

July 20, 2006 (2:05pm)

UNITED STATES  
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFFBefore the Atomic Safety and Licensing Board*In the matter of*ENTERGY NUCLEAR VERMONT YANKEE, LLC )  
and ENTERGY NUCLEAR OPERATIONS, INC. )  
Vermont Yankee Nuclear Power Station )  
License Renewal ApplicationDocket No. 50-271-LR  
ASLB No.06-849-03-LRNEW ENGLAND COALITION, INC.'S OPPOSITION  
TO ENTERGY'S MOTION TO STRIKE PORTIONS OF NEW  
ENGLAND COALITION'S REPLY

Entergy's Motion to Strike Portions of New England Coalition's Reply is a transparent attempt on Entergy's part to enter a sur-reply that is not permitted under Nuclear Regulatory Commission (NRC) rules. 10 C.F.R. § 2.309(h). There is no basis in the NRC rules or precedent to strike any portion of NEC's Reply, and Entergy's Motion should be denied.

**I. LEGAL STANDARD GOVERNING CONTENTS OF NEC'S  
REPLY BRIEF****A. A Reply May Address Legal and Factual Issues Raised in the  
Initial Petition, or in Answers to the Initial Petition.**

The NRC precedent Entergy cites in support of its Motion to Strike plainly states that replies may address "the legal or factual arguments first presented in the original petition or raised in the answers to it." *In the Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, CLI-06-17, 63 N.R.C. \_\_\_, slip op. at 6. All argument and information included in NEC's Reply and in the attached Second Declarations of Dr.

Joram Hopenfeld and Arnold Gundersen directly address legal or factual arguments raised in Entergy and the NRC Staff Answers to NEC's petition to intervene, and is therefore within the scope of an admissible Reply. Further, never once does Entergy claim that NEC's Reply contains "redundant, immaterial, impertinent or scandalous matter." F.R.Civ.P. 12(g) (Motion to Strike).

Entergy cites two factually inapposite cases in which the NRC declined to consider information presented on Reply, where, in each instance, the initial petition was entirely unsupported by either factual allegations or expert opinion. *In the Matter of Louisiana Energy Services, L.P.* (National Enrichment Facility), 60 N.R.C. 619 (December 8, 2004), *affirmed*, *In the Matter of Louisiana Energy Services, LP*, 60 N.R.C. 223 (August 18, 2004); *In the Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, *Supra*. In the first of these cases, a New Mexico state agency acknowledged that its initial petition did not satisfy NRC pleading requirements due to lack of funds to hire experts, and the "mistaken impression that a more generalized 'notice' pleading would suffice to meet the contention standard." *In the Matter of Louisiana Energy Services, LP*, 60 N.R.C. at 225. In the second case, the basis for the contention at issue presented in the initial petition consisted of one paragraph, found to state only "general allegations and obvious truisms", without reference to the licensee's Application. *In the*

*Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, 63 N.R.C. at \_\_\_\_, slip op. at 3-4.

These cases signify only that a petitioner may not supply the entire factual basis for a contention for the first time on Reply. NEC does not supply the basis for its contentions on Reply. Rather, NEC's initial petition included extensive factual and expert support, satisfying the pleading requirements stated in 10 C.F.R. § 2.309(f). On Reply, NEC permissibly responds to Entergy and the NRC Staff's legal and factual arguments in opposition to its contentions.

B. Additional Expert Declarations Are Admissible On Reply.

Entergy moves to strike in their entirety the Second Declarations of Dr. Joram Hopenfeld and Arnold Gundersen, in part on the grounds that petitioners are not permitted to introduce any additional expert declarations on Reply. Entergy cites no authority for this alleged blanket prohibition.

