RAS 13044

February 6, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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)	)	

ENTERGY'S REPLY TO NEW ENGLAND COALITION'S BRIEF ON REVIEW OF LBP-06-20

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Dated: February 6, 2007

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Pursuant to the Commission's January 11, 2007 Memorandum and Order,[1] Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy") submit this Reply to New England Coalition's ("NEC") Brief[2] on review of LBP-06-20. NEC has taken great liberty with its characterizations of the facts in attempt to obfuscate Entergy's compliance with the NRC's rules, and essentially ignores the inconsistency of the Licensing Board majority's decision with both NRC rules and federal statute. Indeed, NEC devotes only a single paragraph to Section 511(c) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1371(c)(2),[3] and totally ignores the longstanding Commission and judicial precedent interpreting that section. See Br. at 31. Under

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[1] CLI-07-01, 65 N.R.C. ___ (Jan. 11, 2007). By Order dated January 24, 2007, the Commission granted NEC's Motion to extend the brief filing deadline to January 29, 2007, and the reply filing deadline to seven days thereafter, or February 5, 2007. Because NEC's brief was received after 5 p.m. on January 29, the reply briefs are due on February 6 in accordance with 10 C.F.R. § 2.306, which extends the response date by one day under this circumstance.

[2] Appellee New England Coalition's Brief (Jan. 29, 2007) ("Br.").

[3] With respect to Section 511, NEC cites the Calvert Cliffs case for the proposition that NEPA poses an independent obligation on the NRC to assess the thermal impacts resulting from discharges authorized by an NPDES permit. Br. at 31. As discussed in Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 N.R.C. 702 (1978), Section 511 was enacted "to overcome that part of the Calvert Cliffs decision requiring [the Atomic Energy Commission] or any other licensing or permitting agency to independently review water quality matters." Id. at 711 (footnote omitted).

case law that could not be clearer,[4] Section 511(c) of the Clean Water Act requires the NRC to accept the National Pollution Discharge Elimination System ("NPDES") permitting agency's evaluation of aquatic impacts at face value.

Here, the Vermont Agency for Natural Resources ("VANR") has issued a final amended NPDES permit[5] approving thermal effluent limits under Section 316(a) of the Clean Water Act, supported by an Amended Fact Sheet[6] and other supporting documents making the findings required by 316(a):

> The Applicant's predictive analysis for the Demonstration indicates that the approved temperature increase will create insignificant changes in the thermal structures of the receiving waters affected by the project's discharge and that as a result the use of the waters by all species will be maintained and protected.
>
> * * *
>
> The Agency has concluded that there will be no significant impact from the proposed discharge on the aquatic biota that are present in the area affected by the proposed discharge. The agency therefore agrees with the Applicant's analysis that the use of the waters by all species present will be maintained and protected.

Amended Fact Sheet at 6-7. Under Section 511(c) as interpreted by the NRC and Court, the NRC must accept this assessment. Therefore, the Licensing Board's decision must be reversed.

Further, NEC's Brief concedes that the only issue raised by its Contention 1 is heat shock. Br. at 26. Thus, the Licensing Board's admission of this contention based on the possibility that there may be other thermal effects, LBP-06-20, slip op. at 56, is clear error. NEC also concedes that the NRC's rules at 10 C.F.R. § 51.53(c)(3)(ii)(B) do not require Entergy to submit any assessment of heat shock if Entergy provides a 316(a) variance or equivalent state

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[4] The controlling case law is discussed on pages 10-12 of Entergy's Brief on Review of LBP-06-20 (Jan. 29, 2007) and will not be repeated here.

[5] Final Amended Discharge Permit #3-1199 (March 30, 2006), included in Appendix E to the ER (Rev. 1) (hereinafter cited as "Final Amended NPDES Permit").

[6] The Amended Fact Sheet is also included in Appendix E to the ER (Rev. 1), as is the VANR's Responsiveness Summary, which represents the agency's response to public comments.

permits. Br. at 5-7, 29. Thus, NEC's whole argument devolves to its specious claims that Entergy has not submitted a 316(a) variance, or if it did, that is was a "nullity." As discussed below, these claims are incorrect and have no support in the record.

