LBP-06-14

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

SERVED 05/25/06

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 May 25, 2006

MEMORANDUM AND ORDER
(Ruling on Admissibility of Three Additional Contentions)

Before the Board is a request by the New England Coalition (NEC) for leave to file three new contentions.[1] For the reasons stated below, the Board finds that NEC's new contentions are inadmissible under 10 C.F.R. § 2.309(f) and (c) and denies the request.

I. PROCEDURAL POSTURE

In September 2003, Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (collectively, Entergy) applied to the U.S. Nuclear Regulatory Commission (NRC) for authorization to increase the maximum power level of Entergy's Vermont Yankee Nuclear Power Station in Windham County, Vermont from 1593 megawatts thermal (MWt) to 1912 MWt. This is referred to as an extended power uprate or EPU. On August 30, 2004, NEC challenged the proposed EPU by filing a request for a hearing that included several proposed

[1] New England Coalition's Request for Leave to File New Contentions (Apr. 6, 2006) (NEC Request).

contentions.[2] On November 22, 2004, this Board found that NEC had standing to participate in this proceeding and admitted two of its original contentions. LBP-04-28, 60 NRC 548, 554, 568-77 (2004).

The NRC published its Draft Safety Evaluation Report (DSER) for the EPU application on November 2, 2005.[3] Subsequently, the Subcommittee on Power Uprates of the Advisory Committee on Reactor Safeguards (ACRS) held four days of meetings to receive input from the public, the applicant, and the NRC Staff on the Vermont Yankee EPU application. The subcommittee met in Brattleboro, Vermont on November 15 and 16, 2005,[4] and in Rockville, Maryland on November 29 and 30, 2005.[5] The full committee of the ACRS addressed the EPU application at its meeting on December 7, 2005. NEC testified at these hearings.[6] On January 4, 2006, the ACRS sent a letter to the Commission recommending approval of the EPU application while expressing certain technical concerns.[7] The NRC published its Final Safety

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[2] New England Coalition's Request for Hearing, Demonstration of Standing, Discussion of Scope of Proceeding and Contentions (Aug. 30, 2004).

[3] Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. ___ to Facility Operating License No. DPR-28, Draft, Revision 1 (Nov. 2, 2005), ADAMS Accession No. ML053010167.

[4] See Meeting Transcript, Advisory Committee on Reactor Safeguards, Subcommittee on Power Uprates (Nov. 15, 2005) (ACRS Transcript 11/15/05); Meeting Transcript, Advisory Committee on Reactor Safeguards, Subcommittee on Power Uprates (Nov. 16, 2005) (ACRS Transcript 11/16/05).

[5] See Meeting Transcript, Advisory Committee on Reactor Safeguards, Subcommittee on Power Uprates (Nov. 29, 2005); Meeting Transcript, Advisory Committee on Reactor Safeguards, Subcommittee on Power Uprates (Nov. 30, 2005) (ACRS Transcript 11/30/05).

[6] ACRS Transcript 11/15/05 at 201-15; ACRS Transcript 11/16/05 at 276-88; ACRS Transcript 11/30/05 at 293-98, 308-20; Meeting Transcript, Advisory Committee on Reactor Safeguards (Dec. 7, 2005) at 99-102.

[7] Letter from Graham B. Wallis, Chairman, ACRS, to Nils J. Diaz, Chairman, NRC (Jan. 4, 2006), ADAMS Accession No. ML060090125.

Evaluation Report (FSER) on March 2, 2006,[8] and it was delivered to NEC on March 6, 2006. Tr. at 823.

On April 6, 2006, NEC submitted a request for leave to file three new contentions that it alleges are based on the ACRS meetings held in November and December, information referenced by Entergy and NRC Staff at those meetings, the ACRS letter of January 4, 2006, and the FSER. NEC Request at 2. Entergy and NRC Staff responded on May 1, 2006, opposing admission of the new contentions,[9] and NEC filed its reply on May 8, 2006.[10]

II. CONTENTION ADMISSIBILITY STANDARDS

Three regulations address the admissibility of additional contentions once an adjudicatory proceeding has been initiated. These are (a) 10 C.F.R. § 2.309(f)(2), which deals with the admission of new and timely contentions, (b) 10 C.F.R. § 2.309(c), which deals with the admission of nontimely contentions, and (c) 10 C.F.R. § 2.309(f)(1), which establishes the basic criteria that all contentions must meet in order to be admissible.[11]

A. Timely New Contentions Under 10 C.F.R. § 2.309(f)(2)

As this Board has previously stated, the first step is to determine if the additional

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[8] Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. 229 to Facility Operating License No. DPR-28 (Mar. 2, 2006), ADAMS Accession No. ML060050028.

[9] Entergy's Response to New England Coalition's Request for Leave to File New Contentions (May 1, 2006) (Entergy Response); NRC Staff's Answer to New England Coalition's Request for Leave to File New Contentions (May 1, 2006) (Staff Answer).

[10] New England Coalition's Reply to NRC Staff and Entergy's Responses to New England Coalition's Request for Leave to File New Contentions (May 8, 2006) (NEC Reply).

[11] As the Commission explained, "Late-filed requests for hearing/petitions are governed by the criteria set forth in § 2.309(c) (formerly § 2.714(a)(1)(I) through (v))." Final Rule: Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004). In contrast, "[p]aragraph [309](f)(2) addresses the standards for amending existing contentions, or submitting new contentions based upon documents or other information not available at the time that the original request for hearing/petition to intervene was required to be filed." Id.

contention is "timely" and otherwise meets the requirements of 10 C.F.R. § 2.309(f)(2). LBP-05-32, 62 NRC 813, 819 (2005). This regulation, promulgated in 2004, provides that new contentions (that are not based on NEPA[12]) may be filed after the initial filing only with leave of the presiding officer upon a showing that:

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

10 C.F.R. § 2.309(f)(2)(I)-(iii) (emphasis added). In short, if new and materially different information becomes available during the processing of the application, and a petitioner promptly files a new contention based on this new information, the contention is admissible (if it also satisfies the general contention admissibility standards contained in 10 C.F.R. § 2.309(f)(1)).

