RAS 12183

UNITED STATES
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.)	ASLB No.06-849-03-LR
Vermont Yankee Nuclear Power Station)	
License Renewal Application	

NEW ENGLAND COALITION INC.'S (NEC) REPLY TO ENTERGY AND NRC STAFF ANSWERS TO NEC'S LATE CONTENTION, OR ALTERNATIVELY, REQUEST FOR LEAVE TO AMEND OR FILE A NEW CONTENTION

I. INTRODUCTION

NEC's amended Contention 1 satisfies contention amendment requirements of 10 C.F.R. § 2.309(f)(2), and the nontimely filing factors of 10 C.F.R. § 2.309(c)(1) weigh in favor of its admission. Amended Contention 1 also satisfies admission requirements of 10 C.F.R. § 2.309(f)(1). Entergy and the NRC Staff's arguments to the contrary are without merit.

II. NEC ACCURATELY REPRESENTED THE STATUS OF ENTERGY'S VERMONT NPDES PERMIT.

As a preliminary matter, NEC strongly denies Entergy's baseless and offensive allegation that NEC's counsel intentionally misled the Board regarding the status of Entergy's Vermont NPDES permit, and its attendant suggestion that this alleged misrepresentation "belie(s) NEC's ability to make any meaningful contribution" regarding the issues stated in NEC's Contention 1. *See* Entergy's Answer at 4, note 5, 8-9. On the contrary, NEC

accurately stated, both in its written submissions and at oral argument, that Entergy's amended NPDES permit, which expired on March 31, 2006, remains temporarily in effect under Vermont law because Entergy filed a timely application for renewal of this permit prior to its expiration. *See*, New England Coalition, Inc.'s Reply to Entergy and NRC Staff Answers to Petition for Leave to Intervene, Request for Hearing, and Contentions at 4; Transcript of Oral Argument at 291-92; NEC's Late Contention or, Alternatively, Request For Leave to Amend or File a New Contention at 2.

Entergy may have been confused about this issue at oral argument. Entergy Answer at n. 5. It is a far leap, however, from Entergy's confusion to NEC's alleged intentional effort to mislead. Indeed, NRC staff did not share Entergy's confusion. Staff Answer at 15-16 (stating that NEC acknowledges that the amended permit remains in effect while on appeal). NEC's counsel misled no one, certainly not intentionally.

Rather, Entergy raises this baseless accusation merely to distract the Board from the merit of NEC's contention. Entergy should be far more careful before making such serious, but baseless accusations. Further, any confusion concerning the status of Entergy's temporary permit resulted at least in part from Entergy's complete inability at oral argument to explain its legal status. Entergy's astonishing ignorance of Vermont law and its permit status compels NEC's participation to provide information requisite to a complete record.

III. NEC SATISFIES CONTENTION AMENDMENT REQUIREMENTS OF 10 C.F.R. 2.309(f)(2), AND "NONTIMELY FILING" FACTORS OF 10 C.F.R. 2.309(c)(1) WEIGH IN FAVOR OF ADMISSION.

NRC precedent makes clear that requirements for the amendment of a petition to intervene are not to be strictly and rigidly construed. Permission to amend should be liberally granted in recognition that "the participation of intervenors in licensing proceedings can furnish valuable assistance to the adjudicatory process." *In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1)*, 33 N.R.C. 15, 40 (1991). Permission to amend should be granted where amendment will not substantially delay the proceeding, even where other factors stated in 10 C.F.R. 2.309(c)(1) may weigh against amendment. *See, Houston Lighting and Power Company (South Texas Project, Units 1 and 2)*, 9 N.R.C. 644, 648-649 (1979)("[T]he key policy consideration for barring late intervenors is one of fairness, viz., the public interest in the timely and orderly conduct of our proceedings."); *In the Matter of Puget Sound Power and Light Company (Skagit/Hanford Nuclear Power Project, Units 1 and 2)*, 16 N.R.C. 981, 985 (1982)(fact that lateness is not extreme, and will not substantially delay proceeding outweighs fact that "balance of other factors tips slightly against the Petitioner").