I. NEC MISCHARACTERIZES ENTERGY'S APPLICATION

NEC first claims that "Entergy's effort to comply with its ER obligations under 10 C.F.R. § 51.53(c)(3)(ii)(B) has been nothing more than its submission of . . . a State of Vermont-issued NPDES permit that pre-dates NRC and State of Vermont approval of Vermont Yankee's uprate operation, and hence does not evaluate or authorize Entergy's proposed increase in thermal discharges at uprate operation levels." Br. at 2. NEC's assertion is wrong in two respects. First, the increase in thermal discharge limit for which Entergy sought the Final Amended NPDES Permit has nothing to do with VY's uprated operations. Second, Entergy amended its license renewal application to provide the Final Amended NPDES Permit and 316(a) variance, along with supporting documentation, approving and assessing the increase in the thermal limit, which NEC is now simply pretending does not exist.

A. The Final Amended NPDES Permit and 316(a) Variance Are Unrelated to the Extended Power Uprate

Contrary to NEC's assertions, see Br. at 6, 7, 12, the increase in the VY thermal discharge limit has nothing to do with the VY uprate. As reflected in the record of this proceeding, Entergy applied for the Final Amended NPDES Permit in order to (1) facilitate increased power generation during summer time peak load periods; (2) improve operational flexibility by reducing the need for the Station to react to unexpected temporary reductions in River flow; (3) increase operational efficiency; and (4) reduce the frequency of operation of the

VY cooling towers.[7] The Environmental Report specifically states that the amended thermal limit was not necessary for operation after the extended power uprate. ER § 4.4.5.1. As explained in the Environmental Report, VY utilizes a variable condenser cooling system which allows it to operate in a variety of configurations, including a closed cycle configuration, to maintain compliance with temperature discharge limits. ER at § 4.4.5. Entergy is currently operating at uprated conditions under the terms of its NPDES permit that applied prior to the March 30, 2006 amendments.[8] NEC provides absolutely no support for its assertions that the increased thermal limit is necessary for or related to operation at uprated conditions. It is not.

B. Entergy's Application Includes The Final Amended NPDES Permit and 316(a) Variance Authorizing and Assessing The Increased Thermal Limit

Contrary to NEC's assertion (Br. at 2), following issuance of the Final Amended NPDES Permit approving the 1°F increase in the thermal discharge limit, Entergy revised its license renewal application so that the ER provided and included the Final Amended NPDES Permit and supporting documentation constituting the 316(a) variance for the increased limit.[9] NEC's suggestion that Entergy is relying on a permit that does not evaluate or authorize the increase in thermal levels (Br. at 2) is belied on its face by the Final Amended NPDES Permit and the Amended Fact Sheet included in Appendix E of the Environmental Report.

Because Entergy provided this 316(a) variance, it was not required under the NRC rules to provide an assessment of heat shock. 10 C.F.R. § 51.53(c)(3)(ii)(B). Recognizing this, NEC

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[7] Entergy's Answer to [NEC's] Petition for Leave to Intervene, Request for Hearing, and Contentions (June 22, 2006) at 11 n.4; Environmental Report, App. E, Amended Fact Sheet at 9.

[8] The Vermont Environmental Court recognized that Entergy can operate its cooling towers to stay within the NPDES permit limits in effect prior to its amendment request. See Decision and Order on Motion for Stay of Permit Amendment Pending Appeal (Aug. 28, 2006) at 3, which is attached to NEC's Br. at Exhibit 4.

[9] Letter from T. Sullivan, VY to NRC (License Renewal Application, Amendment No. 6) (July 27, 2006), ADAMS Accession No. ML062130080.

goes to great length to suggest that the Board struck the revised environmental report and Final Amended NPDES Permit from the proceeding.[10]

Contrary to NEC's suggestion, the Board did nothing of the sort. It merely struck a letter[11] which Entergy had provided to inform the Board and parties of the revision to the license application. Order (Striking Entergy's letter to the Board and Attached Materials) (Aug. 11, 2006). Entergy had thought that it was appropriate to inform the Board and the parties of this revision under NRC precedent[12] requiring a party to inform the Board of any material developments. The Board, however, indicated that "the record should not be cluttered with 'for your information' letters. . . ." Order (Striking Entergy's letter to the Board and Attached Materials), slip op. at 2. Nothing in this Order suggests that the Board was prohibiting Entergy from amending its application.

