

RAS 11569

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/24/06

SERVED 04/24/06

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Lester S. Rubenstein

In the Matter of

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

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-OLA

ASLBP No. 04-832-02-OLA

April 24, 2006

MEMORANDUM AND ORDER
(Clarifying the Legal Scope of NEC Contention 4)

On January 24, 2006, and March 10, 2006, this Board held prehearing conference calls with the parties to discuss, inter alia, mechanisms for the simplification and clarification of the admitted contentions. During both conferences, we indicated that the legal scope of New England Coalition (NEC) Contention 4 needed to be clarified because it alleges, in the alternative, three different legal standards against which compliance should be measured. Tr. at 734-35, 788. Specifically, the contention alleges that the application of Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy) to amend the operating license for its Vermont Yankee Nuclear Power Station to allow it to increase its maximum authorized power level by 20% (referred to as an "uprate") is "not in conformance with [1] the plant specific original licensing basis and/or [2] 10 C.F.R. Part 50, Appendix S, paragraph I(a) and/or [3] 10 C.F.R. Part 100, Appendix A" because the application does not

provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that the Alternate Cooling System (ACS) towers and cells, at the uprated conditions, will be able to withstand the effects of certain natural phenomena.¹ On March 10, 2006, the Board ordered the parties to brief the issue as to which of these three legal standards apply and are allegedly not satisfied with regard to each of the problems asserted by NEC.² After studying these briefs, the Board rules that only those legal criteria established by the first standard, the Vermont Yankee licensing basis, shall be used for purposes of adjudicating and deciding NEC Contention 4.³

¹ LBP-05-32, 62 NRC 813, 827 (2005). In its entirety, NEC Contention 4 reads 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.
Id.

² Tr. at 790-92. See also Order (Supplemental Schedule) (Mar. 14, 2006) at 1-2 (unpublished). Entergy and the Staff were given the opportunity to file answers, and NEC the opportunity to reply. Id. at 2.

³ We recently ruled that the factual scope of NEC New Contention 4 encompasses seven specific deficiencies alleged by NEC's expert, Dr. Ross B. Landsman, which relate to the initial structural conditions of the two safety related cooling tower cells of the alternate cooling system (ACS), given a seismic and/or other external event, as analyzed in a report issued by ABS Consulting, Inc. Memorandum and Order (Clarifying the Factual Scope of NEC Contention 4 and Denying Untimely Motion for Enlargement of Time to File Reply Brief) (Mar. 24, 2006) at 7-9 (unpublished).

I. Positions of the Parties

NEC takes the position that all three of the legal standards cited in its contention apply.⁴ First, NEC asserts that the seismic and structural analysis supporting Entergy's update application does not conform to the legal standards of the "Vermont Yankee Licensing Basis." NEC Brief at 4. NEC says that the license has been "amended 229 times and it has entered more than that number of Technical Specification Changes and numerous Exemptions and Exceptions," and while NEC was "unable . . . to access all licensing and design basis documents relating to seismic and external events qualification of the ACS," NEC identifies and cites "some relevant documents" that it asserts are part of the "licensing and design basis" against which the alleged deficiencies must be judged. Id. at 4. The references and documents cited by NEC as part of the license and design basis include the definition of the ACS, the Entergy Service Water System design basis contained in Vermont Yankee Document SWSY Service Water Systems Revision 0, and several sections of the VYNPS Updated Final Safety Analysis Report. Id. at 4-7. NEC asserts that Entergy has not demonstrated that the ACS cells and towers will comply with the seismic and structural requirements in the Vermont Yankee licensing and design basis. Id. at 7.

As to the second (10 C.F.R. Part 50, Appendix S, paragraph I(a)) and third (10 C.F.R. Part 100, Appendix A) legal standards mentioned in NEC Contention 4, NEC does little more than quote portions of them and of Draft General Design Criteria 2 and 19. NEC Brief at 7-8. NEC then raises an "additional applicable legal standard regarding [the] adequacy of [Entergy's] structural and seismic analyses," – 10 C.F.R. § 50.9(a) – which requires that Entergy must provide NRC with information that is "complete and accurate in all material respects." NEC Brief at 8-9.

