

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 11/07/07

SERVED 11/07/07

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Richard E. Wardwell
Dr. Thomas S. Elleman

In the Matter of

ENTERGY NUCLEAR VERMONT YANKEE,
L.L.C.,
and
ENTERGY NUCLEAR OPERATIONS, INC.

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-LR

ASLBP No. 06-849-03-LR

November 7, 2007

MEMORANDUM AND ORDER

(Ruling on NEC Motions to File and Admit New Contention)

Before this Atomic Safety and Licensing Board (Board) are two motions by the New England Coalition (NEC) to file and admit a new contention relating to the application of Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy) to renew its operating license for the Vermont Yankee Nuclear Power Station (VYNPS) in Windham County, Vermont.¹ The motions each propound a single contention (they are substantially identical) that challenges the adequacy of Entergy's calculations concerning metal fatigue on key reactor components during the proposed 20-year renewal period. For the reasons stated below, the Board grants the second motion and admits a new contention on this subject.

¹ [NEC] Motion to File a Timely New or Amended Contention (July 12, 2007) [NEC Motion One]. [NEC] Motion to File a Timely New or Amended Contention (Sept. 4, 2007) [NEC Motion Two].

I. BACKGROUND

On January 25, 2006, Entergy filed an application to extend its operating license for the VYNPS for an additional 20 years beyond the current expiration date of March 21, 2012.² Subsequently, the Commission published a notice of opportunity to request a hearing on the application, several requests were filed, and, on September 22, 2006, this Board issued an order granting the hearing requests of two entities, the Vermont Department of Public Service (DPS) and NEC. LBP-06-20, 64 NRC 131 (2006). One of the admitted contentions dealt with metal fatigue, as follows:

NEC Contention 2: Entergy's License Renewal Application does not include an adequate plan to monitor and manage the effects of aging [due to metal fatigue] on key reactor components that are subject to an aging management review, pursuant to 10 C.F.R. § 54.21(a) and an evaluation of the time limited aging analysis, pursuant to 10 C.F.R. § 54.21(c).

Id. at 183.

NEC Contention 2 is based on the fact that Entergy's renewal application specified that, if the license were extended for 20 years, certain key components and piping of VYNPS would have a metal fatigue cumulative use factor (CUF) greater than unity ($CUF > 1$), meaning that they would be likely to develop metal fatigue cracks that might affect their function. Application at 4.3-6 to 4.3-8. Under such circumstances, NRC regulations require, inter alia, that the applicant "demonstrate" that the effects of aging (i.e., cracks) "will be adequately managed for the period of extended operation." 10 C.F.R. § 54.21(c)(1)(iii). Entergy responded to this regulatory requirement by stating that it would satisfy the regulation either by refining its CUF calculations to show that the CUFs were really less than unity, or by managing the metal fatigue cracking at locations where the CUF remained greater than unity via an inspection and

² [VYNPS] License Renewal Application (Jan. 25, 2006), ADAMS Accession No. ML060300085 [Application]. Entergy has since supplemented and amended its application several times.

replacement program.³ NEC contended that Entergy's application failed to demonstrate that it would safely manage the metal fatigue aging and cracking process, and instead simply provided a list of three options: (a) recalculate the CUFs, (b) inspect affected locations, and/or (c) repair or replace pipes or components, as needed, at locations where calculated CUFs were greater than unity.⁴

On September 22, 2006, the Board concluded that NEC Contention 2 satisfied the admissibility criteria of 10 C.F.R. § 2.309(f)(1). This was based on NEC's position that Entergy's application contained what amounted to a list of options for the development of future plans, not an actual demonstration of regulatory compliance. LBP-06-20, 64 NRC at 186-87. In so doing, the Board noted that

Efforts by Entergy's attorneys to justify the options presented in the Application, for example by claiming that reanalyzing the CUF factors is a feasible option, fail to address NEC's concern that the brief presentation in the Application provides no information at all about how Entergy intends to reanalyze the CUF factors if it should become necessary to do so. Where such reanalysis does not produce a CUF less than 1, Entergy's statement that it will implement "management of fatigue at the affected locations by an inspection program that has been reviewed and approved by the NRC (e.g., periodic non-destructive examination of the affected locations at inspection intervals to be determined by a method acceptable to NRC)" is a bit vague.