Section 2.309(f)(2) is logical and appropriate because NRC adjudicatory proceedings are initiated at an early stage in the administrative process, when the application has been docketed but long before the NRC and the applicant have finished publishing the relevant documents and information, e.g., before the NRC Staff has finished asking questions (requests for additional information (RAIs)), substantively evaluated the application, issued its DSER or

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[12] 10 C.F.R. § 2.309(f)(2) sets a less stringent rule for "issues arising under the National Environmental Policy Act," specifying that "the petitioner . . . may . . . file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents." New NEPA contentions are not subject to the three conditions specified in (f)(2)(I)-(iii). "[N]ew or amended environmental contentions may be admitted if the petitioner shows that the new or amended contention is based on data or conclusions in the NRC's environmental documents that differ significantly from the data or conclusions in the applicant's documents. . . . For all other new or amended contentions the rule makes clear that the criteria in § 2.309(f)(2)(I) through (iii) must be satisfied for admission." 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004) (emphasis added).

FSER, and issued its environmental documents (environmental impact statement or environmental assessment). New (post-docketing) information also often arises when, as happened here, the applicant amends its application many times after NRC issues its initial notice of opportunity to request a hearing.[13] Also, as in this case, the ACRS may generate or reveal additional post-docketing information. See supra text accompanying notes 4-7.

Pursuant to 10 C.F.R. § 2.332(d), the Board's adjudicatory hearings are generally postponed for many months or even years, while we wait for the NRC Staff to issue the FSER and the Final Environmental Impact Statement (FEIS). Thus, 10 C.F.R. § 2.309(f)(2) accommodates the fact that substantially new and different information typically arises after the docketing of an application and the publication of the notice of opportunity for hearing by allowing a petitioner to assert new contentions based on such information, provided that it is truly new and materially different and provided that the petitioner acts promptly.[14]

This result is consistent with Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984) (UCS 1) and Union of Concerned Scientists v. NRC, 920 F.2d 50 (D.C. Cir.

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[13] In LBP-04-33, 60 NRC 749, 751 (2004), NEC moved for dismissal of this case alleging that Entergy had filed 20 supplements to its application, causing such a "large transformation" in Entergy's original EPU application that due process required that NRC issue a new notice of opportunity for a hearing. We noted that any such "newly available material information" would entitle NEC to file a new contention based thereon, and therefore denied the motion. Id. at 754.

[14] If a contention satisfies the timeliness requirement of 10 C.F.R. § 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. § 2.309(c) which specifically applies to "nontimely filings." This both follows the plain language of the regulations and is eminently sensible because "[i]t is neither logical nor sensible to impose only eight conditions [10 C.F.R. § 2.309(c)(1)(I)-(viii)] on the admissibility of a contention based on old information and where the proponent has, through his own inadvertence, forgotten to raise it, and yet impose even more hurdles (three [10 C.F.R. § 2.309(f)(2)(I)-(iii)] plus eight) on a contention based on new information where the proponent is blameless and prompt." LBP-05-32, 62 NRC 813, 821 n.21 (2005). We reject the suggestion that the three (f)(2) factors merely elaborate on the good cause factor of section 2.309(c)(1)(I) (and therefore are not additive) because there are certainly situations where good cause may have nothing to do with the (f)(2) factors (e.g., where the good cause is based on a medical emergency of the petitioner).

1990) (UCS 2). UCS 1 held that section 189(a) of the Atomic Energy Act prohibits NRC from barring all parties from ever raising an admittedly material issue in a licensing proceeding. 735 F.2d at 1443. UCS 2 ruled that UCS 1 did not prevent NRC from excluding a later intervenor if "another party has fully presented a material issue identical to the one the excluded party seeks to raise," 920 F.2d at 55, or if the later intervenor's proposed new contention is based on a later filed SER or EIS where the "issues . . . were apparent at the time of the application," e.g., the original docketing and Federal Register notice. Id. (emphasis added). In such cases, UCS 2 noted that the NRC certainly has the authority to adopt a pleading schedule designed to expedite its proceedings and to balance the admission of the new party or contention against the (then five) nontimely filing factors. But the D.C. Circuit strongly indicated that any application of the NRC rules "to prevent all parties from raising material issues which could not be raised prior to the release of the environmental reports" would be a misapplication subject to judicial review. Id. at 56. Our reading of 10 C.F.R. § 2.309(f)(2) – that if, after the original 60 days Federal Register notice period of 10 C.F.R. § 2.309(b) has expired, previously unavailable and material information, which raises for the first time a material new contention, becomes available, and if an existing party asserts that new and material contention in a timely fashion, and the contention otherwise satisfies the requirements of 10 C.F.R. § 2.309(f)(1), then that contention is to be admitted, without being required to jump through the eight additional hoops for "nontimely" contentions under 10 C.F.R. § 2.309(c) – is consistent with UCS 1 and UCS 2.