A. NEC's Contention 1 Amendment will not substantially delay this proceeding.

NRC precedent states that admission of a late contention will not unreasonably delay the proceeding, per 10 C.F.R. 2.309(c)(1)(vii), where it is admitted far enough in advance of the scheduled hearing date to allow the parties to conduct full discovery. *In the Matter of Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2)*, 21 NRC 609 (1985), 1985 WL 56935 (N.R.C.) at 15-16. The Board in this matter has not yet reached any decision regarding the admission of contentions, no hearing date has been scheduled, and the discovery period has not started. NEC's amendment to Contention 1, introduced at this very early point in the proceeding, will not cause substantial delay.

Further, there will be no delay because Entergy has already presented its arguments regarding its expired permit amendment in its answer to NEC's Contention 1 and at oral argument. NEC's new or amended contention simply conforms the original Contention 1 to the requirement that an environmental contention be based on the Applicant's Environmental Report. 10 C.F.R. § 2.309(f)(2). Reference to the amended permit was absent from Entergy's Environmental Report until its July 28, 2006 Amendment 6.

B. NEC has good cause to amend its Contention 1.

1. *NEC timely filed when such filing was procedurally ripe.*

Both Entergy and the NRC Staff argue that the information included in Amendment 6 to Entergy's Environmental Report, which is the basis for NEC's Contention 1 amendment, was previously available. Entergy and the

Staff then argue that NEC therefore does not have good cause for late filing, per 10 C.F.R. 2.309(c)(1)(i), and does not satisfy requirements of 10 C.F.R. 2.309(f)(2).

This argument is without merit. NEC's Contention 1 arises under NEPA, and therefore must be based on Entergy's Environmental Report. 10 C.F.R. 2.309(f)(2)("On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report."). NEC's amendment to Contention 1 to address Entergy's reliance on its NPDES permit amendment, therefore, was not procedurally ripe until Entergy amended its Environmental Report to incorporate this information. NEC timely, and with good cause, filed its Contention 1 amendment within ten (10) days of the date NEC received notice of Entergy's Amendment 6.

2. *NEC's Contention 1 amendment appropriately and timely responds to new information concerning the Clean Water Act § 401 certification issue.*

Based on NEC's prior filings in this matter, Entergy is on notice that its requested license extension cannot issue without a Clean Water Act § 401 certification. Astonishingly, Entergy's Amendment 6 to its Environmental Report nonetheless makes no mention of this issue. A § 401 certification for the requested license term could be equivalent to a § 316 determination, and would address the cumulative water quality impacts over the new 20-year license term. *See* 10 C.F.R. § 51.53(c)(3)(ii)(B) (316 determination *or*

equivalent permit required).[1] As explained below, the expired permit does not assess cumulative impacts. As any new permit's five-year term will expire before Vermont Yankee's renewed license term commences, a new permit also will not assess cumulative impacts over Vermont Yankee's twenty-year period of extended operation. Entergy's continued neglect of the § 401 certification requirement and its reliance instead on an expired, temporary permit that, on its face, requires further study to assess the discharge, is "new information" to which NEC appropriately and timely responded.

C. There are no other means by which NEC's concerns stated in its amended Contention 1 can be addressed.

Entergy argues that NEC's interests in its amended Contention 1 can be addressed in the Vermont Environmental Court proceeding concerning the appeal of Entergy's NPDES permit, or through NEC's opportunity to comment on the Nuclear Regulatory Commission's (NRC) eventual Environmental Impact Statement (EIS).