In any event, the Board could not have struck the amendment itself. The Application is the applicant's submittal to the NRC and its Staff, and a Licensing Board has no authority over that review. Cf. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 N.R.C. 551, 570 (2005); Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 N.R.C. 62, 74 (2004); Baltimore Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 349 (1998); Curators of the University. of Missouri, CLI-95-1, 41 N.R.C. 71, 121 (1995); Carolina Power & Light Co.

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[10] Br. at 2 (asserting that Entergy's proffer of the NPDES permit amendment was "rejected and struck by an unappealed ASLB Order"); Br. at 9-10 ("Entergy sought to amend its ER to include ANR's March 30, 2006 action on its permit amendment application. However the ALB struck Entergy's proffer."); Br. at 13 ("Entergy did not attempt to incorporate the March 30, 2006 ANR action into the ER until July 28, 2006, and the ASLB struck that information from this proceedings record.")

[11] Letter from David R. Lewis to Atomic Safety and Licensing Board (July 28, 2006).

[12] See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-143, 6 A.E.C. 623, 625 (1973),) (all parties to an adjudicatory proceeding are to advise the "presiding board and other parties of new information which is relevant and material to the matters being adjudicated"); see also Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-5, 37 N.R.C. 168, 170 (1993).

(Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 N.R.C. 514, 516 (1980).

Further, there was nothing wrong in Entergy amending its application to reflect the amended permit that had been subsequently issued. Indeed, the Commission has expressly recognized that an applicant may amend its application to provide information mooting a contention. USEC, Inc. (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 444 (2006) ("where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the NRC Staff in an environmental impact statement, the contention 'is moot.'") (quoting Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-02-28, 56 N.R.C. 373, 383 (2002)). Not to be able to do so would result in unnecessary litigation of matters already resolved, which would divert NRC resources and expose all parties to undue expense.

It should also be noted that Entergy had provided the Final Amended NPDES Permit and 316(a) variance to the NRC Staff reviewing the Application in May 2006, before NEC filed any hearing request in this proceeding. See NRC Memorandum, Summary of Environmental Site Audit (July 11, 2006), NRC ADAMS Accession No. ML061730397, Encl. 2 (identifying documents provided during Site Audit). Thus, well before any contention was filed, Entergy had already complied with 10 C.F.R. § 51.53(c)(3)(ii)(B), which simply requires the applicant to provide its 316(a) variance. The revision to the ER merely incorporated information that had already been submitted and docketed.

In any event, there is no question that the revised license renewal application containing the Final Amended NPDES Permit is the focus of NEC Contention 1. In its initial Petition to

316(a) that these limits would continue to assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife during the authorized period.

> The Agency found that during the period from June 15 through October 14 the limits "will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife."

Amended Fact Sheet at 4. Indeed, the Amended Fact Sheet finds:

> The Applicant's predictive analysis for the Demonstration indicates that the approved temperature increase will create insignificant changes in the thermal structures of the receiving waters affected by the project's discharge and that as a result the use of the waters by all species will be maintained and protected.
>
> * * *
>
> The Agency has concluded that there will be no significant impact from the proposed discharge on the aquatic biota that are present in the area affected by the proposed discharge. The agency therefore agrees with the Applicant's analysis that the use of the waters by all species present will be maintained and protected.

Amended Fact Sheet at 6-7. Thus, there is nothing tentative about its assessment of the impact of this increase.[15]

It is true that the VANR was unable to make the 316(a) findings supporting an increase from May 16 through June 15, but this makes no difference because the VANR denied the request for an increase in thermal discharge limit during this period. Amended Fact Sheet at 1 ("The Applicant's request for increased thermal limitations during the period from May 16 through June 15 is denied. . . ."). Consequently, it is no longer relevant – there will be no increase in thermal limit between May 16 and June 15. No purpose would be served by an NRC assessment of temperature increases that have been denied by the NPDES permitting agency and, therefore, cannot occur.