We note that the regulations do not set a specific number of days whereby we can measure or determine whether a contention is "timely" as required by 10 C.F.R. §2.309(f)(2)(iii). The "timing" provision of section 2.309(b) cannot apply, for this provision would make all contentions filed after the initial notice period "nontimely," and a contention could never meet the requirements of 10 C.F.R. §2.309(f)(2)(iii). Alternatively, given the significant effort involved

in (a) identifying new information, (b) assembling the required expertise, and then (c) drafting a contention that satisfies 10 C.F.R. § 2.309(f)(1), it would be inappropriate to impose the very short 10-day rule of 10 C.F.R. § 2.323(a) on the filing of new contentions. Several boards have established a 30-day rule for new contentions.[15] This Board has previously noted that new contentions must be filed "very promptly" after the receipt of the relevant new information, but has declined to set a general 30-day rule. Tr. at 698. However, we did set a specific 30-day rule for new contentions based on new and different information in the FSER.[16]

B. Nontimely Additional Contentions Under 10 C.F.R. § 2.309(c)

If a contention is not timely under 10 C.F.R. § 2.309(f)(2)(iii), then we turn to 10 C.F.R. § 2.309(c), which deals with "nontimely filings," and evaluate the contention according to eight potentially applicable factors. Section 2.309(c) states that an untimely contention may be admissible if the petitioner shows a favorable balance among the following factors:

(I) Good cause, if any, for the failure to file on time;
(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
(v) The availability of other means by which the requestor's/petitioner's interest will be protected;
(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

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[15] See, eg., Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-4, 59 NRC 31, 46 (2004); Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-21, 58 NRC 338, 346-47 (2003).

[16] LBP-06-3, 63 NRC 85, 97 (2006) ("Once the Final SER is issued and delivered to the parties, they shall have ten (10) days within which to move for any adjustment to the schedule herein and thirty (30) days within which to move for leave to file any new or amended contentions.")

10 C.F.R. § 2.309(c)(1)(I)-(viii). The first factor – whether good cause exists for failure to file on time – is given the most weight.[17] The eight factors need to be considered only "to the extent that they apply to the particular nontimely filing." 10 C.F.R. § 2.309(c)(1).

C. Basic Contention Admissibility Requirements of 10 C.F.R. § 2.309(f)(1)

The third step in analyzing whether an additional contention is admissible is to determine whether it satisfies the six basic contention admissibility standards contained in 10 C.F.R. § 2.309(f)(1)(I)-(vi).[18] These standards must be met by all contentions, whether they are filed at the outset of the proceeding, are filed in a timely fashion when material new information arises, or are untimely filings. We have reviewed and discussed the six basic criteria in previous rulings herein. LBP-04-28, 60 NRC 548, 554-58 (2004).

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[17] Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564 (2005); State of New Jersey (Dep't of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993).

[18] Under this standard, petitioners seeking to have a contention admitted must:

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

III. NEC NEW CONTENTION 5

The first of NEC's newly proffered contentions, which we will refer to as Contention 5 to distinguish it from other contentions that have been submitted in this proceeding, reads as follows:

> ENVY has failed to provide correctly calculated offsite and control room radiological consequences in the event of a design basis accident ("DBA") under extended power uprate ("EPU") conditions; using both questionable models and applied erroneous assumptions. NRC staff has, through incorporation in the SER, erroneously accepted and approved the ENVY methodology of predicting dose releases under the EPU conditions. Thus ENVY and NRC staff have failed to provide adequate assurance that all Vermont Yankee DBAs while operating under uprate conditions will meet 10 CFR 50.67, General Design Criteria 19, and SRP 15.01 radiological dose requirements. Since therefore the public will be at risk of exposure to radioactivity releases that would exceed the allowable limits, ENVY should not be allowed to operate Vermont Yankee Nuclear Power Station under the proposed EPU.

NEC Request at 5.

A. Position of the Parties

NEC takes the position that all three of its proposed new contentions satisfy all of the requirements of 10 C.F.R. §§ 2.309(f)(2), 2.309(c), and 2.309(f)(1) and that, to the extent the Board disagrees, it should excuse NEC for its "naiveté as a pro se intervenor" and accept the contentions anyway. NEC Request at 12. With regard to timeliness, although NEC admits that it raised the issues in these three new contentions with the ACRS and NRC Staff in November and December 2005, NEC Request at 13, and has been telling the Board that it planned to file these three contentions ever since our conference call of January 24, 2006,[19] NEC argues that they are timely because it was only recently "able to apprehend new information and

[19] The transcript of this call indicates that NEC was working on these contentions in January, 2006, and originally intended to submit them at that time. NEC's pro se representative stated that "[NEC] has in the works three late-filed contentions and we anticipate completing them and submitting them by the end of the week." Tr. at 733.

information that is substantially different than that previously available." NEC Request at 2-3. NEC says that it filed the new contentions "as soon as possible following [its] first opportunity to cumulatively apprehend clear and unambiguous information about the erroneous assumptions and conclusions." Id. at 11. However, at least with regard to NEC Contention 5, NEC admits that "[t]he full depth and scope of non-conservative conclusions . . . was, to [NEC's] knowledge, first publicly revealed in full in NRC staff and licensee presentations [to the ACRS] on November 29, 2005 and December 8, 2005." Id. at 13. NEC repeated that it discovered this "clear and unambiguous information regarding the extent and depth of error" at these ACRS hearings.[20] NEC Request at 14. Despite these admissions, NEC "avers that the final SER is the seminal document on the issues raised" and therefore claims that the new contentions were filed within the 30-day schedule that the Board set for new contentions based on that document. Id. at 15. For these reasons, NEC argues that Contention 5 and the remaining contentions are timely under 10 C.F.R. § 2.309(f)(2).

For some of the same reasons, NEC argues that Contention 5 and the remaining contentions meet the "good cause" requirement of 10 C.F.R. § 2.309(c) for nontimely filings. NEC submits that Contention 5 and the remaining contentions were filed "as soon as possible" after NEC's "first opportunity to cumulatively apprehend clear and unambiguous information" about the three topics, and that this opportunity was created by Staff and licensee presentations before the ACRS and by the FSER. Id. at 11. More specifically, NEC says that its concerns regarding the subject matter of Contention 5 became apparent during the Staff and licensee presentations before the ACRS on November 29, 2005, and December 8, 2005. Id. at 13.