This is not the case. An NPDES permit has a five-year term. The Vermont Environmental Court proceeding concerning Entergy's permit will not address the cumulative impacts of thermal discharge during Vermont Yankee's twenty-year period of extended operation, and therefore is not an adequate alternate forum. *See, In the Matter of The Detroit Edison Company*

[1] Additionally, Entergy has an independent obligation to obtain a § 401 certification, and the NRC is jurisdictionally limited to acting in conformity with § 401 requirements. 33 U.S.C. § 1341; *S.D. Warren v. State of Maine*, 547 U.S. ___, 126 S.Ct. 1843, 1846 (2006).

(Enrico Fermi Atomic Power Plant, Unit 2), 16 N.R.C. 1760, 1767 n.6 (1982) (alternate forum must promise a full hearing of the issues).

Nor can NEC fully address its amended Contention 1 concerns through comment on the NRC EIS. NEC is permitted to amend contentions or submit new contentions based on the EIS only where the NRC's conclusions differ from those of the applicant. 10 C.F.R. 2.309(f)(2)("The petitioner may amend those contentions or 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."). If the NRC's EIS affirms Entergy's position regarding the impact of thermal discharges, NEC will have no opportunity to dispute the NRC findings.

D. NEC's participation will assist in developing a sound record.

Entergy argues that NEC will not assist in developing a sound record, per 10 C.F.R. 2.309(c)(1)(viii), because it has identified no special expertise regarding issues stated in Contention 1. NEC is not required to identify "special expertise". *South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1)*, 7 NRC 209, 212-213 (1978)(specialized education, or relevant experience or ability unnecessary to favorable finding with regard to "assistance in developing record").

Rather, § 2.309(c)(1)(viii) requires only a statement of the issues a petitioner plans to address, and identification of witnesses and evidence it

plans to present. *In the Matter of Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1)*, 19 N.R.C. 878 (1984), 1984 WL 49934 (N.R.C.) at 6 ("It is the ability to contribute sound evidence . . . that is of significance in considering a late-filed petition to intervene."). NEC's initial Contention 1, and its proposed amendment to Contention 1, state the issues with which NEC is concerned. NEC has stated that it will offer the testimony of Dr. Ross Jones, a Research Fellow at the Environmental Studies Program of Dartmouth College, with a Ph.D. in ecology/evolutionary biology, whose doctoral research focused on how changes in environmental conditions affect the short-term biological acclimation and long-term evolution of aquatic invertebrates in streams and rivers. Neither Entergy nor the NRC Staff has challenged Dr. Jones' qualifications to testify regarding NEC's Contention 1. NEC has specified the content of Dr. Jones' anticipated testimony by submitting a Declaration of Dr. Jones together with NEC's initial petition to intervene. In satisfaction of the potentially more demanding § 2.309(c)(1)(viii) standard for specification of witness testimony, NEC submitted a second Declaration of Dr. Jones as an attachment to its amended Contention 1, providing additional detail concerning his anticipated testimony. NEC has thereby demonstrated that it will contribute to the sound development of the record, as required per § 2.309(c)(1)(viii).

Further, NEC's counsel is familiar with the Clean Water Act and Vermont's delegated program. As Entergy stated at oral argument, Entergy

has no familiarity with such law, and indeed could not even explain the legal status of its permit. In contrast, NEC's counsel, Ron Shems, has very extensive experience with the Clean Water Act, having formerly served as the Assistant Attorney General responsible for most of Vermont's Clean Water Act issues. NEC will therefore assist in ensuring an accurate and complete record.

IV. NEC'S NEW OR AMENDED CONTENTION IS ADMISSIBLE.

Ignoring the standard for admission of a contention, Entergy inappropriately raises straw-man arguments and jumps to the merits. "[F]ull adjudicatory hearings are triggered only by those able to proffer at least some *minimal factual and legal foundation* in support of their contentions." *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3)*, 49 N.R.C. 328, 334 (1999)(emphasis added). NEC raises material legal and factual disputes – namely, whether Entergy meets its obligation to either assess all impacts of its *proposed* thermal discharge (either by providing a state assessment or conducting its own assessment), or whether there are significant gaps in the assessment of Entergy's proposed action.

