.54 does not require such a sanction and New England Coalition has identified no other applicable rule that would impose it. New England Coalition, therefore, is asking that Entergy be subjected to requirements that go beyond what the Commission regulations provide.”

This is one of those arguments that should not have been born.

First, In its Request for a Hearing, New England Coalition states that it seeks remedies through the hearing process and that it is within NRC’s authority to

provide such relief upon hearing and considering evidence in the form of denial or modification of the proposed license amendment. Second, 10CFR §50.54 (e) and (F) do not appear to exclude, “revocation, suspension, modification, or amendment for cause”

However, New England Coalitions request for a hearing on Contention One is well within the scope of this proceeding. The scope is set out in the Commission’s hearing notice in pertinent part as follows:

The proposed amendment would change the VYNPS operating license to increase the maximum authorized power level from 1593 megawatts thermal (MWt) to 1912 MWt. This change represents an increase of approximately 20 percent above the current maximum authorized power level. The proposed amendment would also change the VYNPS technical specifications to provide for implementing uprated power operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s regulations.

Notice of Consideration and Issuance of Amendment to Facility Operating License and Opportunity for a Hearing (June 25, 2004). Where the Applicant has specified a shift in QA/QC programs during the iteration of the license amendment application and where in as much as NRC depends upon the QA/QC program to confirm the accuracy of analysis and the physical condition of the plant in seeking reasonable assurance of public health and safety, the quality of the program and information regarding the program is within the scope of this proceeding.

**NRC Staff** – In its answer regarding Contention One, NRC Staff makes no representation as to scope.

## **Contention Two**

### **CONTENTIONS ON PREMISED ON DECLARATIONS OF EXPERTS**

New England Coalition's experts provided support for the following contentions in their Declarations [Exhibits D &E]. Contentions Two through Seven are integrally linked with the bases as provided in the expert testimony of witnesses Arnold Gundersen and Paul Blanch and they should be read in that context.

**Contention Two** - The license amendment should not be approved at this time because Entergy has failed to address the root cause of Main Steam Line Isolation Valve ("MSIV") Leakage but instead proposes to shift the problem downstream to catch a higher allowable leakage in the condenser. Entergy's fails to pursue the root cause of a negative component performance trend that could ultimately yield failure of the MSIV safety function. MSIVs are a critical line of defense during a reactor accident.

### **Basis for Contention 2**

New England Coalition relies upon the Declaration of Arnold Gundersen under Main Steam Line Isolation Valves [EXHIBIT D] and further testimony to be

provided at hearing based upon his professional judgments and further study and review of the license amendment documents and related materials.

**Issue of Law or Fact**

**Applicant** – The Applicant challenges the factual basis of this contention without reference to a countervailing document or expert testimony. Thus the Applicant’s Answer consists of an attorney’s critique of the professional observations and technical evaluations of nuclear engineer and qualified technical expert, Arnold Gundersen.

Mr. Gundersen’s factual support for this contention is referenced under Basis for Contention 2 and was submitted in New England Coalition Exhibit D, which contains Mr. Gundersen’s professional resume’ and declaration.

**NRC Staff** – NRC Staff counsel likewise attempts to challenge the technical correctness of Mr. Gundersen’s Declaration in support of this contention. This is not the time nor place to argue the merits of Mr. Gundersen’s evaluations. What New England Coalition presents is, in accord with the requirements of the Notice of Opportunity and 10CFR §2.309, “an issue of fact to be raised or controverted.” This Contention makes plain the assertion, based on professional evaluation of an Entergy document, that Main Steam Isolation Valve performance will increasingly worsen under uprate conditions; even as valve performance is now, according to the document cited, in an adverse trend.

## **Bases**

**Applicant** – The applicant is concerned that Mr. Gundersen appears to rely on a single Entergy document and that Mr. Gundersen relies on his professional judgment rather than more documents in order to advance the view that MSIV leakage, damage, and malfunction will likely increase under uprate, and that under uprate accident conditions, the leakage of radioactive materials is likely to exceed Federal limits.