Id. (citations omitted).

On June 12, 2007, during a prehearing teleconference, counsel for Entergy informed us of a new development in its plan to deal with metal fatigue during the proposed renewal period. Tr. at 568. Specifically, we learned that Entergy, with the help of its consultants, had been performing revised fatigue analyses incorporating environmentally assisted fatigue (i.e., a further refinement of its CUF analyses) that ostensibly would demonstrate that all CUFs were

³ Application at 4.3-7; Entergy's Answer to [NEC]'s Petition for Leave to Intervene, Request for Hearing, and Contentions (June 22, 2006) at 18-19.

⁴ [NEC] Petition for Leave to Intervene, Request for a Hearing, and Contentions (May 26, 2006) at 16 (citing Application at 4.3-7) [NEC Petition].

less than unity ($CUF < 1$) for the entire renewal period. Tr. at 568-69. If the revised analyses showed all CUFs less than unity, then this would establish that environmentally assisted metal fatigue would be low enough during the 20-year renewal period to eliminate the need for Entergy to have a program to manage such metal fatigue. Entergy's counsel suggested that these revised analyses, when finalized, would render NEC Contention 2 moot. Tr. at 569. Entergy's counsel added that, on June 7, 2007, Entergy had provided the parties with draft versions of the relevant fatigue analyses reports (prepared by Entergy's consultant). Tr. at 572-74.

On July 12, 2007, NEC filed NEC Motion One, seeking the admission of a new contention challenging the adequacy of the revised metal fatigue analyses contained in the draft CUF analyses reports disclosed in June.⁵ In its answer to this motion, Entergy requested that a ruling on the motion await release of the final report of the revised analyses.⁶ In its reply, NEC agreed with Entergy that a ruling on its first motion should be delayed.⁷

On August 2, 2007, counsel for Entergy provided all parties with a copy of its final reports and recalculations regarding the metal fatigue and CUF issues.⁸ Accordingly, on September 4, 2007, NEC filed NEC Motion Two, seeking admission of a new contention (designated herein as NEC Contention 2A) challenging the adequacy of the revised metal

⁵ The NRC regulations create a two-decision process for the initiation of new contentions. First, the parties litigate, and the Board decides, whether the intervenor should be granted leave to file a new contention. 10 C.F.R. § 2.309(f)(2). If so, then the parties litigate, and the Board decides, whether the contention satisfies the requirements of 10 C.F.R. § 2.309(f)(1). In our initial scheduling order, we eliminated this "new contention two-step" and consolidated the briefing on these issues. Licensing Board Order (Initial Scheduling Order) (Nov. 17, 2006) at 6 (unpublished) [Initial Scheduling Order]. The parties followed this consolidated process here.

⁶ Entergy's Response to [NEC Motion One] (Aug. 6, 2007) at 1.

⁷ [NEC] Reply to Entergy and Staff Answers to [NEC Motion One] (Aug. 10, 2007) at 1.

⁸ NEC Motion Two, Attach. 1, Letter from Matias F. Travieso-Diaz, Counsel for Entergy, to Mary C. Baty, Sarah Hofmann, and Karen L. Tyler (Aug. 2, 2007).

fatigue analyses contained in the nine final reports disclosed on August 2, 2007. NEC Motion Two at 1.

NEC Motion One is superseded by NEC Motion Two, and therefore the Board only addresses the latter.