A. Amended Contention 1 does not challenge the validity of 10 C.F.R. § 51.53(c)(3)(ii)(B). It disputes Entergy's compliance with this rule.

Entergy and the NRC Staff first claim that NEC's Amended Contention 1 is not admissible because it challenges the validity of 10 C.F.R.

§ 51.53(c)(3)(ii)(B). This is a straw man-argument. NEC disputes Entergy's compliance with this rule, not the rule's validity.

Section 51.53(c)(3)(ii)(B) requires Entergy to provide a copy of a current Clean Water Act (CWA) § 316 determination, or alternatively, to "assess the impact of the proposed action on fish." *Id.* There is no question that Entergy has failed to conduct its own cumulative impact analysis, particularly on migrating fish. Entergy instead attempts to portray an expired permit that remains temporarily in effect as a CWA § 316 determination. NEC contends that Entergy's amended Environmental Report does not include a CWA § 316 determination, current or otherwise. This is obviously not a challenge to the rule, but a material dispute as to whether Entergy met the rule's requirements.

B. Entergy's Amended NPDES permit is only a partial CWA § 316 variance because it does not approve the thermal discharge during the period of time each year when anadromous smolt are present in the river.

Entergy argues that NEC's contention is vague and that no support is provided for the argument that the amended NPDES permit is not a CWA § 316 determination. NEC, however, has clearly pointed out that this permit states on its face that it is not a CWA § 316 determination for the very straightforward reason that it approves thermal discharge from Vermont Yankee during only some times of the year. It does not approve Entergy's proposed thermal discharge from Vermont Yankee during the period of time each year when anadromous smolt are present in the receiving river, leaving

no assessment whatsoever of the impact of the thermal discharge on protection and propagation of anadromous fish as required by 10 C.F.R. § 51.53(c)(3)(ii)(B).

The Vermont Agency of Natural Resources (VANR) found that it could not assess impacts to migrating smolt based on available information, that additional field study of this issue is needed, and that it could not therefore issue a full CWA § 316 variance. Regarding this issue, the Amended Fact Sheet accompanying Entergy's permit plainly states: "However, in order to approve the requested increase in temperature, a predictive determination also needed to be made that the proposed limits would 'assure the protection and propagation'" of fish. Amended Fact Sheet at 4-5. The Amended Fact Sheet goes on to conclude that, "there was limited information regarding whether migrating salmon smolt would be impacted by the increased thermal effluent limitations . . . The reviewers concluded that more information (i.e. actual field studies) was needed to make this [316] determination and therefcre the Agency *has not granted* this portion of the Applicant's amended request." *Id.* at 5 (emphasis added).

It is plain on the face of Entergy's amended NPDES permit that VANR, due to its inability to assess impacts to anadromous smolt, necessarily could not make the essential CWA § 316 finding that proposed limits would "assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife." CWA § 316, 33 U.S.C. § 1326(a). NEC has also

provided documentation from the U.S. Fish and Wildlife Service and expert declarations to the same effect. Clearly, this is a sufficient showing to raise a material dispute concerning whether Entergy's amended NPDES permit is a CWA § 316 variance.

In response to this argument, Entergy jumps to the merits and relies on selective and incomplete portions of the expired permit and accompanying Amended Fact Sheet to argue that its expired permit is a 316 variance.[2] Answer at 11-17. Nonsensically, Entergy complains that NEC "falsely" asserts that the amended NPDES permit constitutes only a partial § 316 variance, *Id.* at 13, while, in the same paragraph, quoting the Amended Fact Sheet as stating that it is a "partial approval of the Applicant's 316(a) demonstration report." Given that the Amended Fact Sheet itself states that the expired permit amendments are not a CWA § 316 determination, Entergy's argument only further demonstrates a material dispute to be resolved after admission of the contention.

