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DOCKETED
USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

April 13, 2006 (11:21am)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

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

Docket No. 50-271-OLA

ASLBP No. 04-832-02-OLA

NEW ENGLAND COALITION'S REPLY TO NRC STAFF'S ANSWER TO A BRIEF
ON THE LEGAL SCOPE OF NEW ENGLAND COALITION CONTENTION 4INTRODUCTION

On March 21, 2006, New England Coalition filed its Brief on the Legal Scope of Contention 4 in accordance with the Licensing Board's "Order (Supplemental Schedule)" dated March 14, 2006¹. NRC Staff ("Staff") filed its response to NEC's Brief in accordance with a schedule modified by Orders dated March 23 and March 28, 2006.²

At issue is clarification of which legal and regulatory standards New England Coalition believes applicable to the deficiencies of analysis of the Vermont Yankee Nuclear Power Station ("Vermont Yankee") alternate cooling system as they relate to the seismic and structural

¹ The Board's Order of March 10, 2006 [oral] and March 14, 2006 [written] specified New England Coalition's Brief was to be filed by [Friday], March 17, 2006, a date initially suggested by New England Coalition. New England Coalition's pro se representative, overwhelmed with competing obligations in this and other legal venues, found, despite diligent effort, that he could not complete the Brief by close of business on [Friday], March 17, 2006. On Monday, March 20, 2006, New England Coalition solicited and received the agreement of all parties to Motion for Enlargement of Time. However, due to a computer glitch, New England Coalition did not electronically file its Brief until 3:45 AM on March 21, 2006.

² See "Order (Granting New England Coalition Motion for Enlargement of Time Related to Contention 4 ...)," dated March 23, 2006; "Order (Granting NRC Staff's Unopposed Motion for Extension of Time)," dated March 28, 2006.

condition of the cooling tower and two safety-related cooling tower cells of the alternate cooling system (ACS).³

New England Coalition avers that the discussion and suggestion of alternative legal standards provided by NRC Staff in its Answer to New England Coalition's Brief are helpful and should have been offered during talks between the parties prior to raising the questions regarding the legal scope of Contention 4 during the Prehearing Conference call of January 24, 2006 and March 10, 2006.

For the reasons set forth below, New England Coalition submits that its Brief complies with the Licensing Board's Order and with established standards of specificity and particularity required of pro se litigants at this stage of the proceeding.

BACKGROUND

On September 21, 2005, NEC filed a Motion for admission of its New Contention 4,⁴ following the Licensing Board's dismissal of NEC's initial Contention 4.⁵

On December 2, 2005, the Licensing Board issued its decision in LBP-05-32, admitting revised NEC Contention 4.⁶ As modified by the Board, NEC Contention 4 asserts:

³ On March 10, 2006 and March 24, 2006, the Board rejected New England Coalition's reliance on a plain reading of Contention 4, as redrafted and admitted by the Board on December 2, 2005 and decided that the factual scope of New England Coalition Contention 4 is limited to the specific deficiencies alleged by New England Coalition's expert, Dr. Ross B. Landsman, as they relate to the seismic and structural condition of the cooling tower and two safety-related cooling tower cells of the alternate cooling system (ACS), as analyzed in the ABS Report. See Tr. at 820-22.

⁴ *See* "New England Coalition's Request for Leave to File A New Contention" ("NEC Request"), dated September 21, 2005.

⁵ This was dismissed on grounds that analysis demanded in initial contention 4 had now been provided by the applicant and that the analysis, the so called ABS Report, satisfied what the Board termed, a contention of omission.

⁶ *See Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)*, LBP-05-32, 62 NRC 813 (2005).

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.

During a prehearing conference call held on January 24, 2006, the Licensing Board observed that NEC had not clearly identified the legal and regulatory standard which should be applied to the issues raised in NEC Contention 4; the Board directed the parties to file briefs addressing this question, taking into consideration the Board's ruling on the factual scope of the contention. Tr. 820-22.

DISCUSSION

New England Coalition filed its brief in response to the Licensing Board's Order on March 21, 2006 and asserts that each of the standards apply in Contention 4 as redrafted and admitted by the Board applies. And it asserts that at least one additional legal standard also applies that is, 10CFR 50.9, which is not enumerated in the text of the contention but which is included in the bases argued for admission of the contention." NEC's Brief at 3.⁷

⁷ NEC also refers to "NEC Contention 9" and unspecified portions of certain unidentified pleadings which it filed in this proceeding. See NEC's Brief at 3. NEC's reference to NEC Contention 9 appears to be a typographical error, as no such contention has been filed; further, its reference to unspecified statements in other pleadings is overly vague and should be disregarded.

New England Coalition identifies specific portions of those standards that it contends are not satisfied by the EPU application, sufficient for the applicant and NRC staff to understand what they must defend.⁸ See *id.*, at 3-9.