The Applicant points out, correctly, that there are very few documents on MSIV performance or condition available in this docket. The applicant points out, correctly, that much of this information was incorporated in another Entergy Nuclear Vermont Yankee license amendment proceeding, that for Alternate Source Term (AST). This is irrelevant however to the issue of the mechanical performance and reliability of the MSIVs under uprate conditions which, though understated, is easily discerned as part of the main thrust of Contention Two. AST has nothing to do with it, except for the fact that AST is a means of justifying higher release limits. New England Coalition is making no representation here with respect to higher release limits that are within the scope of AST.

**NRC Staff** – NRC Staff's answer is almost identical to that of the Applicant and should be dismissed for the same reason: It simply does not apply. The Entergy

Report, detailing Adverse Trends in MSIVs provides a factual basis together with Mr. Gundersen's professional assessment for Contention Two.

Mr. Gundersen and New England Coalition do not agree with some of the assumptions and conclusions in the report that is cited. That fact does not make their factual-based argument worth less consideration in trying to assure the health and safety of the public.

### **Sources and Documents**

**Applicant and NRC Staff** – Both answering parties New England Coalition's reliance on a single document and a single expert. Neither offers a single document or a single expert to rebut. The technical arguments of both answering parties are unaccompanied by admissible support and should be thrown out.

### **Dispute**

#### **Applicant-**

**NRC Staff** – NRC Staff claims that New England Coalition does not identify a factual dispute with the Applicant. This is incorrect. New England Coalition draws the line between the adverse trend identified in the subject report and the potential for increased damage and leakage under uprate conditions. NRC staff unfairly quotes out of context in order to hide a factual dispute. Staff says, "*The proposed contention itself is stated in terms of the Applicant's asserted failure "to address the root cause of MSIV leakage," which is nowhere mentioned in the proposed*

*EPU amendment.*” What New England Coalition also actually said in its contention was, “ Entergy’s (sic) fails to pursue the root cause of a negative component performance trend that could ultimately yield failure of the MSIV safety functions. MSIVs are a critical line of defense during a reactor accident.”

### **Scope**

**Applicant and NRC Staff** – Both answering parties insist that the issue of an adverse trend in MSIVs should have been taken up with comments or a petition for a hearing in the Alternate Source Term license amendment application. New England Coalition is not speaking to source term. The Contention and supporting declaration make plain that the concern is that the MSIVs won’t be able to stand up to uprate conditions and uprate accident conditions and it may be deduced with elemental effort that New England Coalition is concerned with large leaks, beyond Alternate Source Term bounds under certain accident conditions; all aggravated by EPU.

### **Relief**

**Applicant and NRC Staff** – The answering parties are silent as to the question of relief. New England Coalition has identified remedies and a claim for relief at page 5 of its Request for a Hearing.

**Contention Three** - The license amendment should not be approved at this time or until it is agreed by all parties that Large Transient Testing will be a prerequisite to Extended Power Uprate per the staff position on Duane Arnold Energy Center.

Without adequate characterization, there can be no assurance that the license amendment will adequately safeguard public health by demonstrating compliance with 10 C.F.R. Part 20 standards.

**Basis for Contention 3**

New England Coalition relies upon the Declaration of Arnold Gundersen under Exception to Large Transient Testing [EXHIBIT D] and further testimony to be provided at hearing based upon his professional judgments and study and review of the EPU License Amendment documents and related materials.

**Issue of Law or Fact**

**Applicant-** Applicant claims that NEC has failed to identify a factual basis. It is the applicant that has failed to provide any documents or experts in rebuttal to New England Coalition's assertions of fact are based on Entergy's own public document refusing to perform Large Transient Testing and Mr. Gundersen's analysis of that document in the light of his familiarity with Vermont Yankee, boiling water reactors, and current nuclear industry initiatives.

**NRC Staff –** NRC Staff once again trades words in quotes to better advantage its argument. Staff chooses reliance on an NRC staff "decision" in Mr. Gundersen's

declaration so that it can be knocked out. The Contention refers to a NRC Staff "Position." The difference is enormous. The issue of fact is that without real time full scale testing, there is no way to have even relative certainty that systems will function when called upon in an emergency. This is why planes are still test-flown before boarding passengers.