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[15] NEC seizes a single reference in the Amended Fact Sheet to a "tentative decision" is in a paragraph addressing certain "anti-backsliding" provisions of the Clean Water Act. See Amended Fact Sheet at 5. The Amended Fact Sheet refers to the VANR's "tentative" decision because it was written prior to the VANR's public notice-and-comment hearing to inform the public of the VANR's intended action, much like an SER and FEIS.

Intervene[13] in this proceeding, NEC stated that "[VANR] has issued a discharge permit allowing this increased thermal discharge." Intervention Petition at 11. By its proponent's own admission, "Contention 1 also specifically challenges Entergy's anticipated reliance on the amended permit issued by [V]ANR on March 31[sic], 2006. . . ." Br. at 28. Thus, NEC itself raised the issue of whether the amended permit would satisfy the NRC rules. Further, the Licensing Board noted Entergy's environmental report revision in its decision (LBP-06-20, slip op. at 55 n.57),[14] and its ruling admitting NEC Contention 1 related to whether Entergy's Final Amended NPDES Permit satisfies 10 C.F.R. § 51.53(c)(3)(ii)(B). See LBP-06-20, slip op. at 55-56. NEC is simply wrong in arguing that Entergy's revision to the VY license renewal application's environmental report does not exist or has somehow been struck.

Having failed in its effort to suggest that the amended permit and 316(a) variance is not part of Entergy's application, NEC next attempts to discredit the permit and variance as "tentative and partial," "defective," and of "no effect under Vermont law." Br. at 2. Every facet of these claims is wrong and unsupported.

C. Entergy's 316(a) Variance Is Neither Partial Nor Tentative

Entergy's 316(a) variance is neither "partial" nor "tentative." The 316(a) variance is full, final and complete with respect to the 1°F increase in thermal effluent that the VANR authorized for the period of June 16 through October 14 of each year. On its face, the Final Amended NPDES Permit establishes thermal effluent limitations allowing the 1° increase for this period, without any qualification. On its face, the Amended Fact Sheet makes the finding required by

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[13] Petition to for Leave to Intervene, Request for Hearing, and Contentions (May 26, 2006).

[14] If the Board had struck this amendment, it would presumably have said so.

D. The Vermont Environmental Court Did Not Find The Final Amended NPDES Permit to be Defective

NEC's attempt to characterize the NPDES permit as defective is similarly unfounded. NEC is simply grossly mischaracterizing the rulings of the Vermont Environmental Court.[16]

NEC incorrectly asserts that the Court concluded "that there is a substantial likelihood that [the March 30, 2006 permit amendments] are illegal." Br. at 11. This was not the Court's determination or language. Rather, the Court found sufficient evidence to demonstrate a "substantial possibility" that appellants will prevail on the merits. Stay Decision at 2 (emphasis added). The Court did not determine that appellants' success was "probable," and certainly did not find that VANR's issuance of the permit amendments was "illegal," "defective," or "factually inadequate" as NEC suggests (see Br. at 2, 11, 16). These terms are not found anywhere in the Vermont Environmental Court's decision.

Likewise, there is no merit to NEC's claim that the Vermont Environmental Court found "that heat shock . . . will cause irreparable harm under Entergy's proposed increased thermal discharge" (Br. at 25), or that "the increased thermal discharge will cause irreparable harm to fish." Br. at 11. Again, such statements appear nowhere in the Court's decision. Rather, the Court merely found that "Appellants have shown sufficient potential for irreparable injury to American shad in the Connecticut River." Stay Decision at 3 (emphasis added).

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[16] NEC attaches as Exhibit 4 to its Brief an August 28, 2006 Decision and Order on Motion for Stay of Permit Amendments Pending Appeal. NEC does not provide or mention the Amended Decision and Order On Stay of Permit Amendment Pending Appeal, which the Vermont Environmental Court issued on September 1, 2006. See Entergy's Answer to New England Coalition's Motion to File Supplemental and New Authority (Sept. 8, 2006), Att. A (hereinafter cited as "Stay Decision"). The amended decision allowed Entergy a period of two weeks from the original order (specifically, until September 8, 2006) to implement the order. Also, the amended decision limits the period of the stay to April 1, 2007 and indicates that an additional decision will need to be made, after further review of evidence presented, to determine whether any stay should continue into the summer of 2007.