⁴ [NEC]'s Brief on the Legal Scope of [NEC] Contention 4 (Mar. 21, 2006) at 3 [NEC Brief]. Although the pleading was dated March 17, 2006, it was served electronically on March 21, 2006. At certain points NEC refers to its "Contention 9." See, e.g., NEC Brief at 3. We assume that this is a typographical error and that NEC intended to refer to NEC Contention 4.

NEC never mentions the seven specific technical/factual deficiencies alleged by its expert, Dr. Landsman,⁵ and does not connect them to, or show how there is a non-compliance with, any particular section or portion of the four legal standards that NEC now claims are applicable.

Entergy's response provides little help in identifying the legal standard or standards that determine whether Entergy's analysis of the structural response of the two cooling tower cells of the ACS, given a seismic and/or other external event and their alleged structural conditions at the start of that event, is legally compliant (particularly with regard to the seven deficiencies alleged by NEC).⁶ Instead, Entergy points out difficulties and problems with NEC's submission. Entergy notes that the third legal standard alleged by NEC – Appendix S to 10 C.F.R. Part 50 – was issued in 1996 and only applies to those seeking to license new nuclear power plants “on or after January 10, 1997.” Entergy Answer at 3-4. Thus, Entergy argues that Appendix S is not applicable. Next, Entergy asserts that the second legal standard invoked by NEC – Appendix A to 10 C.F.R. Part 100 – is inapplicable because it is “concerned solely with evaluating, in advance of the licensing of a nuclear power plant, the suitability of the potential plant site and the plant's proposed seismic design bases.” Entergy Answer at 4. As to the first legal standard alleged by NEC – the plant licensing basis – Entergy argues that NEC's brief is “too vague to be meaningful” and “does nothing to pinpoint which portions of these provisions [quoted at length by NEC] are allegedly violated by the asserted . . . deficiencies.” Entergy Answer at 5. Entergy complains that NEC's mention of Draft General Design Criteria 2 and 19, is an attempt to “further expand” the list of applicable legal standards and also rejects NEC's use of 10 C.F.R. § 50.9 as a misuse of the regulation. Entergy Answer at 5-6. Entergy closes

⁵ See [NEC]'s Request for Leave to File a New Contention (Sept. 21, 2005) at 5-6.

⁶ Entergy's Response to [NEC]'s Brief on the Legal Scope of Modified NEC Contention 4 (Mar. 28, 2006) [Entergy Answer].

by urging the Board to direct NEC to provide further clarification or face dismissal. Id. at 7-8.

The NRC Staff, while mostly pointing out various deficiencies in NEC's position, does shed some light on the criteria that the Staff believes should govern in determining whether Entergy's seismic and structural analysis is legally compliant.⁷ First, the Staff notes that NEC failed "to identify any specific portion of [the three legal] standards which it contends are not satisfied by the EPU application." Staff Answer at 3. The Staff next focuses on the Vermont Yankee licensing basis. The Staff reviews several portions of its Final Safety Evaluation Report (FSER),⁸ pointing out that the construction permit for the Vermont Yankee Nuclear Power Station was issued on December 11, 1967, that the plant was "designed and constructed on the [basis of] the proposed General Design Criteria (GDC) published by the AEC in the Federal Register . . . on July 11, 1967," and that the "ACS was designed and implemented 'during the original plant licensing.'" Staff Answer at 4. The Staff asserts that the proposed GDCs (hereinafter, Draft GDCs) are part of the original licensing basis for the Vermont Yankee plant. Staff Answer at 5. The Staff acknowledges that NEC refers to Draft GDC 2 and 19 (which are part of the plant's licensing basis), but reminds us that NEC failed to connect any specific portion of these Draft GDC to any specific alleged violation by Entergy. Staff Answer at 6.

Next, the Staff dismisses the second and third legal standards specified in NEC Contention 4. The Staff asserts that NEC's statements concerning 10 C.F.R. Part 100, Appendix A, "fail to comply with the Licensing Board's Order," Staff Answer at 6, and that Appendix A was not even issued until 1973 and therefore "is not part of VYNPS' licensing basis." Staff Answer at 6 n.16. The Staff dispenses with 10 C.F.R. Part 50, Appendix S in the

⁷ NRC Staff's Answer to [NEC]'s Brief on the Legal Scope of [NEC]'s Contention 4. (Mar. 30, 2006) [Staff Answer].

