

February 5, 2007 (4:58pm)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before the Commission

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In re: ENTERGY NUCLEAR VERMONT YANKEE, LLC	)	
& ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	No. 50-271-LR
(Vermont Yankee Nuclear Power Station)	)	CLI-07-01
_____		)

**APPELLEE NEW ENGLAND COALITION'S REPLY BRIEF**

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. ("Entergy"), and the NRC Staff ("the Staff") construe 10 C.F.R. § 51.53(c)(3)(ii)(B) contrary to its plain language, rendering merely *pro forma* and effectively nullifying Entergy's obligation, here, to provide meaningful information. Respectfully, the Commission should reject this interpretation, whereby Entergy's assessment of thermal discharge impacts might supply little if any information relevant to the NRC's ultimate evaluation of this issue under NEPA.

**A. Entergy cannot satisfy its obligation to assess heat shock with defective information.**

The NRC Staff and Entergy argument that Entergy has satisfied its 10 C.F.R. § 51.53(c)(3)(ii)(B) obligation to assess heat shock by submitting an annulled Vermont Agency of Natural Resources (VANR) action reflects a misunderstanding of Vermont law. More importantly, it leads to the absurd

result that Entergy can meet its assessment obligation with defective information, which could ultimately compromise the validity of the NRC's EIS for the license renewal. As explained in detail in NEC's opening brief, Entergy's permit amendment is a legal nullity and has been found substantively defective by a Vermont court with jurisdiction specific to such VANR action. The Vermont Environmental Court has taken it under *de novo* review, and found the VANR's supporting analysis questionable enough to justify a stay.<sup>1</sup>

Entergy is in the midst of the Vermont NPDES permitting process. It has not yet obtained the "316(a) variance" or "equivalent State permits and supporting documentation" required by § 51.53(c)(3)(ii)(B). Entergy cannot satisfy its heat shock assessment obligation merely by certifying that it hopes to obtain the necessary Vermont variance or equivalent permits and supporting documents at some point in the future. Yet this is essentially what it proposes to do in relying upon the defective, stayed, and vacated March 30, 2006 VANR action.

Incredibly, NRC Staff apparently sanctions this hollow process. However, Staff's position is self defeating, keeps relevant information from the public, and undermines the NEPA process. Indeed, delaying the provision of relevant information can only delay the licensing and NEPA

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<sup>1</sup> Under Vermont law, a stay issues upon demonstration of the same stringent elements as a preliminary injunction. See, NEC Brief, Exhibit 4, *In Re Entergy Nuclear/ Vermont Yankee Thermal Discharge permit amendment*, Decision and Order on Motion to Stay of Permit Amendment Pending Appeal, Docket No. 89-4-06 (August 28, 2006).

process. And, 10 C.F.R. § 51.53(c)(3)(ii)(B) calls for relevant and meaningful information.

**B. NRC's Contention 1 is "moot" only if Entergy amends its License Renewal Application.**

A State of Vermont denial of the NPDES permit amendment for this discharge will not, standing alone, moot NEC's Contention 1. Entergy's Environmental Report must assess its "proposed action." Contention 1 is therefore "moot" only when Entergy revises its License Renewal Application to retract its current proposal to increase thermal discharge into the Connecticut River through 2032.

**C. The NRC must assess cumulative impacts of Entergy's thermal discharge.**

Whether the Vermont Agency of Natural Resources' analysis underlying its action here is adequate to ultimately inform the NRC's EIS is not at all evident. NRC must assess the cumulative impact of Entergy's "rolling" NPDES permit over the full proposed period of extended operation.<sup>2</sup> "Conclusions relative to the overall environmental impacts including cumulative impacts will be left entirely to each site-specific SEIS."

Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 FR 28467, \*28470 (June 5, 1996). Further, the dissent below

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<sup>2</sup> Contrary to what Entergy and the Staff suggest, an NPDES permit is not equivalent to the analysis required by NEPA. Indeed, the federal Environmental Protection Agency (EPA) performs NEPA impact assessments when it issues NPDES permits to new sources. See, 40 C.F.R. § 6.604.

correctly notes that cumulative impacts of a thermal discharge are not specific to Category 1.<sup>3</sup>

NEPA requires that NRC consider all foreseeable direct and indirect impacts of Entergy's "proposed action," and the cumulative impacts of past, present, and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.8, 1508.7.4 . Direct impacts are defined as those impacts "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). Indirect impacts include those impacts "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). Cumulative impacts refer to the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such action. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

Section 51.53(c)(3)(ii)(B) must be read consistently with NEPA. This obligates Entergy to provide a CWA § 316 variance, or "*equivalent* state permits and supporting documents," or to assess "impacts" of heat shock. Impacts of heat shock include its direct, indirect and cumulative impacts. Importantly, Entergy's further application obligations require it to submit

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<sup>3</sup> *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)*, LBP-06-20, 64 NRC 131 (2006) ("Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption)"), dissenting opinion.

relevant and material information on the broader issue of its thermal discharge. 10 C.F.R. § 51.45.<sup>4</sup> To overstate the breadth of Category 1 impacts, and understate the breadth of Category 2, fails to meet these obligations.

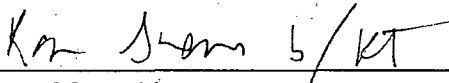
## VI. CONCLUSION.

Entergy's petition should be denied and the ASLB's admission of NEC's Contention 1 affirmed.

February 5, 2007

New England Coalition

by:

  
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<sup>4</sup> The narrow requirement of § 51.53(c)(3)(ii)(B) should not be construed to override the broader requirements of section § 51.45. Section 51.45 is not surplusage, and should be given effect.

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In the Matter of	)	
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Entergy Nuclear Vermont Yankee, LLC	)	Docket No. 50-271-LR
and Entergy Nuclear Operations, Inc.	)	CLI-07-01
	)	
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

I, Clara Cavitt, hereby certify that copies of **APPELLEE NEW ENGLAND COALITION'S REPLY BRIEF** 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 5th day of February, 2007.

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