II. LEGAL STANDARDS FOR ADMISSION OF NEW CONTENTIONS

Three regulations address the admissibility of additional contentions once an adjudicatory proceeding has been initiated. These are 10 C.F.R. § 2.309(f)(2), which deals with the admission of new and timely contentions; 10 C.F.R. § 2.309(c), which deals with the admission of new but nontimely contentions; and 10 C.F.R. § 2.309(f)(1), which establishes the basic criteria that all contentions must meet in order to be admissible.

The first step in assessing the admissibility of a new contention is to determine if it is timely under 10 C.F.R. § 2.309(f)(2).⁹ If so, a new (non-NEPA¹⁰) contention is evaluated under the three factor test of 10 C.F.R. § 2.309(f)(2), which was promulgated in 2004. This regulation provides that new contentions may be filed after the initial docketing, with leave of the presiding officer, upon a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.¹¹

⁹ See, e.g., Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 572 (2006); Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 744-45 (2006).

¹⁰ New contentions arising under the National Environmental Policy Act (NEPA) are subject to a different standard. See 10 C.F.R. § 2.309(f)(2). Otherwise, the three-factor test of 10 C.F.R. § 2.309(f)(2)(i)-(iii) applies.

¹¹ 10 C.F.R. § 2.309(f)(2) (emphasis added). The regulations do not set a specific number of days for determining whether a new contention motion is “timely” as required by 10 C.F.R. § 2.309(f)(2)(iii). It is subject to a reasonableness standard, depending on the facts and circumstances of each situation. However, many boards, including this one, have established a general 30-day rule for the filing of such motions. Initial Scheduling Order at 7.

In sum, if the petitioner is able to show that new and materially different information has become available during the processing of the application, and the petitioner promptly files a new contention based on this new information, then the new contention is admissible (assuming it also satisfies the six general contention admissibility standards contained in 10 C.F.R.

§ 2.309(f)(1)).¹²

If a proposed new contention is not timely under 10 C.F.R. § 2.309(f)(2)(iii), then its admissibility is governed by 10 C.F.R. § 2.309(c), which deals with “nontimely filings.” While timely new contentions are subject to a three-factor test, the admissibility of nontimely new contentions is evaluated by a more stringent standard – the eight-factor balancing test specified in 10 C.F.R. § 2.309(c) (as well as the six general contention admissibility standards contained in 10 C.F.R. § 2.309(f)(1)).

The third step in determining the admissibility of any new contention is the requirement that it satisfy the six standards specified in 10 C.F.R. § 2.309(f)(1). We reviewed this six-factor test earlier in this proceeding, and need not repeat that discussion here. LBP-06-20, 64 NRC at 146-51.

¹² NRC typically initiates its adjudicatory proceedings at a very early stage in the administrative process – when the application is docketed. Normally a great deal of new and material information becomes available to the public after the docketing, as for example when the applicant amends its license application or submits additional information or when the NRC Staff issues its safety evaluation report and final environmental documents. Section 2.309(f)(2) accommodates this fact by allowing a petitioner to assert new contentions, if they are filed in a timely fashion, based on such new information. This satisfies Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239a.

III. POSITIONS OF THE PARTIES

NEC's motions focus on 10 C.F.R. § 2.309(f)(2) and assert that "Entergy's new analysis of environmentally assisted metal fatigue is materially different from the analysis of this phenomenon reported in Entergy's License Renewal Application" because it "employed different methods, and produced different results." See NEC Motion Two at 1. NEC posits that its motion is timely because our Initial Scheduling Order established a 30-day deadline for filing timely new or amended contentions under 10 C.F.R. § 2.309(f)(2)(iii). Id. NEC points out that Entergy filed its final report on the new metal fatigue analyses on August 3, 2007, and NEC Motion Two was filed on September 4, 2007, thus meeting the 30-day requirement.¹³

Turning to the six fundamental admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi), NEC states that NEC Contention 2A incorporates its admitted contention, NEC Contention 2, and adds the following:

NEC now contends . . . that the analytical methods employed in Entergy's [environmentally corrected CUF or] CUFen Reanalysis were flawed by numerous uncertainties, unjustified assumptions, and insufficient conservatism, and produced unrealistically optimistic results. Entergy has not, by this flawed reanalysis, demonstrated that the reactor components assessed will not fail due to metal fatigue during the period of extended operation.