### **Bases**

**Applicant-** The applicant denigrates Mr. Gundersen's professional assessment of the need for large transient testing but brings no documents or experts witnesses rather relying on counsel's "testimony" Mr. Gundersen, of course, highlights those portions of the document(s) that address New England Coalition's concerns, but, where possible, documents in the entirety are provided.

**NRC Staff-** The Staff provides no documents or experts to refute the testimony of Mr. Gundersen.

### **Sources and Documents**

Contrary to the inferences of Applicant and NRC Staff, New England Coalition has accurately and fairly referenced and relied upon Entergy/Vermont Yankee documentation, namely BVY 03-08/Attachment Justification for Exception to Large Transient Testing. Much is made of the fact that New England Coalition's Expert disagrees with the conclusions in this document. Mr. Gundersen's opinion is based not a casual reading of this document but on a long-term, careful study of

the entire uprate application; thus his assessment is well based in fact, training and experience. It awaits peer review in the hearing process.

### **Dispute**

**Applicant and NRC Staff** – The Applicant and NRC staff argue that the contention does not controvert the application and must therefore be rejected. To the contrary, the Contention flatly and directly controverts the Applicant’s position on large transient testing following uprate modifications. Contentions are not briefs nor are they detailed direct testimony founded on full access to the relevant documents. The issue of large transient testing would not arise, were it not for the EPU. Simply, New England Coalition’s position is that if it is not a part of the Application, it should be. Mr. Gundersen provides more than adequate rationale for an argument in support of large transient testing and dispute with the Applicant.

### **Scope**

**Applicant and NRC Staff-** Apparently, NRC staff and the Applicant agree that this Contention is within the scope of the proceeding.

**Relief - Applicant and NRC Staff** – The answering parties are silent as to the question of relief. New England Coalition has identified remedies and a claim for relief at page 5 of its Request for a Hearing.

**Contention Four** - 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.

**Basis for Contention 4:**

New England Coalition relies upon the Declaration of Arnold Gundersen under Ultimate Heat Sink [EXHIBIT D] and further testimony to be provided at hearing based upon his professional judgments and study and review of the amendment application documents and related materials.

**NRC Staff does not object to the admission of this Contention.**

**Entergy proposes rewording this Contention; then proceeds to knock down their construct.**

**Issue of Law or Fact** – Entergy has identified the need for cooling tower and alternate cooling tower cell (safety-related) structural analysis.

**Bases** - The Applicant will run more and hotter water through these towers. Non-safety towers will be equipped with larger fans. Mr. Gundersen has made detailed review of the relevant documents and data. Basis abounds.

**Sources and Documents** – Mr. Gundersen cites several Vermont Yankee documents and contractor studies in his declaration in support of Contention-Four. Mr. Gundersen did his master's thesis on cooling tower performance and, as part of

a Vermont Public Service Board proceeding, has studied the Vermont Yankee Cooling Towers since April 2003.

**Dispute** – A material dispute has been delineated, first, Mr. Gundersen in his declaration; then by counsel for the applicant who, without experts or documents, attempts to refute Mr. Gundersen and, though he fails to refute, makes clear there is a dispute.

**Scope**

**Applicant-** Applicant asserts that cooling tower structural analysis is not within the scope of this proceeding. Mr. Gundersen makes plain that the Alternate Cooling System (dedicated cooling tower cells) will bear extra burden under uprate. Plainly, they are within the scope of this proceeding.

**Relief - Applicant and NRC Staff** – The answering parties are silent as to the question of relief. New England Coalition has identified remedies and a claim for relief at page 5 of its Request for a Hearing.

**Contention Five** - The license amendment should not be approved at this time because Entergy has failed to maintain documentation and records, as required under 10 CFR 54 and elsewhere, and adequate to determine plant condition and design basis conformance as a foundation on which to build uprate analysis.

**Basis for Contention 5:**

New England Coalition also relies upon the Declaration of Arnold Gundersen under Documentation and Record Retention Problems [EXHIBIT D] and further testimony to be provided at hearing based upon his professional judgments and study and review of the LTP documents and related materials.

**Issue of Law or Fact** - Contrary to the assertions of the applicant, New England Coalition sets out specific examples of missing documentation.