The NRC staff argument that the expired permit amendments are equivalent to a § 316 determination merely elevates form over substance. Staff Answer at 12-15. Indeed, the Staff astonishingly fails to make any mention of either CWA § 316's purpose and function – protection and propagation of fish -- or of the VANR's findings. Here, the VANR clearly found and concluded that there was insufficient information to "assure

[2] The State of Vermont has had ample opportunity to state whether or not the water quality impact of 20 years of increased thermal discharge resulting from the requested license has been assessed by the expired permit amendments. It has not. To the contrary, Vermont has adopted NEC's Contention 1.

protection and propagation" of fish. Amended Fact Sheet at 4-5. The denial of a § 316 variance regarding anadromous fish is not a § 316 determination.

NRC Staff also confuse a "current CWA 316 determination" with an equivalent permit. Staff answer at 15-16. The expired NPDES permit remains temporarily in effect. However a temporary permit or variance denial is not equivalent to a "current Clean Water Act 316" determination or variance. For the reasons explained above, the expired permit that remains temporarily in effect is not equivalent, as it does not assure protection and propagation of anadromous fish, as required by § 316.

In summary, NRC rules clearly require that Entergy provide, not a "partial" § 316 determination, or a denial of a § 316 variance, but an actual § 316 determination or variance, or alternatively, its own assessment. 10 C.F.R. § 51.53(c)(3)(ii)(B). An expired permit amendment that only partially addresses Entergy's proposed and anticipated activities does not make the findings requisite to a CWA § 316 determination, and is not a § 316 determination or its equivalent. *See* 40 C.F.R. §125.73 (316 determination must completely assess cumulative impacts). Rather, it leaves a glaring hole in the required environmental report.

Indeed, § 316's purpose is to assure protection and propagation of fish. 33 U.S.C. § 1326(a)(applicant must "assure protection and propagation of shellfish, fish and wildlife in and on the waterbody into which the discharge is to be made."). The shortcoming identified by VANR's variance denial,

which prevented VANR from granting the § 316 determination, was that impacts on migrating smolt were not sufficiently studied and understood. Amended Fact Sheet at 4-5. Because more study on migrating smolt is needed, VANR *has not and cannot find* that protection and propagation of fish is assured over the five-year life of any new NPDES permit, much less under the "proposed action" – 20 years of increased thermal discharge, commencing in 2012. There is no § 316 determination, and hence there is a material dispute.

A permit that fails to assure protection and propagation of fish is not "equivalent" to a CWA § 316 determination. Entergy does not provide any other "equivalent" permit, such as a CWA § 401 Certification, and has not performed its own assessment. Entergy fails to meet any one of the three options available under 10 C.F.R. § 51.53(c)(3)(ii)(B).

Further, 10 C.F.R. § 51.53(c)(3)(iv) requires that the Applicant's "environmental report must contain any new and significant information regarding the environmental impacts of the license renewal of which the applicant is aware." Entergy cannot read this rule to encourage ignorance. Protection and propagation of migrating fish and the impact of increased thermal discharge is significant. As evidenced by the amended NPDES permit submitted by Entergy, Entergy is clearly aware of the potential cumulative impacts of its increased thermal discharge on anadromous

(migrating) fish such as shad and salmon. Yet, it refuses to develop, much less provide such information. Its environmental report is thus deficient.

C. A partial CWA § 316 variance is inadequate to satisfy 10 C.F.R. § 51.53(c)(3)(ii)(B) because Entergy has not amended its license renewal application to confine its thermal discharge to times when anadromous smolt are not present in the river.

Entergy has not conformed its license renewal application to the VANR variance denial, continues to propose year-round increased thermal discharge, and has appealed the denial of its requested variance. *See* Attachment A at ¶ 5. Nonetheless, NRC Staff make a somewhat difficult-to-follow argument that: "There is no reason for the environmental report . . . to discuss the impacts of a variance that was not granted." Staff Answer at 19.