NEC Motion Two at 3 (citations omitted). In support of this new contention, NEC submits the declaration of an expert, Dr. Joram Hopenfeld.¹⁴ According to Dr. Hopenfeld, the environmentally corrected cumulative use factors (CUFens) that Entergy and its consultants calculated as part of their August 3, 2007, reanalyses reports were "unrealistically low." Id. ¶ 9. Among Dr. Hopenfeld's specific allegations are that Entergy failed to perform an error analysis to show the error range for each variable in the CUFen analyses, relied on incorrect guidance when calculating environmental fatigue correction factors (Fens), failed to use sufficient care in

¹³ Id. at 2. The 30th day occurred on a weekend and the following Monday was a legal holiday. See 10 C.F.R. § 2.306.

¹⁴ Sixth Declaration of Dr. Joram Hopenfeld (Aug. 31, 2007) [Hopenfeld Decl.].

adapting equations derived from laboratory experiments to actual reactor components, and “did not use the equations properly at low oxygen and low temperatures.” Id. ¶¶ 16-18. Dr. Hopenfeld also alleges that Entergy’s calculation of 60-year CUFs does not provide sufficient information about key assumptions to substantiate the claim that the result is “conservative” or “bounding.” Id. ¶ 20. Dr. Hopenfeld includes his own proposed recalculation of CUFen values (some exceeding unity) based on the CUF values originally presented in the Application and on what Dr. Hopenfeld asserts are appropriate “bounding” values for the Fens. Id. ¶¶ 28-32 & Table 1.

Entergy opposes admission of NEC’s new contention and argues that the pending NEC Contention 2 should be dismissed.¹⁵ Entergy does not dispute NEC’s assertion that the new contention is timely or that it meets the three criteria of 10 C.F.R. § 2.309(f)(2). Rather, Entergy claims that the new contention fails to satisfy the general contention pleading requirements of 10 C.F.R. § 2.309(f)(1)(i) because it does not include a “specific statement of the issue of law or fact to be raised or controverted.” Entergy Answer at 1-2. According to Entergy, NEC’s pleading is “impermissibly vague” and does not “provide sufficient notice of the specific alleged deficiencies against which Entergy must defend.” Id. at 2. Furthermore, Entergy says, the declaration of NEC’s expert witness “broadly assails” the revised calculations and does not “identif[y] any specific errors or deficiencies” that could influence the results. Id. Entergy goes on to present a point-by-point rebuttal to the issues raised by NEC’s expert, arguing that this rebuttal shows the new contention fails to demonstrate the existence of a genuine dispute as required by 10 C.F.R. § 2.309(f)(1)(vi). Id. at 3-6. Finally, Entergy argues that the original NEC Contention 2 was rendered moot by the completion of the revised fatigue analysis, and that the pending contention should therefore be dismissed. Id. at 6-7. In the alternative, Entergy argues that any hearing on the metal fatigue issue should be limited to NEC’s challenges to the revised

¹⁵ Entergy’s Response to [NEC Motion Two] (Oct. 1, 2007) at 1 [Entergy Answer].

analysis, and that there is no need to consider the second and third options originally proposed in the Application, see supra p. 3, because Entergy has now selected the first of the three. Id. at 7-8.

The NRC Staff does not object to the admission of NEC's new contention.¹⁶ In its earlier answer to NEC Motion One, which was based on Entergy's draft report of the revised metal fatigue analyses, the Staff asserted that the new NEC contention met the pleading requirements of 10 C.F.R. § 2.309(f)(1) and (2) and was therefore admissible.¹⁷ According to the Staff, the contention in NEC Motion Two is the same as the contention in NEC Motion One, except for being based on the final fatigue analysis report rather than the draft, and the reasoning in the Staff's answer to the first motion therefore applies equally to the second. Staff Answer at 1.

