

April 17, 2008 (4:25pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT YANKEE, LLC)	Docket No. 50-271-LR
and ENTERGY NUCLEAR OPERATIONS, INC.)	ASLB No. 06-849-03-LR
)	
Vermont Yankee Nuclear Power Station)	

NEW ENGLAND COALITION, INC.'S REPLY RE: MOTION TO FILE A NEW OR AMENDED CONTENTION

Pursuant to 10 C.F.R. § 2.309(h)(2) and the Atomic Safety and Licensing Board's ("the Board") Initial Scheduling Order ¶ 5(A), New England Coalition, Inc. (NEC) files the following reply to the NRC Staff and Entergy Answers to NEC's March 17, 2008 Motion to File a Timely New or Amended Contention.

REPLY TO NRC STAFF

The NRC Staff ("the Staff") states that it now considers Entergy's CUFen analysis of the feedwater nozzle, which NEC has referred to as Entergy's "Second CUFen Reanalysis," the "analysis of record."¹ The Staff then submits that the Board should admit NEC's proposed new or amended contention as a narrow challenge to Entergy's means of calculating Fen values in its Second CUFen Reanalysis. The Staff argues that the Board should bar further litigation of Entergy's method for calculating CUF values in both its First and Second CUFen Reanalyses because 1) NEC has not challenged Entergy's means of calculating CUF values in the Second CUFen Reanalysis, and 2) NEC's Contention 2A challenge to Entergy's means of calculating CUF values in

¹ NEC will continue in this pleading to refer to the CUFen analysis that NEC's Contention 2A addresses as "Entergy's First CUFen Reanalysis," and the CUFen analysis of the feedwater nozzle that NEC's instant Motion for a New or Amended Contention addresses as Entergy's "Second CUFen Reanalysis."

its First CUFen Reanalysis is now moot because the Staff considers the Second CUFen Reanalysis the “analysis of record.” Finally, the Staff claims that NEC should not be permitted to litigate whether or not Entergy’s Second CUFen Reanalysis, which addresses only the feedwater nozzle, bounds the analysis for other components. The Staff argues that there is no genuine dispute of material fact with respect to this issue because the Staff agrees that the Second CUFen Reanalysis is not bounding. It has therefore recommended a license condition that would require Entergy to “calculate the CUFens for the core spray and recirculation nozzles in accordance with ASME requirements at least two years prior to the period of extended operation and submit the calculations to the NRC for review and approval.” NRC Staff Answer at 4.

NEC disagrees with the Staff’s view that it has not challenged Entergy’s means of calculating CUF values in its Second CUFen Reanalysis. NEC contends that Entergy’s Second CUFen Reanalysis does not confirm results of its First CUFen Reanalysis because it does not resolve NEC’s concerns regarding Entergy’s method of calculating either Fen or CUF values, as stated in the Sixth Declaration of Joram Hopfenfeld in support of admission of NEC’s Contention 2A. NEC’s proposed New or Amended Contention incorporates by reference NEC’s Contention 2A, and states that Entergy’s Second CUFen Reanalysis resolves only one issue: uncertainty in CUF values resulting from use of Green’s functions. NEC Motion to File a Timely New or Amended Contention at 3; Seventh Declaration of Joram Hopfenfeld at ¶¶ 7-10; Sixth Declaration of Joram Hopfenfeld in Support of NEC’s Contention 2A at ¶¶ 23-26.

NEC disagrees that NEC's Contention 2A is moot. Entergy does not argue that Contention 2A is moot. Rather, Entergy's counsel has represented to NEC's counsel that Entergy intends to rely before the Board on both its First and Second CUFen Reanalyses.

Finally, NEC disagrees with the Staff's position that the Board should not consider whether Entergy's Second CUFen Reanalysis is bounding. NEC raises this issue as one "basis" in support of its contention that the Second CUFen Reanalysis fails to demonstrate that CUFens for all components listed in License Renewal Application Table 4.3-3 and all NUREG/CR-6260 locations are less than one, and therefore fails to demonstrate that reactor components will not fail due to environmentally-assisted metal fatigue during the period of extended operation. If the Staff agrees with NEC that the Second CUFen Reanalysis is not bounding, then this fact is evidence in support of NEC's proposed contention.

REPLY TO ENTERGY

Entergy does not oppose the admission of a contention challenging the Second CUFen Reanalysis, but argues that the scope of both NEC's Contention 2A and the proposed new or amended contention should be strictly defined by the "bases" stated in NEC's pleadings. NEC disagrees that its testimony concerning Entergy's CUFen Reanalyses must be confined to the specific issues identified in the declarations filed at the contention admissibility stage of the proceeding.

This approach is inconsistent with NRC rules and precedent. At the contention admissibility stage of a proceeding, the petitioner is not required to state all possible bases for a contention, and the bases stated on admission therefore cannot fully define a contention's scope. This Board explained the "basis" requirements as follows:

“[A] petitioner must provide some sort of minimal basis indicating the potential validity of the contention.” Final Rule: “Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process,” 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989). This “brief explanation” of the logical underpinnings of a contention does not require a petitioner “to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention.” Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004).

In the Matter of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), ASLBP 06-849-03-LR, 64 N.R.C. 131, 147 (September 22, 2006).

CONCLUSION

As Entergy has represented that it intends to rely before the Board on both its First and Second CUFen Reanalyses, NEC now proposes admission of its contention addressing the Second CUFen Reanalysis as a separate Contention 2B as follows:

Entergy’s Second CUFen Reanalysis of the feedwater nozzle fails to demonstrate that CUFens for all components listed in License Renewal Application Table 4.3-3 and all NUREG/CR-6260 locations are less than one, and therefore fails to demonstrate that reactor components will not fail due to environmentally-assisted metal fatigue during the period of extended operation.

April 17, 2008

New England Coalition

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I, Christina Nielsen, hereby certify that copies of NEW ENGLAND COALITION, INC.'S REPLY RE: MOTION TO FILE A NEW OR AMENDED CONTENTION in the above-captioned proceeding were served on the persons listed below, by U.S. Mail, first class, postage prepaid and, where indicated by an e-mail address below, by electronic mail, on April 17, 2008.

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