To accept Entergy's argument would be to find that a petitioner may address only legal arguments on Reply, and may not rebut factual allegations. The questions the Board must decide at this stage of the proceeding -- whether NEC's contentions satisfy requirements of 10 C.F.R. § 2.309(f)(1) -- are mixed questions of law and fact. Indeed, Entergy and the NRC Staff's arguments in opposition to admission of NEC's contentions primarily concern factual issues addressed by NEC's experts, Dr. Hopenfeld and Mr. Gundersen, in their initial Declarations in support of NEC's petition

to intervene. These fact-based arguments must be evaluated and refuted by NEC's technical experts, not NEC's attorneys. To prohibit the submission of additional expert statements on Reply, effectively limiting NEC's Reply to discussion of purely legal aspects of the issues, would deny NEC its right to the "last word" under NRC pleading rules. 10 C.F.R. § 2.309(h).

NEC notes that the D.C. Circuit has stated that "Section 189(a) [of the Atomic Energy Act, 42 U.S.C. 2239(a)] prohibits the NRC from preventing all parties from ever raising in a hearing on a licensing decision a specific issue it agrees is material to that decision." *Union of Concerned Scientists v. NRC*, 920 F.2d 50,54 (D.C. Cir. 1990). The First Circuit has more recently stated that the NRC's Part 2 rules "may approach the outer bounds of what is permissible under the [Administrative Procedures Act]." *Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 355 (1<sup>st</sup> Cir. 2004). The Commission must take care to interpret the requirements of the Part 2 rules in accordance with the AEA and APA. To adopt Entergy's position that a petitioner's Reply may not address factual arguments raised in Answers to its contentions would go beyond the limitations imposed on the Commission by these statutes, and would deprive NEC of due process.

C. 10 C.F.R. § 2.309(f)(2) Does Not Apply

Section 2.309(f)(2) of the NRC rules, 10 C.F.R. § 2.309(f)(2) sets forth conditions for the amendment of a contention or filing of a new contention

based on new information. As NEC's Reply neither amends its contentions nor includes any new contentions, Section 2.309(f)(2) does not apply.

**I. NEC'S REPLY BRIEF CONTAINS ONLY PERMISSIBLE ARGUMENT AND INFORMATION DIRECTLY RESPONSIVE TO ENTERGY AND THE NRC STAFF ANSWERS**

**A. All Information and Argument in Support of Contention 1 is Admissible.**

Other than using a motion to strike as a ruse for a sur-reply, Entergy's argument effectively boils down to the notion that NRC rules and precedent preclude a petitioner from effectively replying to any contention's opposition. As stated above, that simply is not the law. And here, NEC replied directly to Entergy's arguments opposing Contention 1.

Entergy moves to strike NEC's reply regarding Contention 1 on the grounds that § 511(c) of the Clean Water Act does not require any further study of water quality impacts than attachment of Entergy's expired NPDES permit. Opposition at 12-13. It further argues that the Contention is "barred by the Clean Water Act," Opposition at 11, and that:

Entergy's Application provided the [expired] NPDES permit which constituted Vermont's 316(a) determination for the thermal discharge permitted at the time, and Entergy subsequently provided the amended permit constituting the 316(a) determination for the thermal discharge with the 1°F increase. Therefore, under the NRC rules, no further analysis was required. NEC's assertion to the contrary is barred by the rules.

Opposition at 12. Entergy repeats these same arguments in its motion to strike. Motion to Strike at 10.

Entergy's opposition arguments are flat wrong and NEC's reply explains precisely why. Entergy argues that a Clean Water Act "determination" or "equivalent state permits" satisfies NEPA's requirements, including, presumably, NEPA's study of cumulative impacts. 10 C.F.R. § 51.53(c)(3)(ii)(B). Entergy Opposition at 11. NEC's Reply merely points out that here, any such determination must be made pursuant to a section 401 Water Quality Certification, 33 U.S.C. § 1341. Indeed, there is no current NPDES permit, nor could there be an NPDES permit allowing a 1°F increase of the Connecticut River's temperature miles downstream from the plant for the twenty-years from 2012 to 2032. An NPDES permit has a maximum five-year duration. And the current amended permit requires studies precisely to determine whether continuation of the increased thermal discharge will be permitted.<sup>1</sup> Any claim that the expired permit authorizes the increased thermal discharge for any period other than a temporary time necessary to conduct tests is unsupported.