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[20] Indeed, as the Staff points out, whatever "erroneous assumptions and questionable models" NEC alleges exist in the calculation of the radiological consequences of a design basis accident under uprate conditions, NEC Request at 13, seem to have existed since the EPU application was submitted, or, at the latest, when Entergy submitted its alternative source term amendment application on March 29, 2005. Staff Answer at 15 n.28.

NEC requests that the Board, in determining how much time to allow between the discovery of new information and the filing of a contention based on that information, take into account the complexity of the information, the fact that NEC is a citizen intervenor, and the fact that NEC has no remaining venues in which to seek relief.[21]

NEC also argues that Contention 5 meets the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1), citing an extensive declaration by their expert witness in order to satisfy the basis requirement of section 2.309(f)(1)(ii). Id. at 16-18.

Entergy responds by claiming that NEC's new contentions "were neither prompted by, nor based on, new information in the . . . SER," but rather were based on "information that NEC admits it had long before the SER was issued." Entergy Response at 3. Furthermore, Entergy argues, the new contentions would have been late even if they had been based on new information in the SER, as they were filed more than thirty days after the SER was delivered and therefore did not comply with the deadline previously established by the Board. Id. at 5. In the case of Contention 5, Entergy also claims that the methodology NEC attacks was first presented to the NRC in July 2003 as part of Technical Specification Proposed Change No. 262 regarding the use of an Alternative Source Term (AST). Id. at 11. According to Entergy, NEC "should have challenged [the methodology] in the AST license amendment proceeding, or at the very latest in its August 2004 Petition." Id. at 12.

Because Contention 5 and the remaining contentions are untimely, Entergy argues, the section 2.309(c) eight-factor balancing test for nontimely contentions applies. Id. at 19-20. Entergy claims that NEC has failed to demonstrate good cause for nontimely filing – it "has provided no credible explanation for its lateness in submitting the proposed new contentions,

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[21] Id. at 14. NEC also refers to "reliance on a plain reading of the Board's articulations," but it is not at all clear how the statements NEC refers to in this context apply to Contention 5.

and has totally failed to explain why it took at least four months for it to request their admission; in fact, why it did not raise all of them with its Petition in August 2004." Id. at 20.

Finally, Entergy argues that Contention 5 fails to meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) in that it fails to identify the sections of the application that NEC wishes to dispute. Id. at 25. Indeed, Entergy claims that NEC could not have done so because the erroneous assumptions NEC identifies do not appear in the application. Id. at 25-26. Therefore, says Entergy, the contention "fails because its claims do not controvert the EPU Application." Id. at 26.

The NRC Staff argues that NEC's proposed new contentions are required to comply with the requirements of 10 C.F.R. §§ 2.309(f)(2) and 2.309(c), and that the contentions must be rejected as untimely because "each . . . could have been filed long before April 2006." Staff Answer at 7. The Staff claims that NEC has failed "to identify precisely what 'new' and 'different' information was contained in any of the voluminous material it vaguely cites," id. at 8, and points out that NEC itself admits that it was aware of the relevant information – at the latest – following the November ACRS meetings. Id. Therefore, the Staff argues, "[a]bsolutely no reason has been provided to show why NEC could not have filed its new contentions at that time." Id. Furthermore, the Staff claims, NEC has shown neither good cause for nontimely filing nor that the balance of the nontimely filing criteria in 10 C.F.R. § 2.309(c) supports the admission of the new contentions. Id. at 7.

The Staff's analysis under the contention admissibility standards of section 2.309(f)(1) begins with the position that Contention 5 is not "a specific statement of the issue of law or fact to be raised or controverted," as required by section 2.309(f)(1)(I), and that NEC's presentation of the basis for Contention 5 is unclear. Id. at 13-15. Furthermore, the Staff argues that "the Applicant's analyses of the radiological consequences of design basis accidents . . . were

approved in a separate license amendment implementing an alternative source term (AST) for Vermont Yankee," and that Contention 5 therefore falls outside the scope of the proceeding in violation of 10 C.F.R. § 2.309(f)(1)(iii) and (iv). Id. at 15. Finally, Staff asserts that NEC's presentation of Contention 5 is "confusing and fail[s] to properly identify the specific deficiencies in the Applicant's documents which NEC now seeks to litigate." Id. at 16.

B. Analysis of Admissibility as a Timely New Contention Under Section 2.309(f)(2)

The Board concludes that Contention 5 is based on information well known to NEC for approximately five months prior to its filing on April 6, 2006, and therefore was not timely under 10 C.F.R. § 2.309(f)(2)(iii). NEC itself concedes that the information on which the contention was based became available either prior to or during ACRS meetings in November and December 2005. NEC Request at 13. As Entergy and NRC Staff point out,[22] NEC testified at these hearings and raised the very issues it is now propounding in Contention 5.[23]

We reject NEC's attempt to stretch the timeliness clock by arguing that it was only recently able "to cumulatively apprehend" the problem and "[to] discover clear and unambiguous information regarding the extent and depth of error." NEC Request at 11, 14. Certainly, there are some cases where new and material information is revealed in a piecemeal fashion, and where the foundation for the contention is not reasonably available until the later pieces fall into place. In such cases the admissibility decision "turns on a . . . determination about when, as a cumulative matter, the separate pieces of the . . . information 'puzzle' were sufficiently in place to make the particular concerns . . . reasonably apparent." Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 26 (1996). However,

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[22] Entergy Response at 4-5; Staff Answer at 8.