**Bases** – Here again specific examples are cited. NRC cannot be assured of safe plant operation without clarity, certainty, and accessibility in plant documentation. This condition is exacerbated by the increased operational parameters of EPU.

**Applicant-Sources and Documents** – Applicant disparages the examples that New England Coalition has offered. They are nonetheless all examples of documentation that is required by regulation to be kept in good order. And they are examples of missing information or material.

**Dispute** - The Applicant asserts that documentation and record keeping is in order and provides a firm informational base on which to launch uprate. New England Coalition has brought examples and the opinion of expert witness Arnold Gundersen to refute that claim. A litigable material dispute exists.

**Scope** Contention falls within the scope of this proceeding as delineated in the Notice of Opportunity for a Hearing, as referenced earlier in this Reply.

**Relief** - Applicant and NRC Staff – The answering parties are silent as to the question of relief. New England Coalition has identified remedies and a claim for relief at page 5 of its Request for a Hearing.

**Contention Six** - The proposed license amendment fails to preserve defense-in-depth. By placing dependence on maintaining containment pressure to secure Residual Heat Removal and Core Spray Pump suction under accident conditions, Entergy ignores single failure criteria and violates basic tenets of reactor safety. This must not be permitted as it deprives the public of protections afforded by defense-in-depth,

**Basis for Contention 6** New England Coalition relies upon the Declaration of Paul M. Blanch, under Failure to Preserve Defense in Depth [EXHIBIT E] and further testimony to be provided at hearing based upon his professional judgments and study and review of the LTP documents and related materials.

**Issue of Law or Fact**

Contrary to the assertions of the Applicant and NRC Staff, New England Coalition raises an issue of fact, also raised by the State of Vermont in its Petition for Leave to Intervene in this proceeding. Mr. Blanch is a thirty-five year veteran of the nuclear industry, who has spent much of the last year studying this issue with a particular focus on Vermont Yankee.

**Bases**

Mr. Blanch cites numerous documents and relies as well on his extensive training and experience to form a basis for his assertion regarding the loss of single-failure criteria. The Applicant can show only one example of a single failure criterion examined in the EPU Application (Supplement 8).

**Sources and Documents**

As stated above Mr. Blanch references numerous documents, both those of the Applicant and those of NRC.

**Dispute-** A genuine material dispute exists with the applicant who now asserts that the analysis of the failure of a single heat exchanger satisfies the single failure criteria.

**Scope** – This contention is within the scope of the proceeding as the applicant has attempted to at least partially address some aspects of the material issues raised by the contention within the application.

**Relief - Applicant and NRC Staff** – The answering parties are silent as to the question of relief. New England Coalition has identified remedies and a claim for relief at page 5 of its Request for a Hearing.

**Contention Seven** - Entergy has failed to comply with the requirements of 10 CFR 50.71 (E), Maintenance of Records and Making of Reports. Observance of the rule is essential to provide reviewers with accurate information about plant status.

Records provide a measure upon which future activity can be predicated while maintaining safety. Without accurate and complete records, no meaningful review of the proposed uprate in its entirety can take place.

**Issue of Law or Fact**

Contrary to the assertions of the Applicant and NRC Staff, New England Coalition raises an issue of fact and law. Mr. Blanch is a thirty-five year veteran of the nuclear industry, who has spent much of the last year studying this issue with a particular focus on Vermont Yankee.

**Bases**

Mr. Blanch cites numerous documents and relies as well on his extensive training and experience to form a basis for his assertion regarding the loss of single-failure criteria.

**Sources and Documents** – As stated above Mr. Blanch references numerous documents, both those of the Applicant and those of NRC, but in particular points to the failure to orderly and timely update and maintain such vital plant documentation as the Final Safety Analysis Report.

**Dispute-** A genuine material dispute exists with the applicant who now asserts that the plant's documentation is in order.

**Scope** – This contention is within the scope of the proceeding as the applicant has attempted to at least partially address some aspects of the material issues raised by the contention within the application.

**Relief - Applicant and NRC Staff** – The answering parties are silent as to the question of relief. New England Coalition has identified remedies and a claim for relief at page 5 of its Request for a Hearing.