Entergy must either assess the impacts of its total proposed thermal discharge, or provide a § 316 variance or equivalent permits to that effect. 10 C.F.R. § 51.53(c)(3)(ii)(B). It has done neither. VANR's denial of a variance is not a variance or its equivalent. Nor has Entergy "assess[ed] the impact of the *proposed* action on fish." *Id.* (emphasis added). Indeed, NEPA's purpose is to assess impacts of a proposed action, and Entergy must provide significant information regarding the environmental impacts of its license renewal to assure an adequate EIS. 10 C.F.R. § 51.53(c)(3)(iv). Therefore, Entergy fails to provide assurance that its requested license terms will not have an impact on protection and propagation of anadromous fish, and stands in violation of 10 C.F.R. § 51.53(c)(3)(iv). NEC raises a material dispute regarding this rule's interpretation and the effect of ANR's actions.

Further, the Staff argument taken to its next logical step would mean that an applicant can wholly avoid 10 C.F.R. § 51.53(c)(3)(ii)(B)'s obligations by failing to provide a state agency with sufficient information on which to base a § 316 variance and then appending the denial. But, the rule requires either a variance, the equivalent permit, or an assessment of the "proposed" action. 10 C.F.R. 51.53(c)(3)(ii)(B)(emphasis added). If the variance or permit is denied, Entergy must assess its proposed action. It has not. Using this same backwards logic, an applicant can avoid environmental contentions by simply failing to provide information necessary for a variance and attaching a denial in purported fulfillment of the rule's obligations. Here, the denial resulted from Entergy's failure to provide sufficient information to the VANR. This result, of course, is wholly contrary to NEPA's purpose and the NRC rules that implement NEPA – rules that require an applicant to provide information sufficient for the NRC to take a "hard look" at impacts and engage in informed decision-making. 10 C.F.R. Pt. 51.

D. Entergy's amended NPDES permit does not address cumulative impacts of the thermal discharge over the proposed period of Vermont Yankee's extended operation.

Entergy cites VANR's public responsiveness summary for the notion that its 316 demonstration considered cumulative impacts. Answer at 15-16. However, the demonstration's shortcoming was why more study was deemed necessary and the 316 determination denied. Again, there is a material dispute.

Finally, Dr. Jones' declaration attached to NEC's amended Contention 1 provides the requisite minimal showing that Entergy failed to sufficiently study the cumulative impacts of its increased thermal discharge. This expert opinion is clearly shared by ANR and the U.S. Fish and Wildlife Service, all disputing Entergy's assertion that cumulative impacts were assessed by a complete § 316 determination.

V. CONCLUSION

In short, Entergy's environmental report must assess what Entergy proposes to do, or alternatively, provide the State's assessment in the form of a CWA § 316 variance or equivalent permit. Entergy continues to propose the discharge for which VANR denied a variance, but provides neither a variance, nor an alternate assessment as required by 10 C.F.R. § 51.53(c)(3)(ii)(B). NEC raises material disputes.

NEC's Amended Contention 1 satisfies requirements for amendment and late-filing of a contention, and admissibility requirements of 10 C.F.R. § 2.309(f)(1). NEC's Amended Contention 1 should be admitted.

June 29, 2006 New England Coalition

by: Ron Shems by/ Karen Tyler

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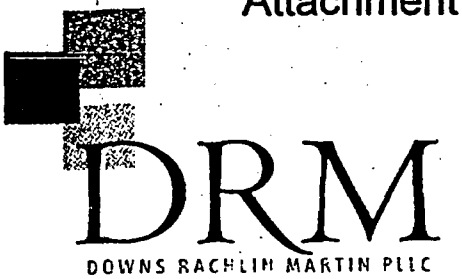
Karen Tyler (on the brief)
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC
For the firm

Attorneys for NEC

Attachment A



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June 13, 2006

BY FIRST CLASS U.S. MAIL

Jacalyn M. Stevens, Court Manager
Vermont Environmental Court
2418 Airport Road, Suite 1
Barre, VT 05641

Re: In Re: Entergy Nuclear Vermont Yankee Discharge Permit, Permit Number 3-1199
Docket No. 89-4-06

Dear Ms. Stevens:

Pursuant to the Court's direction on May 24, 2006 and June 9, 2006, please find enclosed a Second Revised Statement of Questions of Entergy Nuclear Vermont Yankee, LLC. Thank you in advance for your assistance in this matter.