In sum, NEPA requires evaluation of the cumulative twenty-year impact. 40 C.F.R. 1508.7. That impact has not been assessed and cannot be assessed through an expired five-year permit requiring further studies. Any

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<sup>1</sup> This permit expired on March 31, 2006 but remains in effect pursuant to 3 Vt. Stat. Ann. § 814(b) (allowing a license to remain in effect if a timely application for renewal has been filed). The studies required by the expired permit will determine the conditions of any new license. Further, the amendment requiring the studies and temporarily allowing the 1 degree increase 1.4 miles downstream is under de novo appeal in Vermont's Courts and is not final.

claim to the contrary is without foundation. Compliance with water quality requirements for the license term can only be met through a § 401 certification.<sup>2</sup> Hence, NEC's arguments respond directly to Entergy's opposition by explaining why Entergy's attachment of an expired NPDES permit is legally insufficient to meet NEPA's obligations.

Entergy's basis for its motion to strike boils down to its disagreement with NEC over what amounts to appropriate proof of CWA compliance and, hence, satisfaction of a portion of NEPA's requirements. NEC's argument regarding what should have been submitted as such proof responds directly to Entergy's argument that an attached NPDES permit satisfies this obligation. Entergy's disagreement with NEC concerning what constitutes such proof is hardly the basis of a motion to strike, but is instead impermissible sur-rebuttal.

It is also important to note that §401 Water Quality Certification is jurisdictional and imposes an independent obligation on Entergy and the NRC, regardless of whether the need for certification is raised as a contention. "Any applicant for a federal license or permit to conduct any

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<sup>2</sup> It is also worth noting that the NRC explanation for this rule cited by Entergy states that the rule "requires an applicant to provide the NRC with *certification* that it holds FWPCA permits . . . ." Opposition at 12 quoting 56 F.R. 47,016, 47,019 (sep. 17, 1991) (emphasis added). The word "certification" is not an accident. Further, Entergy holds no permits current to the requested license extension term or that would otherwise authorize any discharge during the license extension. And, Entergy leaves out the sentence that precedes its quote: "The permit process authorized by the FWPCA is an adequate mechanism for control and mitigation of these potential aquatic impacts." 56 F.R. at 47019. Certification is the FWPCA process that assures that federally licensed facilities will comply with state water quality requirements. 33 U.S.C. § 1341. This is particularly true when no NPDES permit addressing the discharge is in place. A certification is thus required.

activity including, but not limited to construction *or* operation of facilities, which *may* result in *any* discharge . . . *shall* provide the licensing or permitting agency a certification from the state” that the discharge complies with state water quality requirements. 33 U.S.C. § 1341(a)(1). “*No license or permit shall be granted* if certification has been denied by the State.” *Id.* In short, neither Entergy nor the NRC can escape § 401’s obligations by simply claiming that it was not part of this (or any) contention.

Entergy also uses its motion to strike in an effort to downplay the extent of its thermal discharge. Motion to Strike at 11. Heating the Connecticut River by 1° F a mile and one-half downstream from the plant obviously requires a much higher discharge temperature that will heat portions of the River closer to the point of discharge by much more than one degree. Entergy’s characterization of this truism as an effort to “recast” Contention 1, and Entergy’s subsequent factual explanation is again nothing more than impermissible sur-rebuttal. Motion to Strike at 11. Indeed, Contention 1 initially (but concisely) asserts that a significant portion of the *Connecticut River’s* temperature – not the discharge – will increase by one degree, NEC Contentions at 10, and Dr. Jones’s Declaration discusses increases in temperature from 68° to 77° and from to 68° to 86°. This discussion is not purely academic, but in the context of Entergy’s proposed thermal discharge. Entergy’s desire to respond to these facts a second time, and particularly its artificial portrayal of the increase in its thermal



discharge as only 1° when, in fact, such an increase is a mile and one-half downstream begs accuracy, and certainly does not meet the high standard requisite to a motion to strike. Again, it is a transparent and impermissible sur-rebuttal, if not an outright attempt to distort the facts.

