

July 24, 2006 (8:00am)

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before 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 Application

Docket No. 50-271-LR  
ASLB No.06-849-03-LR

NEC'S REPLY TO NRC STAFF ANSWER  
TO ENTERGY'S MOTION TO STRIKE

The NRC Staff's astonishing response (7/20/06) in support of Entergy's Motion to Strike Portions of NEC's Reply is unfounded.<sup>1</sup>

I. CONTENTION 1

Entergy's Opposition to NEC's Contention 1 (water quality) attached, *for the first time*, a Clean Water Act document. Entergy claimed that this document (an expired NPDES permit) fulfilled its NEPA obligations. NEC's reply demonstrated that the expired permit does not fulfill that obligation, and pointed out what Entergy might have instead attached – a §401 water quality certification. In doing so, NEC is not raising new issues, but responding directly to new facts and argument (the permit and arguments based thereon) Entergy presented in its opposition. Pointing out what is missing from Entergy's Answer assists the Board, Staff and all other parties, and is evidence in support of NEC's contention that Entergy has not taken

<sup>1</sup> NRC procedural rules do not appear to address responses to initial NRC Staff filings such as the one replied to here. If leave is required, NEC respectfully requests that this be treated as a motion for leave to reply to the Staff's Response to Entergy's Motion to Strike. NEC apologizes for cluttering the record, but the Staff response was surprising and vigorous representation of NEC and its members warrants this reply.

the requisite "hard look" at the cumulative impacts of its thermal discharge. NRC Staff's hyper-technical and unwarranted belief that this raises a new issue: (1) would preclude a comprehensive reply to new facts and argument raised in Entergy's opposition, (2) effectively allows an impermissible sur-reply, (3) demonstrates Staff's fundamental misunderstanding of the Clean Water Act, (4) drives this matter towards violation of NEPA and the Clean Water Act, and (5) fails to serve the public interest that the NRC Staff is charged with protecting.

## II. CONTENTION 2

The NRC Staff splits hairs to a nonsensical degree in arguing that NEC's challenge to Entergy's plan to "refine" its analysis of environmentally assisted metal fatigue does not encompass a challenge to Entergy's existing analysis. Obviously, NEC cannot evaluate the validity of refinement without evaluating the validity of the analysis subject to refinement.

NEC emphasizes that Contention 2 is not merely a "contention of omission." That is, Entergy cannot fully address Contention 2 merely by providing more information about how it will refine its analysis, and manage vulnerable components. Rather, Contention 2 challenges Entergy's plan to manage components its Application identifies as vulnerable to environmentally assisted metal fatigue. Once Entergy proposes a specific plan, which it has not done to date, Contention 2 contemplates NEC's evaluation of that plan's legitimacy.

### III. CONTENTION 3

NEC's Reply does not "expand" Contention 3. NEC addresses elements of the short-term steam dryer monitoring program Entergy developed in connection with its application for extended power uprate at Vermont Yankee only because Entergy's Answer suggested that Entergy now proposes to amend its Application to adopt some similar program as an aging management tool. If the Board strikes NEC's Reply regarding this program, it should also strike all references to this program from Entergy's Answer. See, Entergy's Answer to New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions at 26-30.

The Testimony of William Sherman was not available to NEC until June 21, 2006, nearly a month after the deadline for filing NEC's Petition to Intervene.

### IV. CONTENTIONS 4 AND 5

As explained in detail in NEC's Opposition to Entergy's Motion to Strike, NEC's Reply neither "reformulates" nor "transforms" Contentions 4 and 5. Rather, NEC directly responds to arguments raised in Entergy and the NRC Staff Answers, addressing issues with the scope of Contentions 4 and 5 as initially stated.

### V. CONCLUSION

Entergy's Motion to Strike should be denied.

July 21, 2006

New England Coalition, Inc.

by: *Ronald A. Shems by Karen Tyler*  
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Karen Tyler (on the brief)  
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For the firm

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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  
REPLY TO NRC STAFF ANSWER TO ENTERGY'S MOTION TO STRIKE 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 21st day of July, 2006.

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July 21, 2006

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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 Reply to NRC Staff Answer to Entergy's Motion to Strike.

Thank you for your attention to this matter.

Sincerely,



Karen Tyler  
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

Cc: attached service list  
Enclosures (3)