Sincerely yours,

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Enclosure
cc: Service List

STATE OF VERMONT
ENVIRONMENTAL COURT

In Re: Entergy Nuclear Vermont Yankee Discharge Permit Permit Number: 3-1199	)	Second Revised Stmt. of Questions Docket No. 89-4-06

SECOND REVISED STATEMENT OF QUESTIONS OF ENTERGY NUCLEAR VERMONT YANKEE, LLC

Pursuant to Rule 5(f) of the Vermont Rules for Environmental Court Proceedings and the Court's direction on May 24, 2006 and June 9, 2006, appellant Entergy Nuclear Vermont Yankee LLC ("Entergy") hereby sets forth its Second Revised Statement of Questions to be determined on appeal.

1. Whether this Court lacks jurisdiction to determine issues on appeal other than those placed in question by the amendment to Permit No. 3-1199 and whether issues that are not relevant to the determination whether Entergy has met its burden with regard to the 1°F thermal discharge increase – including all issues that challenge the preexisting conditions of Entergy's NPDES permit – are outside the scope of this appeal, are raised in an untimely and procedurally incorrect manner, are inappropriate for resolution by this Court, and will serve only to unduly hinder and delay these proceedings.

2. Whether this Court may assign party status to any entity that did not file Comments on draft Permit No. 3-1199 and/or any entity that fails to raise issues within the jurisdiction of the Environmental Court and Agency of Natural Resources and relating to the amendment to Permit No. 3-1199.

3. Whether VWQS 1-03, VWQS 2-04, VWQS 3-01, and/or other Vermont water quality standards may be applied to Entergy's permit request, or whether the application of

VWQS 1-03, VWQS 2-04, VWQS 3-01, and/or other Vermont thermal water quality standards to Entergy's permit requests is contrary to law.

4. Whether Amended Discharge Permit No. 3-1199 may contain a provision that "[n]otwithstanding the temperature limits in table 6.c above, when the average hourly temperature at Station 3 equals or exceeds 85°F, the permittee shall, as soon as possible, reduce the thermal output of the discharge to the extent that the average hourly temperature at Station 3 does not exceed 85°F," Amended Permit No. 3-1199 Part I.A.6.c (hereinafter, the "85°F Thermal Limit"), and/or whether that 85°F Thermal Limit is contrary to law because Entergy has fully and completely met its burden, pursuant to CWA § 316(a) and 40 C.F.R. § 125.73(a), of establishing by a preponderance of the evidence that the alternative increased thermal discharge will assure the protection and propagation of the balanced indigenous population.

5. Whether Amended Discharge Permit No. 3-1199 may contain a provision approving the 1°F thermal discharge during the period of June 16 through October 14, but fail to contain a provision approving the 1°F thermal discharge during the period of May 16 through June 15, *see* Amended Permit No. 3-1199 Part I.A.6.c, and/or whether the restriction of the 1°F thermal discharge increase to the period of June 16 through October 14 is contrary to law because Entergy has fully and completely met its burden, pursuant to CWA § 316(a) and 40 C.F.R. § 125.73(a), of establishing by a preponderance of the evidence that the alternative increased thermal discharge will assure the protection and propagation of the balanced indigenous population.

