

October 12, 2006 (10:57am)

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 ENERGENCY NUCLEAR OPERATIONS, INC.)
Vermont Yankee Nuclear Power Station)
License Renewal Application

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

**NEW ENGLAND COALITION, INC.'S OPPOSITION
TO ENERGENCY'S REQUEST FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF NEC'S CONTENTION 3**

Pursuant to 10 C.F.R. § 2.323(e), New England Coalition, Inc. (NEC) opposes
Entergy's proposed motion for reconsideration of the Atomic Safety and Licensing
Board's ("the Board's") decision to admit NEC's Contention 3.

I. INTRODUCTION

Entergy makes two arguments for reconsideration of the Board's conclusion that
NEC has demonstrated a "genuine dispute" under the standards of 10 C.F.R. §
2.309(f)(1)(vi) concerning Entergy's plans for aging management of the Vermont Yankee
steam dryer beyond 2012. First, Entergy repeats an argument it made on Answer to
Contention 3 that NEC makes factually incorrect assumptions about Entergy's aging
management plan, and does not contest Entergy's actual proposal. This argument differs
in its second iteration only in that Entergy makes different and inconsistent claims about
the facts of its purported plan. Second, Entergy repeats another argument it made on
Answer that a steam dryer license condition of finite duration, imposed in connection
with NRC approval of the Vermont Yankee power uprate, establishes a mandatory steam
dryer aging management program that will remain in effect throughout the proposed

period of extended operation. The Board has already considered and rejected this argument.

The standard for reconsideration is rigorous and rarely satisfied. Entergy fails to demonstrate a “compelling circumstance”, such as the Board’s misapprehension or misapplication of factual information or a controlling legal principal. If anything, Entergy’s motion for reconsideration only fosters uncertainty about exactly how Entergy proposes to manage the steam dryer, and underscores the need for a hearing on the merits to clarify and confirm the substance and sufficiency of Entergy’s program.

Reconsideration is therefore inappropriate. 10 C.F.R. § 2.323(e); *Private Fuel Storage LLC (Independent Spent Fuel Storage Installation)*, 52 NRC 340, 342 (2000).

II. ARGUMENT

- A. The Board Rightfully Found that Entergy’s Aging Management Plan for the Steam Dryer is Impermissibly Ambiguous. Entergy’s Argument for Reconsideration Based on NEC’s and the Board’s Alleged Misunderstanding of the Facts of its Plan Only Produces Further Ambiguity.

The Board found that “NEC has identified sufficient ambiguity in Entergy’s aging management plan for the steam dryer to meet the requirements for contention admissibility.” Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption), LBP-06-20, 63 NRC ____ (September 22, 2006) at 87. Entergy’s Motion for Reconsideration only further muddies the waters.

In its Answer to NEC’s Petition to Intervene, Entergy stated that its steam dryer aging management plan would be consistent with the steam dryer management program Entergy developed in connection with its application for extended power uprate at

Vermont Yankee, and faulted NEC for its alleged failure to fully evaluate materials filed in the EPU docket. Entergy Answer at 26 (“As a threshold matter, an intervention petitioner has an ironclad obligation to examine the publicly available documentary material The adequacy of monitoring for flow induced cracking in the steam dryers was addressed extensively by Entergy and the NRC Staff in EPU proceedings. NEC has no excuse for ignoring this material. . . .”). Entergy specifically represented that its steam dryer aging management program would be as described in an ACRS letter addressing Entergy’s EPU steam dryer program, and pursuant to the Steam Dryer Monitoring Plan set forth in Entergy’s EPU application. Entergy stated that this program would involve use of the AC and CFD computer models together with additional monitoring and inspection. Entergy Answer at 28 (“As the ACRS determined, the program instituted by Entergy to identify crack formation in the steam dryer includes, besides the analytical tools challenged by Dr. Hopfenfeld, additional monitoring, strain measurements during the power ascension program, and added post-EPU inspections. . . . NEC fails to address this material and provides no basis to dispute the adequacy of the described measures.”); *See also*, Entergy Answer at 28-29 (citing the Steam Dryer Monitoring Plan described in Entergy’s Vermont Yankee EPU application, and complaining of NEC’s “fail[ure] to acknowledge, discuss or dispute this publicly available information”).