**B. All Information and Argument in Support of Contention 2 is Admissible.**

NEC's Contention 2 states that, according to data included in the License Renewal Application, key reactor components will crack and/or fail due to environmentally assisted metal fatigue during the license renewal term, and that Entergy's proposed plan to manage this problem is inadequate. Entergy proposes to either "refine" its metal fatigue analyses (CUF calculations), or develop an inspection and monitoring program at some point in the future. NEC submitted the declaration of Dr. Joram Hopenfeld in support of Contention 2. NEC Petition for Leave to Intervene, Request for Hearing, and Contentions at 14-17, Exhibit 7 ¶¶ 4-14.

Entergy moves to strike rebuttal argument on Contention 2 stated in the Second Declaration of Dr. Hopenfeld, and all references to this material in NEC's Reply brief. Entergy specifically complains that Dr. Hopenfeld's Second Declaration seeks to expand the scope of the initial contention to encompass how CUFs were calculated and adjusted for environmentally assisted fatigue.

NEC's Reply does not expand the scope of Contention 2. As set forth in NEC's initial petition, Contention 2 questions the validity of Entergy's entire

environmentally assisted fatigue analysis and management plan, including the means by which CUF values reported in Entergy's Application were determined. NEC contends that Entergy's proposal to manage metal fatigue by refinement of its CUF calculations lacks transparency in that "[t]he License Renewal Application provides no information about the analytical techniques used to predict the CUF values." NEC Petition for Leave to Intervene, Request for Hearing, and Contentions at 16, Exhibit 7 at ¶ 11. Based on Entergy's Application, NEC is therefore unable to determine whether "refinement" of this analysis is appropriate. *Id.* Clearly, NEC must evaluate the validity of Entergy's existing metal fatigue analysis, in order to determine whether any proposed adjustments to this analysis are legitimate, and whether an adjusted analysis will produce valid results.

The Second Declaration of Dr. Joram Hopenfeld, paragraphs 4-10, directly responds to the following factual arguments regarding Contention 2 that Entergy raised in its Answer:

- (1) Argument regarding the ASME Code's treatment of environmentally assisted metal fatigue;
- (2) Argument that reanalysis of environmentally assisted metal fatigue at Vermont Yankee is appropriate because Entergy's existing analysis was excessively "conservative";
- (3) Argument that CUFs in excess of 1, reported in Entergy's Application, do not really indicate possible component failure because fatigue analysis was "conservative"; and

(4) Argument that the NRC's decision not to address environmentally assisted fatigue generically proves that NECs Contention 2 does not raise a significant safety issue.

Entergy's Answer to New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions at 18-25.

The Second Declaration of Dr. Joram Hopenfeld ¶¶ 4-10, and references thereto in NEC's Reply brief, are therefore admissible. *See, In the Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, CLI-06-17, 63 N.R.C. \_\_\_, slip op. at 6 (Petitioner's Reply may address "the legal or factual arguments first presented in the original petition or raised in the answers to it.").

C. All Information and Argument in Support of Contention 3 is Admissible.

NEC's Contention 3 states that the License Renewal Application does not include an adequate plan to monitor and manage aging of the steam dryer during the renewed license term, and questions Entergy's reliance on two computer models (the Computational Fluid Dynamic Model and the Acoustic Circuit Model) for this purpose. NEC submitted the declaration of Dr. Joram Hopenfeld in support of Contention 3. NEC Petition for Leave to Intervene, Request for Hearing and Contentions at 17-18, Exhibit 7 ¶¶ 15-20.