In its reply, NEC argues that Entergy's strategy is one of "supplying incomplete information, and then faulting the intervenor for lack of specificity in response," and claims that the CUF reanalysis does "not include the information necessary to meet Entergy's burden of proof" regarding compliance with 10 C.F.R. § 54.21(c)(1).¹⁸ NEC further notes that an intervenor is not required to put forward a "comprehensive study" rebutting an applicant's submittals at the contention admissibility stage of a proceeding. Id. at 6. Rather, NEC states that intervenors are required to make a showing sufficient to demonstrate that further inquiry is appropriate. NEC asserts that it has met this standard. Id. Finally, NEC requests that its previously admitted contention be held in abeyance, rather than dismissed, so that it may be revived if the Board finds that Entergy's reanalysis is inadequate. Id.

¹⁶ NRC Staff Answer to [NEC Motion Two] (Oct. 1, 2007) [Staff Answer].

¹⁷ NRC Staff Answer to [NEC Motion One] (Aug. 6, 2007) at 3-6.

¹⁸ [NEC] Reply to Entergy's Answer to [NEC Motion Two] (Oct. 9, 2007) at 3 [NEC Reply].

IV. RULING

The Board grants NEC's motion to file a timely new or amended contention and admits NEC Contention 2A. We find that NEC has satisfied both the new contention pleading requirements of 10 C.F.R. § 2.309(f)(2)(i)-(iii) and the general contention pleading requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vi).

No party disputes NEC's assertion that Entergy's revised fatigue analysis is new and materially different from information that was available previously. Similarly, there is no dispute that NEC filed its new contention within the time prescribed in our Initial Scheduling Order. Accordingly, no elaborate discussion of the new contention requirements in 10 C.F.R. § 2.309(f)(2) is necessary.

We therefore turn to Entergy's assertion that NEC's new contention fails to meet the general contention pleading requirements of 10 C.F.R. § 2.309(f)(1). We first address Entergy's assertion that the contention fails because it does not include a "specific statement of the issue of law or fact to be raised or controverted." Entergy Answer at 1-2. While it is better practice for the petitioner to specify the precise wording of its new contention, NEC's new contention is clear enough to us. The following excerpt from NEC's motion provides a concise statement of the contention:

NEC now contends . . . that the analytical methods employed in Entergy's [environmentally corrected CUF, or] CUFen Reanalysis were flawed by numerous uncertainties, unjustified assumptions, and insufficient conservatism, and produced unrealistically optimistic results. Entergy has not, by this flawed reanalysis, demonstrated that the reactor components assessed will not fail due to metal fatigue during the period of extended operation.

NEC Motion Two at 3 (citations omitted).

Going beyond the overall statement of the contention, we have no difficulty determining that NEC's criticisms of the fatigue analysis generally fall into two broad categories: a critique of Entergy's calculations of environmental fatigue correction factors (Fens), and a critique of the

calculations of 60-year CUFs. Hopenfeld Decl. ¶¶ 14-18 and 19-26, respectively. The only other issue raised is NEC's claim that Entergy is required to "calculate the partial usage factor for each stress cycle" as a step towards calculating environmentally corrected cumulative use factors (CUFens), and that Entergy has not done so. Id. ¶ 27. These two categories and one additional issue provide a rationale for the general statement of the contention and thereby satisfy the basis requirement in 10 C.F.R. § 2.309(f)(1)(ii).