6. Whether Amended Discharge Permit No. 3-1199, may contain a "Trend Analysis," consisting of:

> a time series trend analysis consistent with the non-parametric Mann-Kendall test that was used in the permittee's § 316(a) Demonstration in Support of a Request for Increased Discharge Limits at Vermont Yankee Nuclear Power Station During May

through October, dated April 2004 (Normandeau Associates). The trend analysis shall statistically test for significant ($p<0.05$) increasing or decreasing trends in the annual total catch per unit of effort for each of the nine representative important species collected since 1991 according to the schedule and methods required in the Fish section of Part IV. Each year's annual report shall include a long term trend analysis. Specifically this shall include an analysis of the current and preceding years back through 1991.

Macroinvertebrates: The annual report required under Part I.A.9 shall include a time series trend analysis consistent with the non-parametric Mann-Kendall test that was used in the permittee's § 316(a) Demonstration in Support of a Request for Increased Discharge Limits at Vermont Yankee Nuclear Power Station During May through October, dated April 2004 (Normandeau Associates). The trend analysis shall statistically test for significant ($p<0.05$) increasing or decreasing trends in the annual total catch per unit effort (numbers of orgs/basket/30 days of deployment) for each of five macroinvertebrate abundance measures: total abundance; ephemeroptera; trichoptera; diptera; and crustacea. Analysis shall incorporate all rock basket data collected at stations 2 and 3 since 1996 according to the schedule and methods required in the Benthic Macroinvertebrate section of Part IV.

Amended Permit No. 3-1199 Part IV, p. 22, and/or whether the Trend Analysis required by Amended Discharge Permit 3-1199 is contrary to law because Entergy has fully and completely met its burden, pursuant to CWA § 316(a) and 40 C.F.R. § 125.73(a), of establishing by a preponderance of the evidence that the alternative increased thermal discharge will assure the protection and propagation of the balanced indigenous population.

7. Whether Amended Discharge Permit No. 3-1199 may vest the Environmental Advisory Council ("EAC") with oversight of the annual reports and studies required by the Trend Analysis, thereby imparting to the EAC the authority to modify the permit unilaterally, abdicating the regulator's statutory responsibility to issue and manage the permit. Amended Permit No. 3-1199 Part IV, pp. 22, 25.

ENTERGY NUCLEAR VERMONT
YANKEE, LLC

By Its Attorneys,

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Signed and dated in Montpelier, VT this
13th day of June, 2006

Barbara Ripley (by Zachary R. Hutton, Esq.)

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Signed and dated in Montpelier, VT this
13th day of June, 2006

CERTIFICATE OF SERVICE

I hereby certify that on June 13th, 2006, I caused a true and correct copy of Entergy Nuclear Vermont Yankee, LLP's Second Revised Statement of Questions to be served upon the following:

Catherine Gjessing, Esq. (Counsel for Agency of Natural Resources)
Warren Coleman, Esq. (Counsel for Agency of Natural Resources)
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Evan J. Mulholland, Esq. (Counsel for New England Coalition Nuclear Pollution)
John Hasen (Counsel for Natural Resources Board/Water Resources Panel)
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James Matteau (Windham Regional Planning Commission)

6/13/06
Date

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On behalf of Entergy Nuclear Vermont Yankee, LLP

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 ENTERGY AND NRC STAFF ANSWERS TO NEC'S LATE CONTENTION, OR ALTERNATIVELY, REQUEST FOR LEAVE TO AMEND OR FILE A NEW CONTENTION 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 25th day of August, 2006.

Administrative Judge
Alex S. Karlin, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

Administrative Judge
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Atomic Safety and Licensing Board Panel
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Administrative Judge
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Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

Sarah Hofmann, Esq.
Director of Public Advocacy
Department of Public Service

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by: Ron Shems by / Karen Tyler

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OF COUNSEL

August 25, 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 Entergy 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 Entergy and NRC Staff Answers to NEC's Late Contention or, Alternatively, Request for Leave to Amend or File a New Contention.

Thank you for your attention to this matter.

Sincerely,

Karen Tyler
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

Cc: attached service list
Enclosures (3)

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*Also admitted in the District of Columbia