⁸ Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. 229 to Facility Operating License No. DPR-28, Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc., Vermont Yankee Nuclear Power Station Docket No. 50-271 (Mar. 2, 2006), ADAMS Accession No. ML060050028 [Final SER].

same way, saying that NEC's brief failed to comply with our order, Staff Answer at 7, and that Appendix S was adopted on December 11, 1996 and, by its own terms, does not apply to a licensee whose construction permit was issued prior to January 10, 1997. Staff Answer at 7 n.17. The Staff notes that if NEC contends that the original licensing basis applicable to the ACS cells and towers does not apply and must be supplanted by later regulatory requirements, it has failed to provide any support for that view. Staff Answer at 7-9.⁹ In conclusion, the Staff submits that the Board require a further brief from NEC and that other parties be afforded the opportunity to respond. Staff Answer at 10.

NEC's reply briefs add little.¹⁰ The reply to Entergy notes that "the Vermont Yankee licensing basis is a fairly impenetrable maze" but states that the documents cited by NEC "should be sufficient to put [Entergy] on notice of what it is expected to defend." NEC Reply I at 4. It then repeats, verbatim, a long passage from the NEC's initial brief, to the effect that pro se intervenors should not be held to a high degree of technical compliance with legal pleading requirements. NEC Reply I at 4 n.2. NEC concludes that, if the "Board deems this pleading insufficient," then it "requests an opportunity to cure any defects . . . in a new or amended pleading." NEC Reply I at 4.

II. Ruling on the Legal Standards for NEC Contention 4

The issue presented here is what legal standards govern the determination of whether Entergy's seismic and structural analysis in support of its uprate application is adequate, accurate, and complete to demonstrate that the ACS cells and cooling towers will be able to withstand the effects of an earthquake and other natural phenomena without loss of capability

⁹ This Board previously ruled that, in light of 10 C.F.R. § 50.109, new regulatory standards are not triggered by a proposed license amendment unless there is an unacceptable inconsistency or incompatibility between the requested license amendment and the existing design and licensing basis. LBP-04-28, 60 NRC 548, 564-66 (2004).

¹⁰ [NEC]'s Reply to Applicant's Response on the Legal Scope of [NEC] Contention 4 (Apr. 4, 2006) [NEC Reply I]; [NEC]'s Reply to NRC Staff's Answer to a Brief on the Legal Scope of [NEC] Contention 4 (Apr. 5, 2006) [NEC Reply II].

to perform its safety functions. We start with the assumption that some legal standard must govern. NEC Contention 4 lists three possibilities:

1. The plant specific original licensing basis, and/or
2. 10 C.F.R. Part 50, Appendix S, paragraph I(a), and/or
3. 10 C.F.R. Part 100, Appendix A.

The first standard is somewhat amorphous, whereas the latter two are readily accessible regulations. Based on the record in this case, the Board concludes that only the first legal standard, which we interpret to mean the current licensing basis of the Vermont Yankee plant, applies and should be used for purposes of adjudicating and deciding NEC Contention 4.

As an initial matter, we agree with Entergy and the Staff that the latter two standards, being regulations that were promulgated after the Vermont Yankee plant and the ACS was permitted, constructed, and licensed, do not independently apply to the proposed uprate for this plant. The Staff stated, without dispute, that:

[T]he Atomic Energy Commission (“AEC”) issued the construction permit for the Vermont Yankee Nuclear Power Station on December 11, 1967. A low power operating license for the facility was issued on March 21, 1972, and a full power operating license was issued on February 28, 1973. The ACS was designed and implemented “during the original plant licensing.”