Entergy's only argument in opposition to Contention 3 is that, in connection with its application for extended power uprate (EPU) at Vermont Yankee, Entergy has implemented a more involved program to monitor the

condition of the steam dryer during the plant's ascension to 120 percent power, and during the remainder of at least a portion of its current license term. Entergy Answer to New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions at 25-30. As explained in NEC's Reply brief, the duration of this program is finite, and Entergy's License Renewal Application does not incorporate or extend it.

Entergy now moves to strike rebuttal argument stated in the Second Declaration of Dr. Hopenfeld; in the Testimony of William Sherman, Attachment A to the Second Declaration of Dr. Hopenfeld; and in NEC's Reply brief. All argument and information Entergy moves to strike directly addresses either the relevance of the EPU monitoring program to Entergy's aging management plan for the steam dryer during its renewed license term, or the validity of the EPU monitoring program. All directly address Entergy's opposition.

NEC's rebuttal argument does not "amend" or "recast" its initial contention. Rather, NEC argues that the EPU steam dryer monitoring program is irrelevant to NEC's Contention 3, unless Entergy now proposes to amend its License Renewal Application to incorporate a similar program. If Entergy does in fact propose such an amendment, then NEC legitimately addresses the validity of this program.

The Second Declaration of Dr. Joram Hopenfeld ¶¶ 11-15, and references thereto in NEC's Reply brief, are therefore admissible. *See, In the*

*Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, CLI-06-17, 63 N.R.C. \_\_\_, slip op. at 6 (Petitioner's Reply may address "the legal or factual arguments first presented in the original petition or raised in the answers to it.").

The Testimony of William Sherman, Attachment A to the Second Declaration of Dr. Hopenfeld, is also admissible on these same grounds, as permissible rebuttal of arguments raised in Entergy's Answer.<sup>3</sup> This testimony was filed with the State of Vermont Public Service Board ("the Board") on June 21, 2006, in support of the Vermont Department of Public Service's ("DPS") request that the Board investigate the reliability of Vermont Yankee's steam dryer.

Mr. Sherman's testimony is relevant to NEC's Contention 3 in that it demonstrates that the steam dryer is vulnerable, and underscores the need

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<sup>3</sup> As NEC's submission of Mr. Sherman's testimony does not amend Contention 3 as stated in NEC's Petition to Intervene, requirements of 10 C.F.R. § 2.309(f)(2) do not apply. But, even if they did, NEC's submission of Mr. Sherman's testimony satisfies these requirements. Pursuant to 10 C.F.R. § 2.309(f)(2), new information is admissible when:

- (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).

The Vermont DPS filed Mr. Sherman's testimony with the Vermont Public Service Board on June 21, 2006, after the May 26, 2006 deadline for submission of NEC's Petition to Intervene, and it was not available to NEC before this time. NEC timely filed Mr. Sherman's testimony in this proceeding on June 29, 2006, one week after receiving it. Mr. Sherman's evaluation is materially different from information available to NEC prior to May 26, 2006, especially in its analysis of Entergy's ascension power testing program.

for a careful and conservative aging management plan during the period of extended operation. Mr. Sherman also addresses several specific issues responsive to Entergy's argument that Entergy's EPU steam dryer monitoring program satisfies its obligation to manage aging of the steam dryer during the period of extended operation. These issues include uncertainties inherent in use of the Computational Fluid Dynamic Model and Acoustic Circuit Model, and deficiencies in the EPU monitoring program.

Mr. Sherman details the NRC Staff's rejection of Entergy's steam dryer analysis based on the Computational Fluid Dynamic Model and the Acoustic Circuit Model, the same means by which Entergy apparently proposes to monitor aging of the steam dryer during the renewed license term:

NRC staff could not confirm and did not agree with Entergy's evaluation of the steam dryer.

\* \* \*

Entergy's steam dryer evaluation consisted of (1) a computational fluid dynamics (CFD) analysis, (2) an acoustical circuit model (ACM) review by scale model testing, and 3) an ACM review from the Quad Cities Unit 2 instrumented steam dryer.

The NRC Staff found significant uncertainties associated with the CFD predictions. Sensitivity studies were not performed and comparison to other plant data was not sufficient. CFD uncertainty was underestimated.

