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**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)

October 24, 2006
Docket No. 50-271

ASLBP No. 04-832-02-OLA

**NEW ENGLAND COALITION'S MOTION TO REOPEN THE RECORD
FOR THE PURPOSE OF RE-EXAMINING DR. JORAM HOPENFELD**

INTRODUCTION

Now comes New England Coalition, through its *pro se* representative, Raymond Shadis, to move the Atomic Safety and Licensing Board Panel ("Board") to reopen the record for the purpose of re-examining New England Coalition's sole expert witness in the above captioned proceeding, Dr. Joram Hopenfeld.

New England Coalition herein avers that testimony of Dr. Joram Hopenfeld was disrupted and otherwise negatively affected by irregularities in the identification of ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC. ("Entergy") Exhibits

New England Coalition respectfully moves therefore that the Board now re-examine (question) Dr. Hopenfeld via written (electronic and hard copy format) or transcribed teleconference questions and answers.

TEMPLATE = SECY-041

SECY-02

BACKGROUND

1. On September 13th and 14th 2006, the Board conducted Evidentiary Hearings at Newfane, Vermont for the purpose of taking oral testimony in the above captioned matter. All parties were in attendance and participating.
2. On September 13th, New England Coalition, having previously indicated to the Board that it would not be presenting exhibits, reaffirmed that it would be relying entirely on Entergy and U.S. Nuclear Regulatory Commission Staff (“NRC Staff”) Exhibits. (Tr. at 1508)

CHAIR KARLIN: All right. Thank you, Ms. Abdullahi. You may step down. Thank you for your attention. At this point the New England Coalition has a witness. You have no exhibits that you have presented, Mr. Shadis.[?]

MR. SHADIS: That's correct.

CHAIR KARLIN: So we will just go directly.

MR. SHADIS: I'll be relying on Entergy and NRC exhibits.

3. Also on September 13th, Entergy presented its Exhibits for the record, identifying each exhibit by a list and numeric designation that had not been provided in its final form and format to New England Coalition. Some confusion was evident during the presentation of Entergy's Exhibits as to the designations and status of Exhibits that had accompanied Entergy's Rebuttal Testimony and Supplementary Filing.
4. New England Coalition then complained to the Board that the failure to provide a list of exhibits in the form and format in which Exhibits were being referenced was confusing and placed New England Coalition and its witness at some disadvantage. New England Coalition also asked the Board to provide some remedy of the Board's own device. (See Tr. at 1435 – 1436)

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CHAIR KARLIN.....Any last questions by any of the counsel?

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Mr. Shadis?

MR. SHADIS: Yes, thank you Your Honor.

Many of the exhibits that were offered today we received only in electronic form, and with indices [sic] that did not match, the indices [sic] that were provided today, or the exhibit designations.

And it has caused us some confusion in trying to locate them on the computer, locate the few that we have copied and marked as they were originally marked.

It would be helpful to us if the licensee, and the NRC, would provide us the new amended exhibit lists so that we could correlate all these documents.

5. The Board inquired of NRC Staff and Entergy if they had provided New England Coalition with the Exhibit List proposed for the Evidentiary Hearing. Each replied that they had- Entergy intimating that it had provided the Exhibit List, at least in electronic form. (See Tr. at 1436-1437). Entergy, as it turns out, had not.¹

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CHAIR KARLIN: Well, I think they filed those, did they not? Pursuant to my order, our order on September 6th. Was there not an exhibit list that you filed with us?

MR. TURK: The Staff did, Your Honor, and we did serve Mr. Shadis. We have an extra copy we can give him.

CHAIR KARLIN: There was, and Entergy –

MR. TRAVIESO-DIAZ: We did likewise, and I think it was even before September 6th.

CHAIR KARLIN: Yes, I think yours was filed earlier, and it was an exhibit list with the new 1437

numbers, the new numbering system. And you served Mr. Shadis with that, Mr. Travieso-Diaz?

MR. TRAVIESO-DIAZ: Pardon me?

CHAIR KARLIN: Mr. Shadis got a copy of that earlier, didn't he?

MR. TRAVIESO-DIAZ: Yes. In any event we do have a set of exhibits that we could provide, if that is what he needs.