The Staff references the differences between the draft General Design Criteria (DGDC), under which Vermont Yankee was licensed, and the final General Design Criteria (GDC). As New England Coalition stated in its Reply to ENVY's Answer (April 4, 2006) (and which it now begs to incorporate by reference), some GDC have been incorporated in ENVY's licensing basis and is unclear from ENVY's documents to which DGDC and to which GDC it is committed. This is to be detailed in the Vermont Yankee UFSAR, Appendix F, which to New England Coalition's best information is not yet completed.

CONCLUSION

For the reasons set forth above, the New England Coalition submits that, in compliance with the Board's Order and in keeping with standards set forth in *Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the State of N.Y. (Indian Point, Unit 3)*, LBP-83-5, 17 NRC 134,136 (1983) and also see, *Public Service Co. of New Hampshire (Seabrook Station*,

⁸ Pro se intervenors are not held in NRC proceedings to a high degree of technical compliance with legal requirements and, accordingly, as long as parties are sufficiently put on notice as to what has to be defended against or opposed, specificity requirements will generally be considered satisfied. However, that is not to suggest that a sound basis for each contention is not required to assure that the proposed issues are proper for adjudication Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the State of N.Y. (Indian Point, Unit 3), LBP-83-5, 17 NRC 134,136 (1983).


A basis for a contention is set forth with reasonable specificity if the applicants are sufficiently put on notice so that they will know, at least generally, what they will have to defend against or oppose, and if there has been sufficient foundation assigned to warrant further exploration of the proposed contention.

Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit -1), LBP-8471, 19 NRC 29, 34 (1984), citing Peach Bottom, *supra*, 8 AEC at 20-21; Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1742 (1985), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986). See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 427-28 (1990).

Units 1 and 2), ALAB-942, 32 NRC 395, 427-28 (1990), it has identified the regulatory or legal standards which it contends apply to the factual issues raised in NEC Contention 4, and to the degree that they can be separated out it has not [sic, not] identified the specific portions of that standard which it believes are applicable here.

If the parties, Entergy and NRC Staff contend that they have not received sufficient and particularized notice of the issues raised in New England Contention, that is not the fault of New England Coalition. In their answers to New England Coalition's Brief, both NRC Staff and Entergy have offered that some other legal standards may apply to contention 4, and that is helpful. This is the first time that they have been proposed. Accordingly, the Staff [sic, New England Coalition] respectfully submits that if the parties seek further clarification, the Board should order them to resume discussions. Finally, the Staff [sic, New England Coalition] respectfully requests that the Board take note that that this flurry of mandated filings takes place at a time when the clock is running on contentions, if any to be derived from the Final Safety Evaluation Report, in [sic, and] within the scant time left in which the intervenors have to prepare their final written statements of position and written testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Raymond Shadis', with a stylized flourish at the end.

Raymond Shadis
Pro Se Representative

Dated at Edgecomb, Maine
this 5th day of April, 2006

April 5, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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ERRATA

NEW ENGLAND COALITION'S REPLY TO NRC STAFF'S ANSWER TO A BRIEF
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On printing to paper, it was noticed that four errors that affect meaning were included in the electronic filing.

One error is found at the bottom of page three (3).

Footnote 7 on page three (3) is included in error. It is actually a footnote from the NRC Staff pleading. Please strike footnote 7 in its entirety. New England Coalition has added strikethrough lines to footnote 7.

Three errors are found on page five (5).

In the first sentence on page five (5), it reads, "it has **not** identified the specific portions." Please strike **not**. New England Coalition had added notation to the text as follows: [sic, ~~not~~]

In the last two sentences on page five (5), it twice reads, "...the **Staff** respectfully..." It should read, "...**New England Coalition** respectfully..." New England Coalition has added notation to the text as follows: [sic, New England Coalition]

Finally, in the last sentence on page five (5), it reads, "...Evaluation Report, **in** within..." Please strike **in** and replace with **and**. New England Coalition has added notation to the text as follows: [sic, and]

New England Coalition regrets any confusion or concern that these errors may have caused.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NEW ENGLAND COALITION'S REPLY TO NRC STAFF'S ANSWER TO A BRIEF ON THE LEGAL SCOPE OF NEW ENGLAND COALITION CONTENTION 4, and LIST OF ERRATA in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), and by e-mail as indicated by a double asterisk (**), this 5th Day of April, 2005.

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	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
Lester S. Rubenstein** Administrative Judge Atomic Safety and Licensing Board Panel 4760 East Country Villa Drive Tucson, AZ 85718 E-mail: lesrrr@comcast.net	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
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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 REPLY TO NRC STAFF'S ANSWER TO A BRIEF ON THE LEGAL SCOPE OF NEW ENGLAND COALITION CONTENTION 4 and a LIST OF ERRATA for the same.

Thank you for your kind assistance in making this filing,



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