**CONCLUSION**

For the reasons set forth herein above and in New England Coalition's "Request for Hearing, Demonstration of Standing, Discussion of Scope of Proceeding and Contention" and the Exhibits attached thereto, New England Coalition renews its request for a hearing on its contentions in this matter.

Respectfully submitted:

NEW ENGLAND COALITION  
BY:   
Raymond G. Shadis, pro se representative  
P.O. Box 98  
(Express delivery: Shadis Road)  
Edgecomb, ME 05446  
(207) 882-7801  
shadis@prexar.com

cc: Service List

October 11, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

ENTERGY NUCLEAR VERMONT  
YANKEE L.L.C. and ENTERGY  
NUCLEAR OPERATIONS, INC.

Docket No. 50-271

ASLBP 04-832-02-OLA

(Vermont Yankee Nuclear Power Station)

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**DECLARATION OF PAUL M. BLANCH  
SUPPORTING NEW ENGLAND COALITION'S REPLY**

I, Paul M. Blanch, declare as follows:

1. My name is Paul Blanch. I am an electrical engineer with more than 35 years of experience in the nuclear industry. I am an independent energy consultant. A copy of my curriculum vitae was attached as Exhibit E-A to my Declaration submitted in support of New England Coalition's Contentions in this case and it remains true and correct. As I stated in my Declaration and supporting Exhibit, I am, and remain, a qualified expert on matters relating to the safety of operation of nuclear power plants who is familiar with the license amendment application for an Extended Power Uprate that has been submitted by Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy") for the Vermont Yankee Nuclear Power Station. ("Vermont Yankee").
2. I hereby reallege the statements in my previous declaration in this matter and set forth comments supporting the New England Coalition's Reply to the NRC Staff Answers. In particular, my comments below address those portions of the NRC Staff Answer criticizing aspects and bases of the contentions that I supported with my expertise and expert opinion on issues I believe are relevant to the matter before this Atomic Safety and Licensing Board Panel. These comments are intended to be a part of New England Coalition's Reply.
3. On or about page 21, NRC Staff's Answer to New England Coalition's Contentions, it is stated that:

**NEW ENGLAND COALITION'S  
REPLY EXHIBIT 'A'**

This portion of the contention is inadmissible for failure to dispute the Application. In Supplement 8 to the Application, in response to RAI SPSB-C-10, Entergy performed a sensitivity case, assuming a single failure of a residual heat removal ("RHR") heat exchanger. NEC has not challenged this assessment in any way, nor does it provide any basis for an argument that an assessment involving its stated single failures would be more conservative than the analysis done by the applicant. Because NEC does not dispute the pertinent portion of the application addressing the single failure issue, this basis is insufficient to support admission of the contention.

*Id.* It is my professional opinion that this statement is incorrect. As NRC Staff--and its counsel--should be aware, The General Design Criteria [CDG] are very clear in that all single failures must be considered. In their Answer, Staff (or its counsel) concluded that because Entergy analyzed one single failure, that is sufficient.

4. The GDC are quite precise and clear on this matter:

*Criterion 34--Residual heat removal.* A system to remove residual heat shall be provided. The system safety function shall be to transfer fission product decay heat and other residual heat from the reactor core at a rate such that specified acceptable fuel design limits and the design conditions of the reactor coolant pressure boundary are not exceeded.

Suitable redundancy in components and features, and suitable interconnections, leak detection, and isolation capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure.

*Criterion 35--Emergency core cooling.* A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented and (2) clad metal-water reaction is limited to negligible amounts.

Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure.

*Id.* at 10 C.F.R. Part 50, Appendix 'A', Criterion 34 and 35 (emphasis added).

The requirements of the GDC are part of the NRC regulations with which Entergy must comply both in the operation of Vermont Yankee Nuclear Power Station and in the material representations made to the NRC in the license amendment application at issue in this case. In my professional opinion, the intent of the rules are plain. Taken in conjunction with the General Design Criteria cited above, in my professional opinion,

Entergy must provide more than a single calculation, not only to be certain that the requirements of the NRC's rules and regulations have been met on a pro forma basis, but also to comply with any "conservative" engineering practice.

5. Finally, examining the UFSAR for the Vermont Yankee Nuclear Power Station, one finds the following statement concerning Entergy's compliance regarding compliance with design criteria:

Information regarding application of the General Design Criteria can be found elsewhere in the UFSAR and in other design and licensing basis documents.