6. The Board then appeared to agree that New England Coalition had been provided with (at least electronic service of) the new Exhibit List but nonetheless ordered that Entergy provide the Exhibit List in hard copy to New England Coalition by the end of the day

¹ September 25, 2006, ENERGY'S RESPONSE TO NEW ENGLAND COALITION'S LETTER TO BOARD, footnote 3, page 3-

"... Entergy counsel had mistakenly stated at the end of the September 13 hearing that Entergy had provided a copy of the final exhibit list to NEC at the time it sent it to the Board's clerk. See Tr. 1438. Contrary to counsel's faulty recollection (for which we apologize), Entergy had not provided a copy of its final exhibit list to NEC before the hearing because it interpreted the Board's instructions as requiring that such a list only be sent to the Board's clerk: "f. Exhibit List. On or before September 6, 2006, each party shall provide the Board's law clerk, Marcia Carpentier, Esq. (e-mail address: mxc7@nrc.gov), an electronic copy of a list of all of its prefiled exhibits." Order (Site Visit and Evidentiary Hearing Administrative Matters) (Aug. 24, 2006) at 6, emphasis in original. Entergy fully complied with the Board's Order, submitting its final exhibit list to the Board's clerk on August 29, 2006."

(September 13th). This would have permitted New England Coalition's *pro se* representative and its witness to have reconciled and organized Dr. Hopenfeld's notes intended to support his testimony and referencing earlier exhibit identifications (now modified) with the list form and format that Entergy had entered in evidence. (See Tr. at 1437)

CHAIR KARLIN: All right, so please give him another copy, a hard copy if you could.

MR. SHADIS: Thank you, I appreciate that.

CHAIR KARLIN: Would you do that this evening, before we leave? Okay, with that we are adjourned until tomorrow at nine a.m. Thank you all.

7. Entergy did not comply with the Board's Order. Entergy did not provide paper copies of its Exhibits nor did it provide on September 13th a copy of the Exhibits List as submitted to the Board. Instead, Entergy, unannounced, placed a copy of the (new) Exhibits List on New England Coalition's table just moments before the Hearing commenced on September 14th, the day that Dr. Hopenfeld was to testify².
8. This untimely service, in violation of the Board's Order, provided little or no time for New England Coalition to review the new list and to reconcile it with previously provided (partial) Entergy exhibits lists and document indices contained in Dr. Hopenfeld's notes, which he had prepared for hearing.
9. Dr. Joram Hopenfeld, in response to a question from the Board and not having had opportunity to reconcile his notes, invoked reference to a "Table 1" in a document listed in Entergy's June 19, 2006 Supplement to Direct Testimony on NEC Contentions 3 And 4, Index of Documents Provided in Response to Board Order, as follows, Item - 04,

² September 25, 2006, ENTERGY'S RESPONSE TO NEW ENGLAND COALITION'S LETTER TO BOARD, footnote 3, page 3, "Entergy provided a copy of its final exhibit list to NEC prior to the start of the September 14 hearing..."

Contention NEC-3, Document- Title CLTR for Constant Pressure Power Uprate Safety

Analysis: NEDO 24 154-A, vol. 1-4 summary; ODYN benchmark summaries, Testimony

Where Document is Cited or Referenced - Testimony of Craig J. Nichols and Jose L.

Casilla: (May 17,2006) at A30 and A36. (See, Tr. at 1535-1536)

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ADMINISTRATIVE JUDGE BARATTA: All right. What would be your criteria, considering that it did, in fact, adequately, the ODYN code adequately represented what occurred? We have heard that it has some conservatisms in it, and we have seen, already, comparisons with Peach Bottom turbine trip analysis, that it over predicts the pressure, at least for that case.

WITNESS HOPENFELD: Can I answer now?

ADMINISTRATIVE JUDGE BARATTA: Yes, please.

WITNESS HOPENFELD: Please refer to table 1. It is item O4 - NEC3. NED 241 --

CHAIR KARLIN: Dr. Hopenfeld, table 1?

WITNESS HOPENFELD: Table 1. I'm reading the documents where that table is.

CHAIR KARLIN: All right.

WITNESS HOPENFELD: It is marked item 01. First of all the title of my -- Entergy index document provided in response to the Board request.

CHAIR KARLIN: What are you reading from?

WITNESS HOPENFELD: RAI. I'm reading from what was provided by Entergy, the summary of those

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documents, and the numbering was item 04, and then I think they changed that thing to number 26 yesterday. It is table 1 that was discussed yesterday.

CHAIR KARLIN: I have, attached to their testimony, at the end of their testimony; Entergy's testimony, a document called table 1, Vermont Yankee equipment modifications implemented at EPU. That is not what you are referring to?

WITNESS HOPENFELD: No, that is not the document.

