

October 11, 2006 (2:36pm)

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 ) 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) MOTION FOR LEAVE TO FILE  
MOTION FOR RECONSIDERATION**

Pursuant to 10 C.F.R. § 2.323(e), NEC respectfully moves for leave to file a motion for reconsideration of those portions of the Atomic Safety and Licensing Board's Order of September 22, 2006, which denied admission of NEC's Contention 5, and declined to consider NEC's Contention 1 argument that Entergy is required to obtain a Clean Water Act § 401 certification.

In reaching its decision regarding NEC's Contention 5, and the § 401 certification component of NEC's Contention 1, the Board has misapprehended or misapplied either factual information or controlling legal principal. Reconsideration is therefore appropriate. 10 C.F.R. § 2.323(e); *Private Fuel Storage LLC (Independent Spent Fuel Storage Installation)*, 52 NRC 340, 342 (2000).

**I. The Board Misapprehended or Misapplied Factual Information and Controlling Legal Principal in Denying Admission of NEC's Contention 5:**

**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. NEC Petition to Intervene (May 26, 2006) at 19.**

The Board found NEC's Contention 5 inadmissible on the grounds that NEC failed to show that the integrity of the condenser is within the scope of or material to the findings NRC must

make to support a license renewal decision. Order at 96. In reaching this decision, the Board appears to have adopted uncritically Entergy's unsubstantiated assertion that a condenser that supports normal plant operations is capable of performing its accident function. Order at 95. The Board faults NEC for failure to adequately allege a scenario in which the condenser could break at a time when it is needed to perform its accident mitigation function. Order at 97-98. The Board also faults NEC for failure to adequately allege that a broken condenser would not perform its post-accident function – the hold-up and plate-out of radioactive gases and solid daughter fission products. Order at 96.

In reaching this decision, the Board misapprehended or misapplied factual information and controlling legal principal as follows: (1) it overlooked the plain language of the NRC rules defining the scope of relicensing proceedings; (2) it misapprehended factual information stated in the first Declaration of NEC's expert witness supporting Contention 5, Arnold Gundersen; (3) it gave more weight to consideration of the factual merits of Contention Five than is permitted at the admissions stage of the proceeding.

- A. The Board overlooked NRC rules defining the scope of relicensing proceedings, which plainly include the condenser with the scope of this proceeding, and plainly require that Entergy develop an aging management plan for the condenser.

NRC rule 10 C.F.R. § 54.4 plainly includes the condenser within the scope of this proceeding. The Board's Order does not address the application of Rule 54.4 to NEC's Contention 5. Rule 54.4 defines this proceeding's scope to include:

(1) Safety-related systems, structures, and components which are those relied upon to remain functional during and following design basis events . . . to ensure the following functions –

\* \* \*

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures . . . .

(2) All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in . . . [paragraph 1(iii)].

10 C.F.R. § 54.4. The condenser, as Entergy has acknowledged, is credited under the alternative source term analysis with hold-up and plate-out of radioactive gases that might leak past the main steam isolation valve in the event of a plant accident. Order at 95. It is therefore a component within the scope of this proceeding pursuant to Rule 54.4. See, NEC Petition to Intervene at 7-9.

NRC Rule 10 C.F.R. § 54.21, in turn, plainly requires that Entergy develop an aging management plan for the condenser. The Board Order does not address the application of this rule to NEC's Contention 5. Rule 54.21 states that components subject to aging management review include plant components described in Rule 54.4, which would include the condenser (see above), that "perform an intended function . . . without moving parts or without a change in configuration or properties." 10 C.F.R. § 54.21(a)(1)(i). It further requires that a license renewal application include a demonstration, for each such component, "that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation." 10 C.F.R. § 54.21(a)(3).

B. The Board misapprehended factual information included in the first declaration of NEC's expert witness, Arnold Gundersen.

The Board's finding that NEC failed to adequately allege that the plant condenser could break at a time when the condenser is needed to perform its accident mitigation function, or that a broken condenser would not perform its accident mitigation function, overlooks and misapprehends factual information included in the first Declaration of Arnold Gundersen (May 26, 2006).

Regarding whether the condenser could break at a time when it is needed to perform its accident function, the Board's Order does not address the following relevant information stated in the First Declaration of Mr. Gundersen:

1. Furthermore, the facts show that Vermont Yankee's comparison in "Note # 401" to the Dresden, Quad Cities and Peach Bottom SER's is flawed in that it **fails to acknowledge the degraded condition of the condenser** at Vermont Yankee.