Now, Entergy makes different claims regarding how it proposes to manage aging of the steam dryer. Entergy now claims that its plan will not involve use of the AC and CFD models. Entergy Motion for Reconsideration at 4 (“The monitoring plan for the VY steam dryer during the license renewal period does NOT depend on theoretical calculations using computer models.”)(emphasis in original). Whereas Entergy

previously claimed that its steam dryer aging management plan would be as described in the EPU proceedings and Entergy's EPU application, Entergy now alleges that NEC erred to the extent it relied on the EPU record, leading to "fundamental factual error" regarding Entergy's program. Entergy Motion for Reconsideration at 4, 4 n.3.

Entergy's new claim that its steam dryer aging management plan will not involve use of the AC and CFD computer models is inconsistent with Entergy's prior statements in this proceeding. Moreover, NEC notes that it is undisputed that Entergy has previously used these computer models to establish a baseline for its steam dryer management program, and integrated code-based predictions into its aging management assessment. NEC's Contention 3 concerns regarding validity of these models are therefore current regardless of whether Entergy will make further use of them.

Although Entergy made only passing mention of this issue in its Answer to NEC's Petition to Intervene, Entergy now stresses its License Renewal Application statement that cracking of the steam dryer due to flow-induced vibration is currently managed by the "BWR Vessels Internals Program", which "incorporates guidance of [General Electric Service Information Letter 644, Revision 1]." See, License Renewal Application ¶ 3.1.2.2.11. Entergy now faults NEC for failure to comment on GE-SIL-644, Revision 1, which states General Electric's recommendations for maintenance of steam dryers it manufactures.

Entergy's reference to GE-SIL-644, Revision 1 adds no specificity to Entergy's steam dryer aging management plan. This document is not in any way binding on Entergy – Entergy is under no obligation to implement any of General Electric's recommendations during its proposed second license term. The recommendations

themselves are written in loose terms. For instance, General Electric “recommends that owners of GE BWRs *consider* the following [visual inspection program].” GE-SIL-644, Revision 1 at 6 (emphasis added). The preface to the moisture monitoring recommendations Energy cites at length in its Motion for Reconsideration states the following caveat: “GE recommends that all BWRs implement the moisture carryover and operational guidance described here. However, plants that have sufficient baseline data and operating experience may elect to consider a less stringent monitoring program.” GE-SIL-644, Revision 1 at 30. While Entergy’s License Renewal Application states that its steam dryer program “incorporates” guidance of GE-SIL-644, Revision 1, it is not at all clear how or which of these recommendations are incorporated. Nor, as the Board rightfully noted, is it clear how Entergy proposes to interface a monitoring program somehow “incorporating” General Electric’s recommendations with its use of the AC and CFD models during the renewed license term. *See*, Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption), LBP-06-20, 63 NRC ____ (September 22, 2006) at 86 (“As we see it, NEC is arguing that, even with such monitoring, reliance on the models during the renewal period that starts in 2012 is inappropriate.”). In short, NEC’s comment on GE-SIL-644, Revision 1 as a component of Entergy’s steam dryer aging management plan would be speculative and pointless; these recommendations are nonbinding, and it is not at all clear how or whether Entergy proposes to monitor and inspect in accordance with them during the period of extended operations.

The Board noted that “assurances offered by Entergy’s counsel, whether in pleadings or at oral argument, are not in evidence before this Board and cannot be

granted the same weight as sworn testimony or exhibits.” Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption), LBP-06-20, 63 NRC ____ (September 22, 2006) at 87. Rather than clarifying the License Renewal Application, Entergy’s inconsistent statements in its briefing on Contention 3 have increased ambiguity regarding the fundamental issue: What is Entergy’s steam dryer aging management plan? A hearing on the merits is necessary to clarify exactly what Entergy proposes -- based on sworn testimony from Entergy witnesses rather than the inconsistent statements of Entergy’s counsel -- and to evaluate whether Entergy’s program is adequate to ensure public safety during the period of extended operation.

B. The Board has Already Considered and Rightfully Rejected Entergy’s Argument for Reconsideration Based on Vermont Yankee Facility Operating License, Amendment No. 229.

Entergy repeats an argument it made on Answer to NEC’s Petition to Intervene that the amendment to the Vermont Yankee operating license developed during the EPU proceedings, which addresses monitoring and inspection of the steam dryer during and for a finite period after ascension to uprate power, somehow mandates a steam dryer aging management program during the period of extended operation. *See*, Entergy Answer at 28-29. Entergy now notes that this same license amendment requires Entergy to revise its EPU Steam Dryer Monitoring Plan to “reflect consistency of the facility’s steam dryer inspection program with General Electric Services Information Letter 644, Revision 1”. Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Amendment to Facility Operating License, Amendment No. 229 § 2.M.2.e.