ADMINISTRATIVE JUDGE RUBENSTEIN: Is this in the RAI?

WITNESS HOPENFELD: The document that I'm talking about, that Entergy provided in response to your request. They provided us a set of documents. There are two documents which summarize the ODYN code.

CHAIR KARLIN: These are the supplemental exhibits?

WITNESS HOPENFELD: It is in the supplemental, correct.

CHAIR KARLIN: That we requested. Okay.

WITNESS HOPENFELD: And I'm reading what was provided in that supplemental, and I believe it was provided on June 14th.

10. The Board could not locate the table that Dr. Hopenfeld referenced in the Entergy Exhibits before it. As result confusion ensued, requiring the Board to request that New England Coalition's *pro se* representative advance to the witness stand to consult with witness Hopenfeld in order to attempt to clarify the reference and the location of the table to which Dr. Hopenfeld was referring. (See, Tr. at 1536-1538)

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CHAIR KARLIN: Well, just wait for a

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second so that we can see if we understand what document that is. Please just hold for a moment, Dr. Hopenfeld.

MR. SHADIS: It looks like it is Entergy 24.

CHAIR KARLIN: Entergy exhibit 24?

MR. SHADIS: I believe that is what it is.

WITNESS HOPENFELD: Item 04, and the counsel yesterday referred to the same table I'm talking about. I believe it is the same table I'm talking about.

CHAIR KARLIN: Mr. Shadis, why don't you go over and see if you can verify what Dr. Hopenfeld is referring to?

MR. SHADIS: Thank you.

CHAIR KARLIN: It would help us, for the record.

(Pause.)

MR. SHADIS: Yes, this is NEDO 24 --

CHAIR KARLIN: That is Entergy 26, I believe, was what we must be referring to. All right, so I think you are referring to Entergy exhibit number 26?

WITNESS HOPENFELD: Yes, that is exactly what it is. Let me read the title of that document.

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It is page 1, table 1, and it is rebuttal testimony of C. J. Nichols, and Jose Casillas, on NEC Contention 3, large transient testing exhibit 3. And I would like to answer the question, first, in the context of this table.

11. After some moments had elapsed, Entergy's counsel advised that the errant, referenced table could be found in Entergy Exhibit #23. (See, Tr. at 1538-1539)

MR. TRAVIESO-DIAZ: In the interest of expediting matters, I believe that he is referring to what has been introduced into evidence as Entergy Exhibit 23, which was the exhibit 1 to the rebuttal testimony of Mr. Nichols and Mr. Casillas. It is the same document, like this.

CHAIR KARLIN: I think he is referring to rebuttal testimony, exhibit 1? So it is 23.

MR. TRAVIESO-DIAZ: Exhibit 23.

CHAIR KARLIN: All right.

WITNESS HOPENFELD: In the --

CHAIR KARLIN: Thank you.

WITNESS HOPENFELD: -- middle of the page there is a statement by Entergy that the table below, table which is -- which I will discuss later, is the justification for using the ODYN code for Vermont Yankee at EPIJ conditions. What they are saying, that these parameters that you see in this table, cover the EPU operational parameters. That is what this statement

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says. So now, if this is true, they do not provide any backup to this, this is an extremely important statement. There is no backup to this. I believe they are mistaken. And I would like to point out to you why they are mistaken. But before I go into this table and discuss the parameters that they are talking about, and what the outcome of the table, I would like to give you, if I may, a little bit feel for the actual data in person. Because as it was -- okay. If you go, now please, to the exhibit which, again, on my nomenclature here, it is item 03, NED241454-A, volume Please take a look-at-pages 327, 330, 325, 331, 360. I will summarize it to you.

CHAIR KARLIN: Please stop for a minute. I believe that is exhibit --

MR. TRAVIESO-DIAZ: I believe that is exhibit 27 he is talking about now.

CHAIR KARLIN: That is what I have, okay.

WITNESS HOPENFELD: It is item 03 on my --

CHAIR KARLIN: Yes, okay.

