

February 22, 2006 (2:50pm)

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

<p><i>In the matter of</i> ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station)</p>
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February 14, 2006
Docket No. 50-271

ASLBP No. 04-832-02-OLA

**NEW ENGLAND COALITION'S BRIEF
ON THE SCOPE OF ITS CONTENTION REGARDING INADEQUATE ANALYSIS
OF THE VERMONT YANKEE ALTERNATE COOLING SYSTEM PERFORMANCE
UNDER CONDITIONS OF EXTENDED POWER UPRATE**

INTRODUCTION

New England Coalition hereby complies with an Atomic Safety and Licensing Board Order (oral) given January 24, 2006 for a brief on the question of whether New England Coalition's Contention 4 encompasses the entire Alternate Cooling System at Vermont Yankee or only the dedicated Alternate Cooling System cell (Cooling tower cell).

Per the Board's Order of February 7, 2006, granting an enlargement of time and clarifying the issues to be addressed in this brief, the issues discussed herein are those which were initially raised by the parties, Tr. at 712-713, 715-716, and specified by the Board, Tr. at 731, 739, during the January 24, 2006 prehearing conference call.

BACKGROUND

On September 21, 2005, New England Coalition submitted Contention 4 as a late filed contention in accordance with all of the pertinent sections of 10 CFR Part 2.

Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (“Entergy”) and NRC Staff filed answers on October 31, 2005.

NRC Staff did not oppose admission of the new contention, except “insofar as NEC takes issue with the ‘current actual physical condition’ of the ACS”, which the Staff asserts is “outside the scope of this proceeding¹.”

New England Coalition filed its reply on October 26, 2005.

On December 2, 2005, the Atomic Safety and Licensing Board Panel (“Board”) in this proceeding issued an Order stating that New England Coalition’s new contention (as modified) satisfies the requirements of 10 C.F.R. §2.309(c), (f)(1), and (f)(2) and is admitted.

The Board provided a copy of New England Coalition’s New Contention 4 (as modified) in Attachment A to the Order, as follows:

The Entergy Vermont Yankee [ENVY] 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 CFR Part 50, Appendix S, paragraph I(a), and/or 10 CFR 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 its entirety, in its actual physical condition (or in the actual physical condition ENVY 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 in service at the requested increased plant power level.

At the Board’s prompting and at Entergy’s initiative, New England Coalition and Entergy, on occasion together with NRC Staff, have engaged in discussions with the mutually agreed upon goal of clarifying and narrowing the issues in Contention 4.

New England Coalition has thus far agreed that the contention is limited to those components of the Alternate Cooling System (ACS) that would be affected by uprate and that the

¹ See NRC Staff’s Answer to Entergy’s Motion to Dismiss as Moot, or in the Alternative, for Summary Disposition of New England Coalition Contention 4 (July 25, 2005) at 8.

contention does not reach to those ACS components that would not be placed under additional load, stress, or demand under uprate conditions.

DISCUSSION

The Board modified and admitted New England Coalition's New Contention 4 after due consideration of the arguments of the parties.

The Board rejected Entergy's argument that New Contention 4 was overly broad and vague.

A plain reading of the New Contention 4 (as modified) is that the ACS "**in its entirety**" is under consideration and that Entergy has failed to "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 its entirety, in its actual physical condition (or in the actual physical condition ENVY 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 in service at the requested increased plant power level."

The answer as to whether this contention addresses only the cooling towers or also addresses the entire ACS is clearly, from the text, that it addresses the entire ACS.

This issue was clarified, informed, and focused upon by New England Coalition after examining available plant data (public documents and Entergy disclosures) on the ACS, and in particular the Declaration of George Thomas of July 10, 2005, and the ABSG Report (VYC-2413, Rev.) – Seismic Calculation) that Entergy offered as comprehensive and conclusive in its Motion to Dismiss as Moot or in the Alternative for Summary Disposition of July 25, 2005.