[23] See ACRS Transcript 11/16/05 at 285-88; ACRS Transcript 11/30/05 at 293-95 (presenting testimony based on the DSER).

based on the record in this case, it is clear to us that the information "puzzle" for Contention 5 was reasonably complete at the latest by November and December of 2005 (when NEC first began sounding the alarm at the ACRS meeting). Accordingly, the time available for NEC to file new contentions on this subject matter should be measured from December 2005.

We also reject the suggestion that our ruling of January 17, 2006, which specified that "[o]nce the Final SER is issued and delivered to the parties, they shall have . . . thirty days within which to move for leave to file any new or amended contentions," LBP-06-03, 63 NRC 85, 97 (2006), relaxed the deadline for any and all new contentions until 30 days after the FSER. Our 30-day deadline plainly applied only to new contentions based on new and materially different information in the FSER. In this case, NEC failed to show that any of the material information that it relies upon for Contention 5 first became available in the March 2006 FSER. Therefore, NEC fails to satisfy the requirements of section 2.309(f)(2)(I)-(iii) or of the January 17, 2006 order.[24]

C. Analysis of Admissibility as a Nontimely Contention Under Section 2.309(c)

Having concluded that Contention 5 is not "timely" under section 2.309(f)(2), we now turn to the eight factors related to "nontimely filings," to see if the contention may, nevertheless, be admitted under 10 C.F.R. § 2.309(c).

We conclude that NEC fails at the first, and most important, balancing factor – a showing of "good cause, if any, for failure to file on time." 10 C.F.R. § 2.309(c)(1)(I). NEC's argument that the FSER was NEC's "first opportunity to cumulatively apprehend" the problem is no more effective here, in establishing good cause for nontimeliness, than it was in establishing

[24] Given NEC's multi-month delay in filing its new contentions, we find no need to quibble about whether NEC missed the 30-day deadline by one day, Entergy Response at 5, Staff Answer at 11-12, or whether this one-day delay is excusable, either by the regulations or by NEC's "naiveté as a pro se intervenor." NEC Request at 12.

timeliness. See discussion supra p. 13. Nor does the "unusual volume and complexity of the information to be sifted" constitute a good cause excuse, because, by its own admission, NEC recognized the alleged problem as early as November. NEC Request at 13. NEC's "eureka" moment occurred in November 2005. But it took the next five months for NEC to find the time and resources to sit down to draft and file the contention that it knew it had, and that it had repeatedly announced that it intended to file. Given our scheduling orders in this case, NEC was aware that, as the issuance of the FSER loomed, the dates for filing of written testimony and the evidentiary hearing would soon follow. We find it hard to accept that NEC's other work should take higher priority than the formulation and filing of new contentions, or that the general workload of its representative should be allowed to delay the relatively imminent hearing herein. Nor do we accept that "naiveté as a pro se intervenor," NEC Request at 12, has anything to do with, or excuses, these late contentions. Pro se or not, NEC is an experienced player in NRC adjudicatory hearings. And while "naiveté" may excuse pleadings that are inartfully drawn,[25] we do not see how it applies to simple things like the need for timeliness and prompt action. Our review of the remaining seven factors of 10 C.F.R. § 2.309(c)(1)(ii)-(viii), to the extent they are applicable at all, does not tip the balance in favor of admitting NEC's nontimely Contention 5. Certainly, by our prior admission of NEC to this proceeding, we have already ruled that NEC has a right to be made a party, has interests in the proceeding, and could be affected by the proceeding, as per 10 C.F.R. § 2.309(c)(1)(ii), (iii) and (iv), respectively.[26] But these factors do

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[25] Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973) ("[W]e do not think that a pro se petitioner should be held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere.").

[26] See LBP-04-28, 60 NRC 548, 553-54 (2004) (ruling that NEC has standing in this proceeding); LBP-05-32, 62 NRC 813, 822 (2005) (admitting a new contention submitted by NEC).

not seem particularly "applicable" given that they focus on the status of the requestor/petitioner seeking admission to a proceeding (e.g., standing, nature of requestor/petitioner's affected interests) rather than on new contentions submitted by admitted parties. Similarly, we conclude that NEC has satisfied section 2.309(c)(1)(vi) by showing that its interests are not adequately represented by the other parties. NEC Request at 9-10.

Among the remaining factors, NEC's greatest stumbling block is 10 C.F.R. § 2.309(c)(1)(vii) – the fact that admission of this nontimely contention at this late date will substantially broaden and delay this proceeding. If NEC Contention 5 were admitted, the Board either would be forced to significantly delay the litigation and hearing on the admitted contentions, or would need to set a second, later schedule for the litigation of Contention 5.[27] NEC's suggestion that the new contentions could be admitted without substantially disrupting the existing schedule, NEC Request at 10, is plainly wrong.

On balance, the Board concludes that it will not admit NEC Contention 5 under 10 C.F.R. § 2.309(c) because NEC has shown no good cause for waiting, at this relatively late stage, several months to file this contention and because its admission would significantly delay the proceeding. NEC recognized the key issue as early as November 2005 and knew or should have known that filing this proposed contention on April 6, 2006, would disrupt and delay the proceeding. In these circumstances, we decline to excuse the delay or to admit this nontimely filing.

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[27] Assuming arguendo that NEC Contention 5 would be heard in a Subpart L proceeding, there would need to be a time for mandatory disclosures under 10 C.F.R. §§ 2.336 and 2.1203. Then the parties would need time to develop and submit written testimony on Contention 5, both direct testimony and rebuttal. Next would come the submission of proposed direct and cross examination plans, and then the Board's own preparation for, and conduct of, an oral hearing. See 10 C.F.R. § 2.1207.