For the ACM validation by scale model testing, NRC staff found significant uncertainties with the scale model because of the relative low flow used in the scale model test. The scale model measured results had substantial deviations from predicted results by calculations.

For ACM validation from the Quad Cities Unit 2 instrumented steam dryer, NRC staff concluded an assumption of even 100% uncertainty was an underprediction.

Because none of these analytical techniques were successful, the only basis for NRC acceptance of the steam dryers in power uprate conditions was the added instrumentation and the power ascension tests.

Direct Testimony on Steam Dryer Reliability of William Sherman on behalf of the Vermont Department of Public Service (June 21, 2006) at 8-10.

Mr. Sherman also discusses deficiencies in the instrumented steam dryer monitoring program Entergy implemented during Vermont Yankee's ascension to 120 percent power. Entergy's Answer to Contention 3 suggests that Entergy proposes to amend its License Renewal Application to implement this or some similar program as an aging management tool during the renewed license term. Mr. Sherman explains:

The original limit curves presented in the initial power ascension test plan carried the expectation that steam line/steam dryer phenomena were sufficiently understood analytically and that the limit curves were conservative. The fact that limit curves had to be recalculated three separate times demonstrates to me that steam line/steam dryer interactions are not well understood analytically. Based on not being able to predict the uncertainties related to how steam line frequencies would perform, there exists sufficient doubt in the steam line strain/ steam dryer stress correlation . . . .

*Id.* at 16.

D. All Information and Argument in Support of Contention 4 is Admissible.

Contention 4 states that Entergy's proposed plan to manage flow accelerated corrosion of the plant's piping during the period of extended operation is inadequate because it depends on use of CHECWORKS, an empirical computer model that is not reliable to determine inspection frequency at Vermont Yankee because the EPU changed plant parameters. NEC submitted the declaration of Dr. Joram Hopenfeld in support of Contention 4. NEC Petition for Leave to Intervene, Request for Hearing, and Contentions at 18-19, Exhibit 7 ¶¶ 16-22.

Entergy moves to strike rebuttal argument on Contention 4 stated in the Second Declaration of Dr. Hopenfeld, and in NEC's Reply brief, all of which directly responds to the following arguments Entergy raised in its Answer:

- (1) The NRC Staff determination in the Vermont Yankee EPU proceeding that Entergy has an adequate program to manage FAC during the remainder of its current license term decides this issue for purposes of license renewal;
- (2) It is not necessary to benchmark CHECWORKS to EPU conditions because the maximum increase in projected wear rates is in proportion to the velocity increase and FAC can be projected on that basis;
- (3) Entergy can collect sufficient data under uprate operation during the remaining six years of its current license term to benchmark CHECWORKS; and
- (4) Dr. Hopenfeld's statement in his first Declaration that 10-15 years of data is necessary to benchmark CHECWORKS is incorrect.



Entergy's Answer to New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions at 30-36.

Echoing its position regarding Contention 3, Entergy argues that NEC "recasts" Contention 4 to dispute the validity of the FAC program evaluated in the EPU proceeding. Rather, NEC's Reply argues that the EPU proceedings did not decide this issue for purposes of License Renewal, but that, to the extent that Entergy now proposes to rely upon the same program during its renewed license term (which the License Renewal Application does not indicate), NEC legitimately addresses its validity.

The Second Declaration of Dr. Joram Hopenfeld ¶¶ 16-22, and references thereto in NEC's Reply brief, are therefore admissible. *See, In the Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, CLI-06-17, 63 N.R.C. \_\_\_, slip op. at 6 (Petitioner's Reply may address "the legal or factual arguments first presented in the original petition or raised in the answers to it.").