New England Coalition staff and New England Coalition's expert, Dr. Ross B. Landsman, upon diligent review of the publicly available documents, including the license amendment application and licensee safety assessment found no evidence that Entergy had provided analyses that are adequate, accurate, and complete in all material respects to demonstrate that the ACS will, under uprate conditions will be able to withstand the effects of an earthquake and other natural phenomena without loss of capability to perform its safety functions.

Nothing has occurred, nor has any new information been offered, since the Board's Order of December 2, 2005 to amend or relieve that concern.

New England Coalition notes that Entergy did not timely file a request for the Board to reconsider or amend its order.

CONCLUSION

Entergy, having failed to timely file objection to the terms in Contention 4, as modified and stated in the Board's Order of December 2, 2005 and having failed to timely file a request for the Board to reconsider or amend its order, should not now be permitted to argue for retail (piecemeal) disposition of what it could not do away with wholesale.

New England Coalition is willing and prepared to continue good faith dialogue toward agreement as to which components of the ACS are potentially affected by uprate; in order that the scope of the dispute be limited to that which is purposeful in building a sound record.

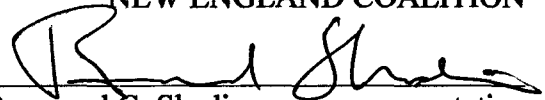
New England Coalition is committed to pursuing agreement with Entergy in cooperative and timely fashion.

This brief is largely limited to a discussion of the facts. Should the Board also require an exposition on applicable regulation and case law, New England Coalition would be pleased to provide that; asking only a scheduled opportunity to file a supplement or an amended brief.

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

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 BRIEF ON THE SCOPE OF ITS CONTENTION REGARDING INADEQUATE ANALYSIS OF THE VERMONT YANKEE ALTERNATE COOLING SYSTEM PERFORMANCE UNDER CONDITIONS OF EXTENDED POWER UPRATE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class and by e-mail as indicated by a double asterisk (**), this 14th day of February 2006

<p>Alex S. Karlin, Chair** Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ask2@nrc.gov</p>	<p>Dr. Anthony J. Baratta** Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ajb5@nrc.gov</p>
<p>Lester S. Rubenstein** Administrative Judge Atomic Safety and Licensing Board Panel 4760 East Country Villa Drive Tucson, AZ 85718 E-mail: lesrrr@comcast.net</p>	<p>Office of the Secretary** ATTN: Rulemaking and Adjudications Staff Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: HEARINGDOCKET@nrc.gov</p>
<p>Office of Commission Appellate Adjudication Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p>	<p>John M. Fulton, Esq. Assistant General Counsel Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601</p>

<p>Jay E. Silberg, Esq.** Matias Travieso-Diaz, Esq.** Pillsbury Winthrop Shaw Pittman, LLP 2300 N St., NW Washington, DC 20037-1128 E-mail: jay.silberg@pillsburylaw.com matias.travieso-diaz@pillsburylaw.com douglas.rosinski@pillsburylaw.com</p>	<p>Sarah Hofmann, Esq.** Special Counsel Department of Public Service 112 State Street - Drawer 20 Montpelier, VT 05620-2601 E-mail: sarah.hofmann@state.vt.us</p>
<p>Anthony Z. Roisman, Esq.** National Legal Scholars Law Firm 84 East Thetford Rd. Lyme, NH 03768 E-mail: aroisman@nationallegalscholars.com</p>	
<p>Jonathan M. Rund, Esq.** Law Clerk Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: jmrund@nrc.gov)</p>	<p>Sherwin E. Turk, Esq.** Jason C. Zorn, Esq.** Office of the General Counsel Mail Stop O-15 D21 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p>



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

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Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
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 BRIEF ON THE SCOPE OF ITS
CONTENTION REGARDING INADEQUATE ANALYSIS OF THE VERMONT
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Thank you for your kind assistance in making this filing,



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