12. New England Coalition's witness then attempted to answer the Board's questions by expounding on the contents of table 1, now identified by Entergy's counsel as Exhibit 23 and drawing comparisons to data in item 03 or Entergy Exhibit 27, but Dr. Hopenfled was proceeding uncertainly given the lengthy interruption and confusion. Full elucidation on table 1, and the data in particular as it relates to the phenomenon of Critical Heat Flux and transition boiling is central to Dr. Hopenfled's testimony regarding proper use of a valid calculation[al] tool for comparison and response to the Board's questions. However, it remains uncertain that confusion over the identification of the table, reference to its contents, and the data in other documents that DR. Hopenfled referenced did not prevail to the detriment of Dr. Hopenfled's testimony. (See, Tr. at 1539-1543)

WITNESS HOPENFELD: If you look at this, this is an example, a snapshot of the comparison of

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the data. The data does not compare very well with the actual test at Peach Bottom. But that is not very important. What is important is to understand what is the difference and you mentioned conservatism. The fact that something is higher doesn't mean that it is conservative....

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If you look at the table 1, you have two predictions. One of comparison. This is uncertainty that was done on all the data. Now, the parameters that they are talking about, in this table, and that was the original intent of the code, to predict that parameter, is the CPR, or the delta critical power. Critical power ratio for those that may be of interest, its a power at which one point, at some point of the bundle you get into transition boiling, divided by the average power of the bundle. It is a calculated value. As I said, it is not something that you measure, but it is a very important criteria. Now, why is it important?

Because once you get into that transition boiling, you want to stay away from it, like away from cancer.

Because once you get there you will have potential for a melt. So it is important, and it is a safety, and what we have done here, we have decreased the margin, towards getting to that transition boil. So if you look at this table it has only one criteria at this point. We are interested in other criteria. We are interested in the pressure. And, as I said before, we also are interested in the frequency of oscillations of that pressure, because

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that is a potential excitation force for resonance vibration. Now, if you look at the comparison nowhere is ODYN code even getting close of predicting the vibration frequency. So as far as the vibration frequency, it doesn't predict it.

13. On September 15, 2006, [New England Coalition] ascertained by search of its electronic archives and confirmed from Entergy's counsel (September 19, 2006) that electronic

service of the final Entergy Exhibit List had not been provided to New England Coalition.

14. On September 21, 2006, New England Coalition wrote a letter to the Board requesting examination of the circumstances and record of Dr. Hopenfeld's testimony, and a determination as to whether his testimony was unduly disrupted or hindered by the confusion resulting from Exhibit List irregularities.
15. On September 25, 2006, Entergy filed an Answer to New England Coalition's letter.
16. On October 16, the transcripts of the September 13, 14, 2006 Evidentiary Hearing were published in NRC's Electronic Hearing Docket and on September 17, 2006, New England Coalition traveled to a computer with cable service and downloaded the transcript files.
17. Having had the opportunity to review the transcripts in conjunction with preparing proposed findings of fact and conclusions of law, New England Coalition's concern that that sole opportunity of its expert witness to present oral testimony and respond to the Board's questions was compromised has been confirmed and heightened.

DISCUSSION

Supported by the foregoing chronological relation of events (with references from the transcript and Entergy correspondence), New England Coalition now avers that its witness, Dr. Joram Hopenfeld, was deprived of an opportunity to respond in full and directly to the Board's questions, and thus to fully and openly inform the Board and build a record on the technical and safety issues confronting the Board.

Entergy's failure to provide service of the Exhibit List constitutes a violation of 10 CFR § 2.302(b) (formerly § 2.701 (b)) which, apart from Entergy's unacceptably cribbed reading of the

Board's Order, requires that all documents offered for filing in adjudications be served on all parties.

While it is recognized that the Board must maintain an orderly, timely, and efficient process, it is also important that the Board provide a fair hear process and one, ultimately, where public health and safety supercedes all other considerations³.

It is the duty of Licensing Boards to regulate the conduct of hearing participants and the course of hearings in order to foster a fair, impartial, expeditious and orderly adjudicatory process, 10 CFR § 2.319(g) (formerly § 2.718(e); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-417, 5 NRC 1442, 1445-46 (1977).

CONCLUSION

In consideration of the foregoing, New England Coalition respectfully moves that the Board exercise its lawful discretion to reopen the record for the purpose of re-examination (questioning) of Dr. Hopenfeld via written (electronic and hard copy format) or transcribed teleconference questions and answers.⁴ Should the Board act both favorably and promptly on this motion, no extraordinary burden on the parties or lengthy extension of the schedule need ensue. New England Coalition's witness is prepared to testify along the very narrow grounds

³ Pursuant to 10 CFR § 2.319 (formerly § 2.718), a Board has the power to regulate the course of the hearing and the conduct of the participants, as well as to take any other action consistent with the APA. See also 10 CFR § 2.333 (formerly § 2.757). A Board should ensure that the hearings are fair, and produce a record that leads to high quality decisions and adequately protects the public health and safety and the environment. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-107, 16 NRC 1667,1677 (1982), citing, Statement of Policy, supra, 13 NRC at 453.