*Id.* at Appendix F. My review of the UFSAR and all other design and licensing basis documents failed to uncover the referenced information.

6. In my professional opinion this absence of the information referenced in the UFSAR indicates that the documents supporting the application at issue in this case and, perhaps the UFSAR itself, contain inaccurate statements and are, at a minimum, a possible violation of the requirements in NRC regulations at 10 CFR 50.9, "Completeness and accuracy of information" and 10 CFR 50.71 et seq.
7. Having completely reviewed the NRC Staff Answer to New England Coalition's Contentions in this case, it is my considered professional opinion that the declaration I provided in support of the Contentions remains correct and the above provided information should be of common and working knowledge to anyone connected with the application, use, and enforcement of NRC rules and regulations. Information, my opinion is a safety tool. It must be accurate, complete, and available. If it is not, occupational and public health and safety cannot be assured.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 11, 2004.



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Paul M. Blanch

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing "New England Coalition's Reply to Applicant and NRC Staff Answers to New England Coalition's Request For Hearing, Demonstration of Standing, Discussion of Scope of Proceeding And Contentions " and Declaration in Support of New England Coalition's Reply, are served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, this 12<sup>th</sup> Day of October, 2004. Where indicated by an asterisk persons where served the Reply by electronic mail on October 11, 2004 and the Declaration by electronic mail on October 12, 2004.

\*Administrative Judge  
Alex S. Karlin, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
[ask2@nrc.gov](mailto:ask2@nrc.gov)

\*Administrative Judge  
Dr. Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
[ajb5@nrc.gov](mailto:ajb5@nrc.gov)

\*Administrative Judge  
Lester S. Rubenstein  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
[lesrrr@msn.com](mailto:lesrrr@msn.com)

Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**\*Secretary**  
Att'n: Rulemakings and Adjudications Staff  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
secy@nrc.gov, hearingdocket@nrc.gov

**\*Sarah Hoffman**  
Special Counsel  
Department of Public Service  
112 State Street – Drawer 20  
Montpelier, VT 05620-2601  
Sarah.Hofmann@state.vt.us

**\*Anthony Z. Roisman**  
National Legal Scholars Law Firm  
84 East Thetford Rd.  
Lyme, NH 03768  
aroisman@valley.net



**Raymond Shadis**  
New England Coalition  
Post Office Box 98,  
Edgecomb, Maine 04556  
207-882-7801  
shadis@prexar.com

Office of Commission Appellate Adjudication  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**\*Brooke Poole, Esq.**  
Robert Weisman, Esq.  
Marisa Higgins, Esq.  
Office of the General Counsel  
Mail Stop O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
bdp@nrc.gov, rmw@nrc.gov, mch5@nrc.gov

**\*Jay E. Silberg, Esq.**  
Matias F. Travieso-Diaz, Esq.  
Shaw Pittman  
2300 N. Street, N.W.  
Washington, D.C. 20037  
Jay.Silberg@shawpittman.com

October 12, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
Before the Atomic Safety and Licensing Board

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

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Rulemaking and Adjudications Staff  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Rulemaking and Adjudications Staff.

Enclosed, Please find for filing in the above captioned matter an original and two copies of **NEW ENGLAND COALITION'S REPLY TO APPLICANT AND NRC STAFF ANSWERS TO NEW ENGLAND COALITION'S REQUEST FOR HEARING, DEMONSTRATION OF STANDING, DISCUSSION OF SCOPE OF PROCEEDING AND CONTENTIONS.**

Also please find a two copies of **NEW ENGLAND COALITION'S REPLY EXHIBIT A – DECLARATION OF PAUL BLANCH IN SUPPORT OF NEW ENGLAND COALITION'S REPLY.** An original *signed* copy of **EXHIBIT A** is being mailed under separate cover.

Copies of the **REPLY** and **EXHIBIT A** are being served electronically and by First Class US Mail to all parties.

Thank you for your kind attention.

Sincerely,



Raymond Shadis  
New England Coalition  
Post Office Box 98,  
Edgecomb, Maine 04556  
207-882-7801  
shadis@prexar.com