Entergy again argues that conditions stated in this license amendment will remain in effect during the proposed second license term, establishing a mandatory aging management plan, including monitoring and inspection consistent with GE-SIL-644, Revision 1. This is not at all the case. As NEC has previously noted, the license conditions to which Entergy refers, including the requirement for implementation of an EPU Steam Dryer Monitoring Plan consistent with GE-SIL-644, apply for a finite period time, and may expire during the current license term.

These conditions expire once (1) Entergy conducts a visual inspection of the steam dryer during three scheduled refueling outages (beginning in the Spring of 2007); (2) Entergy implements “operating limits, required actions and surveillances” specified in its EPU Steam Dryer Monitoring Plan during one full operating cycle at EPU; and (3) visual inspection of the steam dryer does not reveal any new unacceptable flaw or flaw growth due to fatigue. *Id.* at § 2.M.4-8. If visual inspection does reveal new unacceptable flaws or flaw growth, EPU Steam Dryer Monitoring Plan requirements “shall extend another full operating cycle until the visual inspection standard of no new flaws/flaw growth based on visual inspection is satisfied.” *Id.* at § 2.M.4.

As the Board noted, these conditions were developed in the EPU proceedings “primarily in regard to the power ascension toward EPU levels and the first few operating cycles thereafter.” Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption), LBP-06-20, 63 NRC ____ (September 22, 2006) at 84. It is misleading at best to suggest that these conditions

comprise a mandatory steam dryer aging management plan that will bind Entergy throughout the proposed second license term.¹

The Board has already appropriately considered and decided Entergy's argument regarding Amendment No. 229:

As a threshold matter, the Board notes that since Entergy's existing license continues until 2012, its application for a license renewal necessarily only involves aging management matters after that date. Steam dryer monitoring and inspection plans for the time period prior to 2012 are not directly relevant to, nor dispositive of, our ruling on NEC Contention 3 except to the extent that Entergy's license renewal application, or other materials properly before this Board at this stage in the proceeding, indicates a commitment to continue existing programs. Entergy's apparent assertion that the history of the steam dryer issue in the separate EPU proceeding should resolve the issue in this proceeding is therefore without foundation.

Id. (emphasis in original). Entergy makes no commitment to extend its post-EPU steam dryer program past its expiration upon an inspection finding of no new unacceptable flaw or flaw growth due to fatigue. Entergy therefore demonstrates no reason for the Board to reconsider its decision.

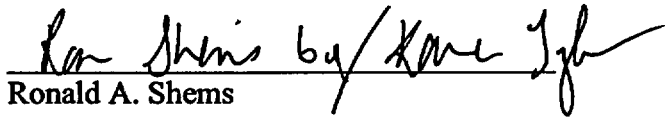
¹ Entergy's citation to NRC decisions barring collateral attacks on NRC regulations is totally inapposite. NEC is not arguing for the imposition of conditions in excess of what NRC regulations would require. Rather, NEC contests Entergy's contention that Vermont Yankee Facility Operating License Amendment No. 229 establishes a mandatory steam dryer aging management program that will apply during the period of extended operations. It plainly does not.

III. CONCLUSION

Entergy's Request for Leave to File a Motion for Reconsideration should be denied.

October 12, 2006

New England Coalition, Inc.

by: 
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For the firm

Attorneys for NEC

**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 REQUEST FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF NEC'S CONTENTION 3 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 12th day of October, 2006.

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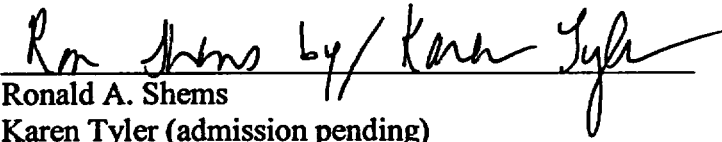
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October 12, 2006

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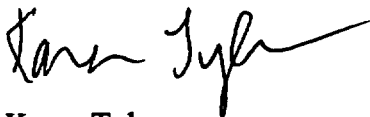
Re: In the Matter of Entergy Nuclear Vermont Yankee, LLC and Entergy
Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station),
Docket No. 50-271-LR, ASLBP No. 06-849-03-LR

Dear Sir or Madam:

Please find enclosed for filing in the above-stated matter New England Coalition, Inc.'s Opposition to Entergy's Request for Leave to File Motion for Reconsideration of NEC's Contention 3.

Thank you for your attention to this matter.

Sincerely,



Karen Tyler
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

Cc: attached service list
Enclosures (3)