Staff Answer at 4 (citations omitted). Meanwhile, Appendix S to 10 C.F.R. Part 50 “Earthquake Engineering Criteria for Nuclear Power Plants,” was issued in 1996, and states, at the outset, that it only applies to applicants seeking to license a new nuclear power plant “on or after January 10, 1997.”¹¹ The other regulation cited in NEC Contention 4 – 10 C.F.R. Part 100 Appendix A – was likewise promulgated after the Vermont Yankee power station was

¹¹ See Final Rule, Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants, 61 Fed. Reg. 65,157, 65,173 (Dec. 11, 1996); 10 C.F.R. Part 50, App. S, General Information.

licensed.¹² NEC has failed to point to any subsequent event or action (e.g., a subsequent license amendment or licensee commitment) that has caused either Appendix S to Part 50 or Appendix A to Part 100 to be added to the Vermont Yankee's licensing basis. Accordingly, neither legal regulation applies directly to Vermont Yankee.

Turning to the remaining legal standard asserted in NEC Contention 4 – “the plant specific original licensing basis” – the Board concludes that this standard does provide legal criteria with which to evaluate whether the seismic and structural analysis supporting Entergy's uprate application is adequate and compliant. For example, the Staff points out that the Vermont Yankee plant was designed and constructed based on the Draft GDC that the Atomic Energy Commission had proposed and published in 1967.¹³ We consider these Draft GDC to be part of the Vermont Yankee licensing basis, i.e., the legal criteria used to determine whether the facility was not inimical to public health and safety. Draft GDC 2, which deals with performance standards for “natural phenomena such as earthquakes,” is particularly relevant and applicable for purposes of NEC Contention 4. Entergy is well aware of Draft GDC 2, and we reject the suggestion that using it as part of the licensing basis of Vermont Yankee is an expansion of NEC Contention 4.

Likewise, the portions of 10 C.F.R. Part 100 that were in effect in 1967 and were relevant to seismic issues constitute part of the licensing basis of the Vermont Yankee plant for purposes of NEC Contention 4. The 1967 regulations stated:

¹² See Final Rule, Seismic and Geologic Siting Criteria, 38 Fed. Reg. 31,279, 31,281 (Nov. 13, 1973). The wording and structure of 10 C.F.R. Part 100 “Reactor Site Criteria” may have contributed to NEC's confusion. Subpart A provides evaluation factors (including Appendix A) for reactor applications “before January 10, 1997,” while Subpart B provides such factors for reactor applications “on or after January 10, 1997,” (emphasis added). Despite this language, we do not interpret Subpart A as going back to Genesis. Instead, we interpret it as only going back to November 1973, when the regulation was initially promulgated.

¹³ See Proposed Rule, General Design Criteria for Nuclear Power Plant Construction Permits, 32 Fed. Reg. 10,213 (July 11, 1967); Staff Answer at 4; Final SER § 1.2 at 1.

[T]he Commission will take the following factors into consideration in determining the acceptability of a site for a power or testing reactor: . . . (c) Physical characteristics for the site, including seismology, meteorology, geology and hydrology. (1) The design of the facility should conform to accepted building codes or standards for areas having equivalent earthquake histories. No facility should be located closer than one-fourth mile from the surface of a known active earthquake fault.

10 C.F.R. § 100.10(c)(1) (1967); Final Rule, Part 100, Reactor Site Criteria, 27 Fed. Reg. 3509, 3510 (Apr. 12, 1962).

We reject the suggestion that Part 100 is concerned solely with initial site suitability and is therefore inapplicable to subsequent changes in the Vermont Yankee plant. See Entergy Answer at 4. The site evaluation factors relate “both to the proposed reactor design and the characteristics peculiar to the site.” 10 C.F.R. § 100.10(a) (1967). In addition to the seismic standards quoted above (e.g., building codes), the regulation lists various plant design factors, such as the “proposed maximum power level” of the reactor, the “nature and inventory of contained radioactive materials,” the use of “generally accepted engineering standards,” and other factors relating to the safety and design of the facility. 10 C.F.R. § 100.10(a)(1)-(4) (1967). In short, a plant of a given power may be suitable for a given site, while a plant of greater power may not.

In concluding that the compliance with the Vermont Yankee “licensing basis” is a legitimate legal standard to use in deciding NEC Contention 4, we recognize that the contents of the plant’s “licensing basis” cannot be summarized crisply and precisely, but we believe that this legal standard works no hardship on Entergy or the Staff.¹⁴ Both of them are in at least as good a position as NEC to know and identify those portions of the Vermont Yankee licensing basis that are relevant to the structural issues raised by NEC and to show, as Entergy and the

¹⁴ The Commission originally proposed that licensees be required to compile all documents constituting a facility’s licensing basis in an auditable and retrievable form, but later deleted this requirement. See Final Rule, Revisions, Nuclear Power Plant License Renewal, 60 Fed. Reg. 22,461, 22,474 (May 8, 1995); Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,952 (Dec. 13, 1991).