Declaration of Arnold Gundersen (May 26, 2006) at ¶ 12 (Emphasis added). The obvious inference is that no credible aging management program can be developed without establishing a baseline. Entergy gives no information in its application acknowledging the current condition of the condenser.

2. After reviewing the evidence provided by Entergy regarding the Vermont Yankee Condenser, it is my opinion that the Condenser's integrity to mitigate the leakage of radioactive gases cannot be assured given its degraded condition.

*Id.* at ¶ 11.

3. Mr. Gundersen's citation to Entergy in-house documents assessing the aging and integrity of the condenser, speculating on the condenser's ability to withstand the demands of service to the end of the current license under original licensed thermal power, and concluding that unusual circumstances or events could cause condenser failure. *Id.* at ¶¶ 16-17.

Regarding whether a broken condenser would perform its accident mitigation function, particularly its hold-up function, the Board appears to have adopted uncritically Entergy's unsubstantiated assertion that main condenser integrity is continually verified during normal plant operation and no aging management program is required to monitor and manage aging of the primary containment boundary adequate to assure the post-accident intended function. The Board has no basis in assuming *de minimis* condenser leakage, or condenser internals by-pass, without requiring and then assessing quantification from Entergy. "Run it until it breaks" can hardly be credited as an adequately conservative aging management plan.

Finally, it is common knowledge among all of the participants in this proceeding that significant early offsite dose contributors in reactor accidents are isotopes of noble gases – Krypton and Xenon. These gases do not plate out. They do not combine with other elements to

form compounds; that is why they are called noble gases. Entergy and the Board failed to make this elemental distinction. If, as the Board postulates, "...the condenser cracked or broke into pieces at the same time a LOCA or other accident occurred..." then no credible mechanism remains to hold up (never mind, absorb) these gases. Thus a large-scale failure of the steam condenser boundary would result in an increase in accident consequences.

C. The Board's Order gives inappropriate weight to the factual merits of NEC's Contention 5.

At this stage of the proceeding, NEC is not required to prove the merits of its contentions. Rather, it must only make "a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate." *In Gulf State Utilities Co.*, 40 NRC 43, 51 (1994). The Board's decision of NEC's Contention 5 depends substantially upon its apparent acceptance of Entergy's unsupported arguments, lacking detail or quantification, that the condenser could never break at a time when it is needed to perform its accident mitigation function, and that broken condenser surfaces will capture MSIV leakage. In fact, given the New England Coalition allegations stated in its Petition to Intervene, as supported by the first Declaration of Arnold Gundersen (May 26, 2006), these issues are clearly in material dispute.

**II. The Board Misapprehended a Controlling Legal Principal in Declining to Consider NEC's Contention 1 Argument that Entergy is Required to Obtain Clean Water Act Section 401 Certification.**

The Board granted Entergy's Motion to Strike NEC's argument regarding the need for a Clean Water Act § 401 certification. Section 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 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)(emphasis added). “No license or permit shall be granted if certification has been denied by the State.” *Id.* (emphasis added). In short, § 401 binds the Board and the NRC regardless of whether raised in a contention; therefore all parties were at least on constructive notice of its requirements.

**III. NEC Has Consulted All Parties.**

Pursuant to 10 C.F.R. § 2.323(a), NEC has consulted all parties to this proceeding concerning this motion. The State of Vermont, Entergy, and the NRC Staff have no objection. Consent to this motion is not to be construed, however, as agreement that standards for granting reconsideration are satisfied.

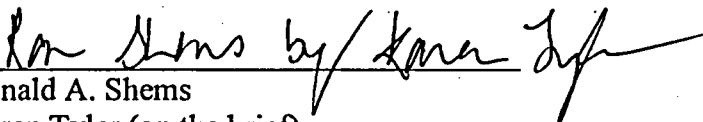
**IV. Conclusion**

NEC’s motion for leave to file a motion for reconsideration should be granted. Upon reconsideration, the Board should find that NEC’s Contention 5 is admissible, and that NEC’s Contention 1 incorporates the argument that Entergy must obtain § 401 certification..

October 2, 2006

New England Coalition, Inc.

by:



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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 MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION 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 2nd day of October, 2006.

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October 2, 2006

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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 Motion for Leave to File Motion for Reconsideration.

Thank you for your attention to this matter.

Sincerely,



Karen Tyler  
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

Cc: attached service list  
Enclosures (3)