In short, the Court only decided that NEC had created "a sufficiently substantial possibility to examine and weigh the other factors to be considered in whether or not to grant a stay." Id. In looking at other factors, the Court found no irreparable harm to Entergy, and therefore issued the stay. Id. The Court has made no findings that would invalidate the VANR's assessment of the impacts from the increased thermal limit.

E. The Final Amended NPDES Permit Is Not A Nullity

Likewise, NEC's various statements that the Vermont Environmental Court has somehow nullified the Final Amended NPDES Permit[17] are unsupportable. The Vermont Environmental Court has not vacated the Final Amended NPDES Permit and 316(a) variance, but merely stayed their effect to preserve the status quo pending judicial review. Moreover, the stay order is not permanent. The stay remains in effect only until April 1, 2007, or until further order of the Court issued before that date.

> [A] hearing will be scheduled in March, 2007, to determine whether an order should issue continuing the stay for the 2007 season; any order that issues as a result of that hearing will be appealable at that time.

Stay Decision at 4. The Court's express statements directly contradict NEC's position that the Final Amended NPDES Permit is a "nullity not to be reinstated." Br. at 29.

The fact that the Vermont Environmental Court is conducting a de novo review of the Final Amended NPDES Permit simply means that "no presumption is afforded the fact that the permit amendment was issued" and Entergy "will bear the burden of proof that it qualifies for a waiver of the thermal effluent limitation otherwise applicable to it," just as it did when the permit amendment request was under review by VANR. Stay Decision at 3. This is just the evidentiary standard to be used on judicial review, and does not negate the VANR's decision. If

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[17] See also Br. at 2 (claiming the Final Amended NPDES Permit "is of no effect"); Br. at 8, 16 (stating the amended permit was "nullified"); Br. at 25 (claiming the amended permit was "voided").

the VANR's decision is upheld on judicial review, the limits in the Final Amended NPDES Permit and 316(a) variance issued by the VANR will govern plant operations (and therefore cannot possibly be considered a "nullity"). If the VANR's decision is overturned, there will be no increase in the thermal discharge to assess.

Moreover, under NRC rules what is important is that the VANR has assessed the thermal impacts and made Section 316(a) findings supporting the thermal effluent limitations established for VYNPS, not whether the Final Amended NPDES Permit is under judicial review. Indeed, in the Seabrook decision in which the Commission affirmed the acceptance of the NPDES permitting agency's assessment without independent inquiry, the Commission explicitly noted that the EPA decision on which the Commission relied in the proceeding was under judicial review at the time. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 N.R.C. 1, 26 n.41 (1978). Therefore, the instant case is not distinguishable. The expert NPDES permitting agency's assessment of the aquatic impact is dispositive and must be respected by the NRC.

F. There Is No Genuine Dispute that VANR Issued A 316(a) Variance for The Increased Thermal Limit

Finally, grasping at straws, NEC claims that Entergy does not have a 316(a) variance (Br. at 2), and in footnote 2 appears to suggest that the Final Amended NPDES Permit does not constitute a 316(a) variance. It should be noted that 10 C.F.R. § 51.53(c)(3)(ii)(B) requires a license renewal applicant to provide a 316(a) variance or "equivalent State permits and supporting documentation," thus recognizing that states use NPDES permits to grant 316(a) variances. Indeed, the federal regulations governing 316(a) demonstrations, which Vermont is implementing, state:

> This subpart describes the factors, criteria and standards for establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act [i.e., NPDES permits].

40 C.F.R. § 125.70; see also 40 C.F.R. § 125.73(a) ("Thermal discharge effluent limitations or standards established in permits. . . .") (emphasis added).