The Board previously concluded that the metal fatigue issue, and Entergy's approach to meeting the requirements of 10 C.F.R. § 54.21(c)(1)(i)-(iii) with respect to that issue, was "an aging management issue that is clearly within the scope of a license renewal proceeding." LBP-06-20, 64 NRC at 186. NEC's new contention is conceptually similar and likewise satisfies the scope requirement of 10 C.F.R. § 2.309(f)(1)(iii). Similarly, we previously found that a legitimate challenge to Entergy's aging management program for metal fatigue constituted a genuine, material dispute. Id. Because NEC's new contention is a challenge to Entergy's new aging management program, it likewise satisfies the materiality requirement of 10 C.F.R. § 2.309(f)(1)(iv) and the genuine dispute requirement of 10 C.F.R. § 2.309(f)(1)(vi).

Dr. Hopenfeld's affidavit serves as the "concise statement of supporting fact or expert opinion" required by 10 C.F.R. § 2.309(f)(1)(v). Entergy's assertions notwithstanding, NEC is not required to present its entire case at the contention admissibility stage of the proceeding.¹⁹ Nor is it required to demonstrate that it will prevail on the merits. LBP-06-20, 64 NRC at 151. Rather, NEC is required to provide sufficient information to show that a more comprehensive inquiry is warranted. Id. By submitting a detailed critique of Entergy's revised fatigue analysis, supported by an affidavit by an expert witness, NEC has satisfied this regulatory requirement.

¹⁹ Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004).

Regarding the fate of the original NEC Contention 2, NEC claims that its original contention remains valid and should be held in abeyance pending the resolution of its new contention. NEC Reply at 6. We agree, with one proviso. When this litigation began, Entergy's application showed certain CUFs to be greater than unity, and Entergy indicated that it would manage such metal fatigue over the 20-year renewal period. NEC's original Contention 2 challenged the adequacy of Entergy's demonstration of its metal fatigue management program. Now Entergy says it has recalculated the CUFs to show that they all are less than 1, thus eliminating the need to manage metal fatigue over the renewal period. NEC Contention 2A challenges Entergy's recalculation of the CUFs. If NEC Contention 2A is successful and Entergy's revised CUF analyses are not shown to be sufficient, then Entergy might return to relying on a fatigue management program as a way of satisfying the Part 54 regulations.

Thus, we conclude that NEC Contention 2A will be litigated now, and NEC Contention 2 will be held in abeyance. The proviso is that the parties are not to litigate Contention 2 unless and until Entergy returns to reliance on a metal fatigue management program (as would likely happen if NEC prevails on NEC Contention 2A). If Entergy proposes a new metal fatigue management program that differs from the one originally submitted in the Application, then NEC may need to amend NEC Contention 2 to address and support its challenges to the revised program. This approach is more efficient than dismissing NEC Contention 2 entirely, and then re-litigating its admission later as a "new" contention.

V. SELECTION OF HEARING PROCEDURES

As charged by 10 C.F.R. § 2.310(a), upon admission of a contention, the Board must identify the specific hearing procedures to be used. The Board makes this determination on a contention-by-contention basis, selecting the hearing procedure “most appropriate for the specific contentions before it.”²⁰ The regulation provides, “[e]xcept as determined through the application of paragraphs (b) through (h) of this section, proceedings . . . may be conducted under the procedures of Subpart L of this part.” 10 C.F.R. § 2.310(a) (emphasis added). Paragraphs (b) through (h) outline specific instances where certain hearing procedures are available or mandated. Unfortunately, none of the parties addressed the question of which hearing procedures should apply to the new NEC Contention 2A.

Absent any mandatory hearing procedure under 10 C.F.R. § 2.310(b)-(h), the Board must exercise its discretion under 10 C.F.R. § 2.310(a) and select the hearing procedure most appropriate for NEC Contention 2A. There is no mandatory or automatic “default” to Subpart L. A general discussion of this issue is found at Vermont Yankee, LBP-04-31, 60 NRC at 704 -06.