Staff assert, that Entergy is compliant. We agree that the term “current licensing basis,” covers a lot of ground:

Current licensing basis (CLB) is the set of NRC requirements applicable to a specific plant and a licensee’s written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 C.F.R. parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 C.F.R. 50.71 and the licensee’s commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.

10 C.F.R. § 54.3(a).¹⁵ “The current licensing basis represents an ‘evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.’” Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001) (citing 60 Fed. Reg. 22,461, 22,473 (May 8, 1995)). Given this expansive definition, covering 39 years of licensing evolution and history of the Vermont Yankee plant, we can appreciate why NEC might characterize the licensing basis as a “fairly impenetrable maze.” NEC Reply I at 4. And we accept that NEC, as a pro se intervenor, is not held to a “high degree of technical compliance with legal requirements . . . as long as the parties are sufficiently put on notice as to what has to

¹⁵ Although this definition pertains to license renewal for power reactor facilities, the terms “current licensing basis” and “licensing basis” are widely used in all matters related to power reactors.

be defended against.” Consolidated Edison Co. of New York (Indian Point, Unit No. 2), LBP-83-5, 17 NRC 134, 136 (1983).¹⁶

In light of our recent ruling narrowing the factual scope of NEC Contention 4 and our elimination of the two regulations specifically cited in NEC Contention 4, we conclude that the Vermont Yankee “licensing basis,” is a sufficiently focused legal standard to put Entergy on notice as to the deficiencies that it must defend against in the next stage of this proceeding.¹⁷ Accordingly, we will expect NEC’s written testimony and statement of position on NEC Contention 4 to connect the seven factual “deficiencies” that it is alleging, to specific elements of what it asserts to be the Vermont Yankee licensing basis (such as Draft GDC 2 or 10 C.F.R. §100.10(c)(1) (1967)), and to show us how those element are part of the licensing basis and how they are not met under uprate conditions.¹⁸ Long and unexplained quotes from unconnected documents (e.g., SWSY Service Water Systems Revision 0) or requirements will not suffice. Instead, NEC should show us (a) how and where a specific regulation or requirement has been incorporated into the licensing basis, and (b) how the seven deficiencies alleged by NEC fail to conform to that regulation or requirement under uprate conditions. Nor

¹⁶ In this respect, the Board concludes that the current licensing basis, not the original licensing basis, should be used as the legal criterion for NEC Contention 4. We are not sure what date would be used for determining the “original” licensing basis. Further, we see no reason to freeze the legal standard to 1967 requirements when the licensing basis (relevant to the seismic and structural issues here) may have subsequently evolved (e.g., become more lenient or more stringent).

¹⁷ Inasmuch as the initial round of briefs on this issue was not very helpful, we see little value in delaying this proceeding further by asking for another. NEC, operating pro se, was not very helpful. Meanwhile, Entergy merely took shots at NEC without proffering a legal standard by which compliance should be measured. We doubt that added briefing would improve the situation.

¹⁸ Using the Vermont Yankee licensing basis obviates the Staff’s concerns that NEC is advocating an inappropriate backfit with no showing of incompatibility. See Staff Answer at 7-9. As we read it, NEC Contention 4 merely seeks to require Entergy to comply with its existing licensing basis, not to impose more stringent or new requirements. See LBP-04-28, 60 NRC at 565.

will the Board tolerate discussion on testimony outside the scope of this proceeding, e.g., attacks on operation of Vermont Yankee at non-uprated power level. Likewise, we will expect the written testimony and statements of position filed by Entergy and the Staff, respectively, to show how the application is compliant with the structural legal standards in the Vermont Yankee licensing basis and that none of the seven alleged deficiencies are significant enough to compromise the safety function of the ACS cooling towers given a seismic and/or other external event under uprate conditions.¹⁹