In contrast, NEC provides no citation to federal or State law indicating that 316(a) variances are granted by different means or documentation, and likewise provides no example of any alternative means by which Vermont grants 316(a) variances. Thus, NEC fails to demonstrate that there is any genuine dispute that the Final Amended NPDES Permit and the supporting documentation that Entergy has provided constitute a 316(a) variance.

Moreover, NEC provides no meaningful discussion of either the terms of section 316(a) or the findings that the VANR made in approving the thermal effluent limitations for VYNPS. Section 316(a) provides for the imposition by the EPA or State, as appropriate, of a thermal effluent limitation that is an alternative to technology-based or water-quality-based standards established under Section 301 of the Clean Water Act (for existing sources) or Section 306 of the Clean Water Act (for new sources), based on a demonstration that the alternative limitation "will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water." 33 U.S.C. § 1326(a). The Final Amended NPDES Permit establishes such alternative thermal effluent limitations (i.e., it contains thermal discharge limits less stringent than Vermont Water Quality Standards), and thus can only be interpreted as a variance under Section 316(a). The Fact Sheet accompanying and explaining the Final Amended NPDES Permit states:

> "The Agency's review of thermal discharges is governed by §316(a) of the Clean Water Act (CWA) and relevant portions of the Vermont Water Quality Standards. . . ." Fact Sheet at 3.

> "The Agency found that during the period from June 16 through October 14 the [thermal effluent] limits 'will assure the protection and propagation of a balanced indigenous population shellfish, fish and wildlife.'" Id. at 4.
>
> "The Reviewers agreed that the temperature increase would assure this balanced indigenous population during the period of June 16 through October 14. . . ." Id. at 5.

Thus, it is obvious on the face of these documents, as well as in the Responsiveness Summary providing the VANR's responses to public comments (which are included in Appendix E of the ER), that the Final Amended NPDES Permit and supporting documentation constitute the establishment of alternative thermal effluent limitations allowed by Section 316(a) based on the demonstration required by Section 316(a). NEC provides no basis to suggest otherwise.

II. THE NRC SHOULD RESPECT THE STATE OF VERMONT'S AQUATIC IMPACT DETERMINATIONS

In closing, Entergy notes NEC's statements that this proceeding should not be used to collaterally attack Vermont's administration of the Clean Water Act, and that comity is due. Br. at 23, 25. In fact, Section 511(c) provides such comity, by requiring the NRC to accept the NPDES permitting agency's assessment of aquatic impact. In contrast, NEC's attempt to litigate in this NRC proceeding the magnitude of the thermal impacts already assessed by the VANR is exactly the type of collateral attack that Section 511(c) is intended to avoid. In essence, NEC is attempting to obtain review of the VANR's assessment in two forums. Such duplicative review would not only usurp the Vermont Environmental Court's jurisdiction, but also is what the First Circuit Court of Appeals held is not required. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 98 (1st Cir. 1978) (denying petitioners a "second forum" before the NRC in which to litigate its aquatic impact concerns).

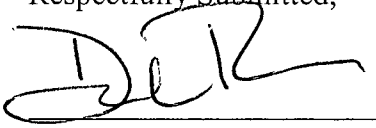
The bottom line is that the duplicative assessment sought by NEC would serve no good purpose. If the Vermont Environmental Court upholds the VANR's approval of the Final

Amended NPDES Permit, the VANR's assessment will stand and can be relied upon. If the Court does not uphold that assessment, there will be no increase in thermal effluent to assess.

III. CONCLUSION

For the reasons set forth above, the Commission should reverse the Licensing Board majority's decision and dismiss NEC Contention 1.

Respectfully Submitted,



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Dated: February 6, 2007

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NUCLEAR REGULATORY COMMISSION

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(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Reply to New England Coalition's Brief on Review of LBP-06-20" dated February 6, 2007, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 6th day of February, 2007.

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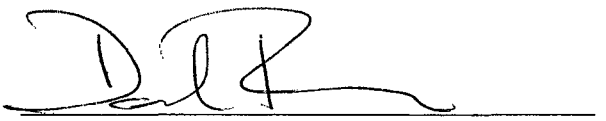

David R. Lewis