Our selection of the appropriate hearing procedure for newly admitted NEC Contention 2A is influenced by the fact that the other two contentions admitted herein are currently subject to the Subpart L procedures. LBP-06-20, 64 NRC at 201-04. While the original selection of hearing procedures for the other contentions is not immutable, there is no indication that any party will seek to change it. Under these circumstances, and lacking any suggestion that a different procedure would be appropriate for the newly admitted contention, we conclude that NEC Contention 2A should be heard under the Part 2, Subpart L hearing procedures.

If any party objects to the selection of this hearing procedure for the newly admitted contention, then, within ten days hereof, it may file a motion, not to exceed five pages in length,

²⁰ Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 705 (2004).

supporting the selection of a different hearing procedure. Seven days thereafter, any other party or interested state may file a response, not to exceed five pages in length, supporting or opposing the motion.

VI. FURTHER MOTIONS

The NRC Staff has stated that it plans to issue its final Safety Evaluation Report (SER) in November.²¹ Based on our Initial Scheduling Order, the issuance of the SER in November will likely result in our holding the evidentiary hearing in the second quarter of 2008 (calendar year). Given this limited intervening time frame, henceforth no motions for summary disposition or motions to dismiss as moot may be filed herein, on NEC Contention 2A or any other contention, without prior motion for leave to file and a showing of good cause why such a proposed motion: (a) would not be disruptive of the ability of the parties to prepare for, and submit all appropriate evidence for, the evidentiary hearing, and (b) would materially expedite the ultimate resolution of the proceeding. If a motion for leave is filed, it need not include the proposed motion for summary disposition or motion to dismiss as moot, and if it does, the

²¹ Letter from Mary C. Baty, Counsel for NRC Staff, to the Licensing Board (Nov. 1, 2007) at 2.

responding parties need not address such attached proposed motions in their answers, unless and until at least 10 days after the Board grants the motion for leave. This will conserve effort and minimize disruption to preparations for the evidentiary hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²²

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

/RA by E. Roy Hawken for:/

Dr. Thomas S. Elleman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 7, 2007

²² Copies of this order were sent this date by internet e-mail transmission to counsel for (1) licensees Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.; (2) intervenors Vermont Department of Public Service and New England Coalition of Brattleboro, Vermont; (3) the NRC Staff; and (4) the State of New Hampshire.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT YANKEE, LLC,)	
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and)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket No. 50-271-LR
)	
(Vermont Yankee Nuclear Power Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON NEC MOTIONS TO FILE AND ADMIT NEW CONTENTION) (LBP-07-15) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas S. Elleman
Atomic Safety and Licensing Board Panel
5207 Creedmoor Rd., #101
Raleigh, NC 27612

Lloyd B. Subin, Esq.
David E. Roth, Esq.
Mary C. Baty, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Ronald A. Shems, Esq.
Karen Tyler, Esq.
Andrew Raubvogel, Esq.
Shems Dunkiel Kassel & Saunders, PLLC
91 College Street
Burlington, VT 05401

Docket No. 50-271-LR
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TO FILE AND ADMIT NEW CONTENTION) (LBP-07-15)

Sarah Hofmann, Esq.
Director for Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601

Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768

Matthew Brock, Esq.
Assistant Attorney General
Office of the Massachusetts Attorney General
Environmental Protection Division
One Ashburton Place, Room 1813
Boston, MA 02108-1598

Diane Curran, Esq.
Harmon, Curran, Spielberg,
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Callie B. Newton, Chair
Gail MacArthur
Lucy Gratwick
Town of Marlboro
SelectBoard
P.O. Box 518
Marlboro, VT 05344

Dan MacArthur, Director
Town of Marlboro
Emergency Management
P.O. Box 30
Marlboro, VT 05344

David R. Lewis, Esq.
Matias F. Travieso-Diaz, Esq.
Elina Teplinsky, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128

Peter C. L. Roth, Esq.
Senior Assistant Attorney General
State of New Hampshire
Office of the New Hampshire
Attorney General
33 Capitol Street
Concord, NH 03301

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of November 2007