E. All Information and Argument in Support of Contention 5 is Admissible.

NEC's Contention 5 states that the License Renewal Application does not include an adequate plan to monitor and manage aging of the plant condenser, which is already degraded by corrosion and stress cracking, to the point that its integrity to mitigate leakage of radioactive gases in the event of an accident at Vermont Yankee cannot be assured during the renewed license

term. NEC submitted the declaration of Arnold Gundersen in support of Contention 5. NEC Petition for Leave to Intervene, Request for Hearing, and Contentions at 19-20, Exhibit 8.

Entergy alleges that NEC's Reply seeks to "recast the Contention from a claim that the condenser's integrity to mitigate the leakage of radioactive gases in the event of an accident cannot be assured to a claim that an unexpected transient could simultaneously cause both implosion of the condenser and a release of radioactive gas." Entergy Motion to Strike Portions of New England Coalition Reply Brief at 15. In fact, this is the very argument NEC made in its Petition to Intervene:

The License Renewal Application does not include an adequate plan to monitor and manage aging of the plant condenser, a key plant component necessary to mitigate the release of radioactive gases during an accident at the plant.

\* \* \*

As stated in the attached Declaration of Arnold Gundersen, Exhibit 8, documents produced in discovery in proceedings before the State of Vermont Public Service Board concerning a twenty percent power uprate at the Vermont Yankee plant indicate that the plant condenser is significantly degraded by corrosion and stress cracking, such that its integrity to mitigate the leakage of radioactive gases cannot be assured. These documents acknowledge that any 'unusual accident or occurrence' – just what the condenser is intended to mitigate – would destroy the integrity of the condenser.

New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions at 19-20.

Entergy moves to strike rebuttal argument on Contention 5 stated in the Second Declaration of Mr. Gundersen, and in NEC's Reply brief, all of which directly responds to the following arguments Entergy and the NRC Staff raised in their Answers:

- (1) The condenser's integrity is not necessary to its post-accident function;
- (2) The condenser's integrity to perform its post-accident function is continually verified by its ability to support normal plant operation; and
- (3) Argument concerning the significance of backpressure on the condenser.

Entergy's Answer to New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions at 36-40; NRC Staff Answer to Request for Hearing of New England Coalition at 15-17.

The Second Declaration of Arnold Gundersen, and references thereto in NEC's Reply brief, are therefore admissible. *See, In the Matter of Nuclear Management Company, LLC (Palisades Nuclear Plant)*, CLI-06-17, 63 N.R.C. \_\_\_, slip op. at 6 (Petitioner's Reply may address "the legal or factual arguments first presented in the original petition or raised in the answers to it.").

### III. CONCLUSION

Entergy's Motion to Strike should be denied.

July 20, 2006

New England Coalition, Inc.

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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
	)	
Entergy Nuclear Vermont Yankee, LLC	)	Docket No. 50-271-LR
and Entergy Nuclear Operations, Inc.	)	ASLBP No. 06-849-03-LR
	)	
(Vermont Yankee Nuclear Power Station)	)	

**CERTIFICATE OF SERVICE**

I, Ron Shems, hereby certify that copies of the NEW ENGLAND COALITION, INC.'S  
OPPOSITION TO ENTERGY'S MOTION TO STRIKE PORTIONS OF NEW ENGLAND  
COALITION'S REPLY in the above-captioned proceeding were served on the persons listed  
below, by U.S. Mail, first class, postage prepaid; by Fed Ex overnight to Judge Elleman; and,  
where indicated by an e-mail address below, by electronic mail, on the 20th day of July, 2006.

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July 20, 2006

Office of the Secretary  
Attn: Rulemaking and Adjudications Staff  
Mail Stop O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: In the Matter of Energy Nuclear Vermont Yankee, LLC and Entergy  
Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station),  
Docket No. 50-271-LR, ASLBP No. 06-849-03-LR

Dear Sir or Madam:

Please find enclosed for filing in the above stated matter New England Coalition, Inc.'s Opposition to Entergy's Motion to Strike Portions of New England Coalition's Reply.

Thank you for your attention to this matter.

Sincerely,



Karen Tyler  
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

Cc: attached service list  
Enclosures (3)