Before closing, we briefly address and reject the suggestion that NEC can add a fourth legal standard to NEC Contention 4. As we have stated, if a legal criterion is specifically shown to be part of the Vermont Yankee licensing basis, then it is part of the legal standard to be used for this contention. But, at this late date, we will not entertain extraneous and new legal criteria under this contention. In this respect, we find that the briefing as to the applicability of 10 C.F.R. § 50.9, which requires that “[i]nformation provided to the Commission by an applicant . . . shall be complete and accurate in all respects,” is beside the point. NEC Contention 4 already uses almost this exact language, alleging that the seismic and structural analyses are “not . . . adequate, accurate, and complete in all material respects.” Whether 10 C.F.R. § 50.9 is cited therein or not, the concept of the completeness and accuracy of documentation is fundamental to the NRC regulatory system and is a part of this contention.

III. Conclusion

In conclusion, the Board rules that only the Vermont Yankee current licensing basis shall be used to adjudicate and decide NEC Contention 4. The licensing basis at least includes

¹⁹ This should not be difficult, given that we would typically expect the Applicant to make such a showing in its Safety Analysis Report and the Staff to evaluate such compliance in its Safety Evaluation Report. We note that the Final SER discusses NEC Contention 4 and concludes that “the licensee’s seismic evaluation adequately accounts for the cooling tower modifications” without ever informing the reader as to the criterion or standard against which the licensee’s evaluation was deemed “adequate.” See Final SER § 2.5.3.4 at 87.

Draft General Design Criterion 2 and 10 C.F.R. § 100.10(c)(1) (1967). We find that the two other legal standards specified the contention – 10 C.F.R. Part 50, Appendix S, paragraph I(a) and 10 C.F.R. Part 100, Appendix A – were promulgated after the ACS towers and cells were built and licensed, and therefore do not apply unless NEC can cite to some specific part of the licensing basis that incorporated them.

Attachment A, which is incorporated herein by reference, is a restatement of NEC Contention 4, as clarified by today's ruling, and by the Board's March 24, 2006 memorandum and order clarifying the factual scope of this contention. NEC Restated Contention 4 shall be used for the remainder of this proceeding.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD²⁰

[Original Signed By]

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

[Original Signed By]

Anthony J. Baratta
ADMINISTRATIVE JUDGE

[Original Signed By G. Paul Bollwerk, III for]

Lester S. Rubenstein
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 24, 2006

²⁰ Copies of this memorandum and order were sent this date by Internet e-mail transmission to representatives for (1) licensees Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc.; (2) intervenors Vermont Department of Public Service and New England Coalition of Brattleboro, Vermont; and (3) the NRC Staff.

ATTACHMENT A

NEC Restated Contention 4

The Entergy Vermont Yankee license application (including all supplements) for an extended power uprate of 20% over rated capacity is not in conformance with the plant's current licensing basis because, with respect to the Alternative Cooling System (ACS) cooling tower cells CT2-1 and CT2-2, it does not provide analyses that are adequate, accurate, and complete in the following respects: the ABS Report

- (1) does not include a physical examination of the alternate cooling tower cell;
- (2) lacks adequate documentation of the breaking strength of the tie rods,
- (3) does not use added conservatism in accounting for the effects of aging mechanisms and/or moisture and/or cooling system chemicals;
- (4) in its structural analysis, fails to assign a negative value to the replacement rate for degraded members;
- (5) fails to account for changes after the report was completed;
- (6) relies on incorrect and non-conservative assumptions concerning the condition of the concrete in the cooling tower cells and fails to take into account the unanalyzed effects of recent modifications including steel splices; and
- (7) does not provide a reasonable assurance of the seismic qualification of the ACS cooling tower cells CT2-1 and CT2-2.

Therefore, the license application fails to demonstrate that the ACS cooling tower cells CT2-1 and CT2-2, in their actual physical condition (or in the actual physical condition Entergy will effectuate prior to commencing operation at EPU), will be able to withstand the effects of an earthquake and other natural phenomena without loss of capability to perform their safety functions in service at the requested increased plant power level.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (CLARIFYING THE SCOPE OF NEC CONTENTION 4) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-271-OLA
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SCOPE OF NEC CONTENTION 4)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of April 2006