D. Analysis of Admissibility Under the Six Basic Factors of Section 2.309(f)(1)

As we have already determined that Contention 5 does not meet the criteria for nontimely filing set forth in 10 C.F.R. § 2.309(c), it is not strictly necessary to determine whether Contention 5 meets the six-part admissibility test in section 2.309(f)(1). However, we do find that Contention 5 fails to "[p]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee" or to

> include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes . . . or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1)(vi). NEC refers to the NRC Staff's presentation before the ACRS and the DSER, NEC Request at 16, but does not point to any specific portion of the application in which the alleged deficiencies can be found. NEC alleges that Entergy's EPU application makes five specific false or inaccurate assumptions regarding the "potential of public exposure to exceedingly high doses of radioactivity."[28] But, when pressed, "neither NEC nor Dr. Hopenfeld cite where in the EPU Application the allegedly erroneous assumptions are made." Entergy Response at 25. To the contrary, Entergy shows that none of these five assumptions were made in the EPU application. Id. at 25-26.

In its reply, NEC shifts ground. Instead of pointing out where Entergy supposedly made the five "false" assumptions, NEC now characterizes Contention 5 as a contention of omission, stating that "[b]ecause Entergy has ignored the iodine spiking issue entirely, and provided no specific calculations of radioactivity . . . it was not possible . . . to cite the specific paragraphs [in

[28] NEC Request, Exh. 1, Declaration of Dr. Joram Hopenfeld Supporting New England Coalition's New Contentions (Apr. 6, 2006) at 4 (Hopenfeld Declaration-Request).

the EPU application] where Entergy made incorrect assumptions."[29] But NEC's claim that Entergy has ignored the radiological consequences of design basis accidents under EPU conditions is plainly incorrect, because those analyses were submitted by Entergy in 2003, and approved by the NRC Staff, in a separate license amendment implementing an AST for Vermont Yankee.[30] Thus, while we do not say, as the Staff urges, that the existence of a prior AST license amendment means that Contention 5, which focuses on the radiological consequences of design basis accidents under EPU conditions, is not within the scope of an EPU proceeding under 10 C.F.R. §2.309(f)(1)(iii),[31] Staff Answer at 15, we do conclude that NEC has failed to show that a genuine dispute exists with regard to a material issue of law or fact. For this reason, Contention 5 fails the standard test for admissibility under section 2.309(f)(1)(vi).

IV. NEC NEW CONTENTION 6

The second of NEC's newly proffered contentions, which we will refer to as Contention 6 to distinguish it from other NEC contentions that have been submitted in this proceeding, reads as follows:

> The ENVY application (Technical Specification Proposed Change No.263 w/ Supplements 1-45) the radiological consequences at Vermont Yankee under

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[29] NEC Reply, Exh. 1, Declaration of Dr. Joram Hopenfeld in Reply to NRC Staff and Entergy Responses to New England Coalition's April 6, 2006 Request for Leave to File New Contentions (May 5, 2006) at 3 (Hopenfeld Declaration-Reply).

[30] Entergy's July 31, 2003 AST amendment application states "the AST analyses which have been performed consider the core isotopic values at EPU conditions." Entergy Response, Exh. 4 at 2 (emphasis added). The AST amendment was approved and issued on March 29, 2005. Vermont Yankee Nuclear Power Station Amendment to Facility Operating License, Amendment No. 223, License No. DPR-28 (Mar. 29, 2005), ADAMS Accession No. ML041280490.

[31] "We reject the argument that because the MSIV LLTR is the subject of a prior license amendment request, it is automatically outside of the scope of the EPU application." LBP-04-28, 60 NRC 548, 570 (2004).

> uprate, and NRC staff review thereof, including Requests for Additional Information ("RAI") (ADAMS ML053260427 - Added 12/05/2005) and the SER, is [sic] incomplete insofar as it [sic] does not discuss how Vermont Yankee would comply with GDC-19, GDC 55, and 10 CFR 100.11 following the failure of small lines carrying primary coolant outside of containment. ENVY has not provided the requisite information in the instant application.

NEC Request at 6.

A. Position of the Parties

NEC's position on timeliness with respect to Contention 6 is the same as its position with respect to Contention 5 – timeliness under 10 C.F.R. § 2.309(f)(2) should be assessed relative to the date of the FSER, and that, if the contention is nontimely, it should be accepted because of the length of time NEC needed to "cumulatively apprehend clear and unambiguous information" related to the contention. NEC Request at 11. NEC's pleading provides no information to demonstrate that Contention 6 meets the general contention admissibility standards of 10 C.F.R. § 2.309(f)(1), although the statement of their expert witness does address "basis" issues. Hopenfeld Declaration-Request at 9-10.

Entergy argues that Contention 6, which asserts that "the application . . . and the SER is [sic] incomplete insofar as it does not discuss how Vermont Yankee would comply . . . following the failure of small lines carrying primary coolant" is a contention of omission which "has nothing to do with the SER." Entergy Response at 12. Because the "omission" existed in the application ab initio, it "could and should have been raised as a proposed contention by NEC with its Petition in August 2004." Id. at 13. Furthermore, Entergy asserts that it did not need to submit the analysis that NEC requests because it previously submitted an AST license amendment request and is therefore not required to do so here. Id. at 27-29.

The NRC Staff also claims that NEC's new contentions should have been filed long before the FSER was issued in March 2006. The Staff makes reference to the ACRS meetings in November 2005, claiming that "[a]bsolutely no reason has been provided to show why NEC

could not have filed its new contentions at that time, if not upon receipt of the Applicant's licensing submittals." Staff Answer at 8. The Staff rejects NEC's claim that the timeline for submitting contentions should be based on the issuance of the FSER, and further argues that NEC has failed to show good cause for filing the new contention months – or even years – after the appropriate deadline. Id. at 8-12. With respect to the substance of Contention 6, the Staff agrees with Entergy's claim that it is not required to submit the analysis NEC requests because such an analysis

> should only be used if the licensee's radiological consequences analyses are not based on an alternative source term (i.e., if the analyses are based on a traditional source term . . .). In contrast, . . . Vermont Yankee has adopted an alternative source term, pursuant to an AST amendment issued on March 29, 2005, and its EPU radiological dose consequences analyses are based on the AST. Accordingly, template SE Section 2.9.3 [of the Staff's EPU Review Standard RS-001] does not apply.