⁴ Considerations of fairness and of affording a party a proper opportunity to ventilate the issues sometimes dictate that a hearing be reopened. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980 (1974). Under certain instances the record maybe reopened, even though the new evidence to be received might not be so significant as to alter the original findings or conclusions, where the new evidence can be received with little or no burden upon the parties. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83,85 (1978))

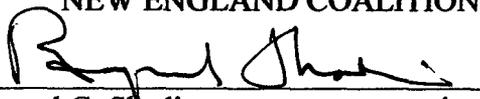
described in the Evidentiary Hearing and to seek, in an orderly context, only clarity and assurance of comprehensive understanding of the issues involved in application of calculation[al] tools to transient analysis. New England Coalition respectfully suggests that if the Board is convinced that the schedule for pending filings will not allow incorporation of new proposed findings of fact, etc. from the parties, then an expedited schedule of a few days might fairly be added for supplemental filings. New England Coalition respectfully asks the Board to consider that the Coalition is the sole intervenor and has invested two years in bringing this one contention forward, even defending it against a motion for summary judgment; all with the goal of presenting its best case to the Board. It is not justice that New England Coalition's interests should be shadowed by a disruptive and disorderly episode ([in] presenting its testimony) that was surely no fault of its own.

CERTIFICATION

Pursuant to 10 C.F.R. 2.323, New England Coalition contacted counsel for Entergy and NRC Staff in an effort to reach agreement on this motion. New England Coalition invited inquires and further discussion. Both parties stated that they would object to this motion.

Respectfully submitted:

NEW ENGLAND COALITION

BY: 
Raymond G. Shadis, *pro se* representative

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

ENERGY NUCLEAR VERMONT YANKEE
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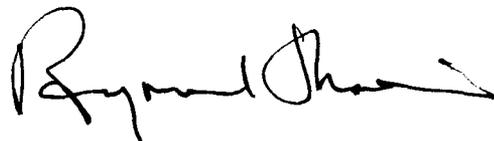
ASLBP No. 04-832-02-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of NEW ENGLAND COALITION'S MOTION TO REOPEN THE RECORD in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or by e-mail as indicated by a double asterisk (**), this 26th day of October, 2006.

<p>Alex S. Karlin, Chair** Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ask2@nrc.gov</p>	<p>Dr. Anthony J. Baratta** Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ajb5@nrc.gov</p>
<p>Lester S. Rubenstein** Administrative Judge Atomic Safety and Licensing Board Panel 4760 East Country Villa Drive Tucson, AZ 85718 E-mail: lesrrr@comcast.net</p>	<p>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</p>
<p>Office of Commission Appellate Adjudication* Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p>	<p>John M. Fulton, Esq. Assistant General Counsel Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601</p>

<p>Marcia Carpentier, Esq.** Law Clerk Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: MXC7@nrc.gov)</p>	<p>Raymond Shadis** Staff Technical Advisor New England Coalition P.O. Box 98 Edgecomb, ME 04556 E-mail: shadis@prexar.com, shadis@ime.net</p>
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New England Coalition

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NUCLEAR REGULATORY COMMISSION**

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**ERRATA AND CORRECTIONS
TO NEW ENGLAND COALITION'S MOTION TO REOPEN THE RECORD
FOR THE PURPOSE OF REEXAMINING DR. JORAM HOPENFELD**

The following listed four corrections were not included in New England Coalition's electronic filing of the above captioned motion but have been incorporated in the hard copy filing in brackets [...] at the appropriate locations.

- *Page 7, 2nd sentence under number 12, changing "calculation" to "calculation[al]"*
- *Page 7, 1st sentence under number 13, adding [New England Coalition] after, "On September 15, 2006"*
- *Page 10, 1st sentence, changing "calculation" to "calculation[al]"*
- *Page 10, 4th sentence, changing " ...presenting its testimony..." by adding parentheses' and inserting [in] to "...([in] presenting its testimony)..."*



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UNITED STATES
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ASLBP No. 04-832-02-OLA

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

Dear Rulemaking and Adjudications Staff,

Please find for filing in the above captioned matter one original and two copies of
**NEW ENGLAND COALITION'S MOTION TO REOPEN THE RECORD FOR THE
PURPOSE OF REEXAMINING DR. JORAM HOPENFELD**

Thank you for your kind assistance in making this filing,



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