Id. at 21 (citations and internal quotations omitted). In short, the Staff and Entergy assert that there is no omission, because Review Standard RS-001[32] does not require such an analysis if the applicant is using an AST.

NEC replies by arguing that the Staff and Entergy have misconstrued the relevant portion of Review Standard RS-001 ("Matrix 9"), which states that the analysis is required for all "EPUs that do not utilize alternative source term whose failure of small lines carrying coolant outside containment result in fuel failure." Hopenfeld Declaration-Reply at 4 (emphasis added). As we understand it, NEC is arguing that Matrix 9 of RS-001 only exempts facilities (a) that use an AST and (b) whose failure of small lines carrying coolant outside containment result in fuel failure, whereas (NEC posits) the Staff and Entergy believe that Matrix 9 exempts all facilities that use an AST. Id. at 5.

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[32] Review Standard for Extended Power Uprates (Rev. 0 Dec. 2003), ADAMS Accession No. ML033640024 (Review Standard RS-001).

B. Analysis of Admissibility As a Timely New Contention Under Section 2.309(f)(2)

Much of the timeliness analysis offered under the discussion of Contention 5 also applies to Contention 6. This Board rejects NEC's claim that issuance of the FSER started the timeliness clock for this contention, because, by NEC's own admission, NEC had recognized and complained about the relevant information and/or omission – at the latest – by the time of the ACRS meetings in November and December of 2005. NEC Request at 13. We reject NEC's efforts to excuse its delay by arguing that it needed months "to cumulatively apprehend" information it had available at that time.[33] Id. at 11. For this, and other reasons discussed above, we determine that Contention 6, like Contention 5, is not timely under section 2.309(f)(2).

C. Analysis of Admissibility As a Nontimely Contention Under Section 2.309(c)

Our application of the balancing test for nontimely filings also parallels the analysis presented for Contention 5. The information or omission that underlies Contention 6 was recognized as a problem by NEC at the time of the ACRS meetings in November and December 2005. NEC Request at 13. There has been no showing of good cause why NEC did not file Contention 6 soon thereafter, especially when it must have been obvious that delaying the filing of this contention would disrupt and delay this proceeding just when the adjudicatory hearing documents needed to be filed. As with Contention 5, this Board concludes that Contention 6 also fails the balancing test for the admission of nontimely contentions under section 2.309(c).

[33] In reality, the problem or omission NEC complains of probably existed since the summer of 2004 when the EPU application was docketed, and thus the clock for the filing of this contention began almost two years ago.

D. Analysis of Admissibility Under the Six Basic Factors of Section 2.309(f)(1)

Given that Contention 6 is inadmissible because it fails the alternate tests of 10 C.F.R. §§ 2.309(f)(2) (timely contentions) and 2.309(c) (nontimely contentions), we need not belabor whether it meets the six basic factors of 10 C.F.R. § 2.309(f)(1). It is sufficient to note that the omission complained of – that the application and SER are incomplete insofar as they do "not discuss how Vermont Yankee would comply with GDC-19, GDC 55, and 10 CFR 100.11 following the failure of small lines carrying primary coolant outside of containment" – is no omission at all, because such information is not required for EPUs that use ASTs. The Staff's Review Standard RS-001 at 59 (Matrix 9 at 2), states that the Staff should review the "radiological consequences of the failure of small lines carrying primary coolant outside containment" for "EPUs that do not utilize alternative source term whose failure of small lines carrying primary coolant outside containment result in fuel failure." Since Entergy's EPU utilizes an AST, RS-001 does not require the Staff to review the radiological consequences of the failure of small lines.

NEC disputes this interpretation of Review Standard RS-001. NEC points out that RS-001 requires the radiological consequences analysis if both (a) the EPU does not use an AST and (b) the failure of small lines carrying coolant outside containment will result in fuel failure, i.e., the analysis is only required for a "subset" of EPUs not using ASTs. Hopenfeld Declaration-Reply at 4-5. We agree. NEC then urges a fallacious converse – that the radiological consequence analysis is not required only if both (a) and (b) are missing. This is logically invalid. Since the combination of (a) and (b) is what triggers the requirement for the radiological consequences analysis for small line failure, the absence of either precondition means that Matrix 9 does not mandate such an analysis. In this case, condition (a) ("the EPU

does not use an AST") is missing because Entergy's EPU uses an AST, and thus Review Standard RS-001 does not call for a review of the radiologic consequences of small line breaks.

V. NEC NEW CONTENTION 7

The third of NEC's newly proffered contentions, which we will refer to as Contention 7 to distinguish it from other NEC contentions that have been submitted in this proceeding, reads as follows:

> ENVY Technical Specification Proposed Change No.263 w/ Supplement 1-42 does not comply with Drafts GDC-40 and 42 insofar as they require that protection must be provided against the dynamic effects of a LOCA.
>
> Specifically, and in contradiction to Supplement 42 (provided to New England Coalition 12/05/2005) and ENVY testimony before the NRC Advisory Committee on Reactor Safeguards (11/15/2005, 11/16/2005, 11/29/2005, 11/30/2005, 12/07/2005, 12/08/2005, 12/09/2005), and the Steam Dryer Monitoring Plan endorsed in the NRC Final Safety Evaluation Report at page 50, and the NRC staff endorsement of Ascension Power Testing as described in NRC's staff's response to public comments on the SER at page 325, and NRC Staff's acceptance of ENVY steam dryer inspection results as determinative of no further crack growth at SER page 337, New England Coalition asserts that:
>
> a. The fatigue and the intergranular stress corrosion cracks, (IGSCC) which already exist on various Vermont Yankee steam dryer surfaces will increase in number and grow in size because of the higher stresses on the dryer structure from flow induced vibrations under EPU conditions.
>
> b. The increase [sic] energy content in the flow under EPU conditions will increase the intensity and duration of the dynamic loads that act on the dryer causing it potentially to fragment and generate many loose parts.
>
> c. The loose parts may migrate to the core region or the Main Steam Isolation Valve ("MSIV"), potentially blocking fuel flow channels and/or preventing the MSIV from isolating the containment following a main steam line break. The ultimate danger to the public from dryer failure is a core-melt with an early containment by pass.
>
> d. Because the ascension power tests, as described in Supplement 42, are limited to steady state conditions they will not provide any data that could indicate that the dryer would not fail catastrophically following LOCA.

NEC Request at 6-7.

A. Position of the Parties

NEC's position on timeliness with respect to Contention 7 is the same as its position with respect to Contention 5 and 6 – timeliness under 10 C.F.R. § 2.309(f)(2) should be assessed relative to the date of the FSER, or alternately a nontimely filing under section 2.309(c) should be accepted because of the length of time NEC needed to "cumulatively apprehend clear and unambiguous information" related to the contention. NEC Request at 11. NEC provides no information to demonstrate that Contention 7 meets the general contention admissibility standards of 10 C.F.R. § 2.309(f)(1), although the statement of their expert witness does address basis issues. Hopenfeld Declaration-Request at 10-14.

Entergy argues that NEC had access to the information on which Contention 7 is based by November 22, 2005, at the latest, and that the contention therefore fails the timeliness test in 10 C.F.R. § 2.309(f)(2). Entergy Response at 15. It also avers that NEC's expert acknowledges knowing about the "alleged vulnerability of VY to flow-induced vibration failure of its steam dryer as early as 2004," and that NEC therefore "could have and should have raised its steam dryer contention when it filed its Petition in August 2004." Id. at 16. Entergy also cites testimony submitted to the Staff by an NEC witness in August 2003, id. at 16-19, to support its claim that NEC has failed to show good cause for failure to file in a timely manner or to make a sufficient showing regarding the remaining elements of the section 2.309(c) test for nontimely filings. Id. at 20-21. Finally, Entergy rejects the substance of Contention 7 as "unsupported and ill-defined" and characterizes the statements made by NEC's expert in support of the contention as "vague" and "conclusory." Id. at 29, 31. Based on its argument that these statements are insufficient to provide a basis for the contention, Entergy claims that Contention 7 fails the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). Id. at 32.

The NRC Staff's position is that the Vermont Yankee FSER differs very little from the DSER, which was available November 2005, and the differences that do exist "do not support the admission of this expansively written contention." Staff Answer at 24. Furthermore, information relevant to the Applicant's steam dryer inspection appeared "in Supplement 42 to the EPU application, dated November 22, 2005" and "was addressed by Dr. Hopenfeld in his statements to the ACRS in November 2005." Id. at 24-25. According to the Staff, NEC "could – and should – have filed this contention at that time." Id. at 24. The NRC Staff presents no independent argument applying the balancing test for nontimely filing, asserting merely that "[n]o reason appears as to why NEC could not have filed its New Contention [Seven] at the time it addressed these issues before the ACRS." Id. at 25. The Staff presents no arguments regarding the substance of Contention 7 or the contention admissibility standards in 10 C.F.R. § 2.309(f)(1).

B. Analysis of Admissibility As a Timely New Contention Under Section 2.309(f)(2)

The timeliness analyses offered under the discussion of Contentions 5 and 6 also apply to Contention 7. The Board finds that the information on which Contention 7 is based was available – at the latest – in November and December 2005 and thus that a timely contention should have been filed promptly thereafter. The gist of the contention – that stress corrosion cracks on dryer surfaces may increase in number and grow in size because of greater flow induced vibrations under EPU conditions – was known to NEC's expert as early as 2005[34] and certainly is not based on any new and materially different information in the FSER. We reject NEC's attempts to connect its submission to a later date by claiming that it could not piece together the relevant information at the appropriate time and by suggesting that the deadline for contentions based on the FSER should also apply to contentions not based on the FSER. NEC

[34] ACRS Transcript 11/16/05 at 279-83.

Request at 11, 15. We therefore determine, as we did for Contentions 5 and 6, that Contention 7 should not be deemed timely.

C. Analysis of Admissibility As a Nontimely Contention Under Section 2.309(c)

Our application of the balancing test for nontimely filings also parallels the analysis presented for Contentions 5 and 6. NEC failed to show good cause for its failure to file Contention 7 in a timely manner and failed to address the fact that admitting the contention this late in the proceeding will substantially broaden and delay litigation.[35]

[35] Although our general impression is that NEC Contention 7 may satisfy the six basic criteria of 10 C.F.R. § 2.309(f)(1), the unexcused untimeliness of this contention makes it unnecessary for us to resolve this issue.

VI. CONCLUSION

For the reasons stated above, New England Coalition Contentions 5, 6, and 7 are not admitted.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD[36]

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

Anthony J. Baratta
ADMINISTRATIVE JUDGE

/RA by G.P. Bollwerk, III for:/

Lester S. Rubenstein
ADMINISTRATIVE JUDGE

Rockville, Maryland

May 25, 2006

[36] 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
ENTERGY NUCLEAR VERMONT YANKEE L.L.C.	)	Docket No. 50-271-OLA
and ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
	)	
	)	
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON ADMISSIBILITY OF THREE ADDITIONAL CONTENTIONS) (LBP-06-14) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 25th day of May 2006