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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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 RESPONSE IN SUPPORT OF STAFF'S MOTION IN LIMINE

Pursuant to 10 C.F.R. § 2.323(c) and paragraph 10.E of the Atomic Safety and Licensing Board ("Board")'s Initial Scheduling Order dated November 17, 2006, Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby file their response in support of the NRC Staff's "Motion in Limine to Strike Testimony and Exhibits Filed by New England Coalition, Inc." (June 12, 2008) ("Staff Motion in Limine"). The Staff's Motion in Limine seeks to exclude (1) the testimony submitted by Mr. Ulrich Witte ("Witte Direct") on behalf of intervenor New England Coalition, Inc. ("NEC"); (2) portions of the testimony submitted by Dr. Joram Hopenfeld (collectively "Hopenfeld Testimony") on behalf of NEC; and (3) the entire testimony submitted by Dr. Hopenfeld and by Dr. Rudolf Hausler ("Hausler Direct") on behalf of NEC (on the grounds that these NEC witnesses lack adequate qualifications to testify on the contentions in controversy in this proceeding).

Entergy fully supports the Staff's Motion in Limine. With respect to Mr. Witte, Entergy has filed its own Motion in Limine to exclude the entirety of testimony and exhibits proffered by Mr. Witte on similar grounds to those raised by the Staff. Entergy's Motion in Limine (June 12, 2008). Mr. Witte is clearly unqualified to testify as an expert on flow accelerated corrosion,

which is the subject of NEC Contention 4 and of the Witte Direct. See Entergy Motion in Limine at 22-23. Also, his testimony contains many statements lacking any factual support, see id. at 23-25, and in many instances the testimony does not rise above sheer speculation. See, e.g., Staff Motion in Limine at 5-6. Finally, Mr. Witte provides opinions and makes statements that are clearly outside the scope of this proceeding. See id. at 7-9. For all these reasons, Mr. Witte's testimony and exhibits are inadmissible.

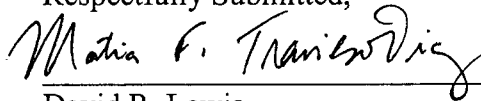
The Staff also seeks the exclusion of four statements included in the Hopenfled Direct: (1) Dr. Hopenfled's attack on the testimony of Staff witness John Fair; (2) Dr. Hopenfled's interpretation of the binding nature of the recommendations in the American Society of Mechanical Engineers ("ASME") Code; (3) Dr. Hopenfled's gloss on the requirements of 10 C.F.R. § 54.21; and (4) Dr. Hopenfled's allegations as to Entergy's failure to provide documentation needed for his review. Staff Motion in Limine at 9-10. All four statements are inappropriate testimony and should be excluded.

First, Dr. Hopenfled's attack on the testimony of Mr. Fair, who Dr. Hopenfled's accuses of blatantly distorting information in his presentation before the ACRS, is irrelevant, prejudicial and lacks probative value. Second, the ASME Code, like other industry documents, provides only guidance and does not set forth any binding standards. Therefore, Dr. Hopenfled's characterization of the Code as setting requirements (Pre-filed Rebuttal Testimony of Dr. Joram Hopenfled Regarding NEC Contentions 2A, 2B, 3 and 4, NEC Exhibit NEC-JH_63) ("Hopenfled Rebuttal") at 3 (A5) is on its face incorrect and should be stricken. Third, Dr. Hopenfled seeks to expand the requirements imposed by 10 C.F.R. § 54.21(c) by adding to the regulation a requirement ("a demonstration that components will operate safely in the reactor environment," Hopenfled Rebuttal at 6 and A5) that is not contained in the regulation and that is

patently wrong, as it overstates and misconstrues the requirement in the regulation that license renewal applicants perform time-limited analyses; in addition, Dr. Hopenfeld is not qualified to testify as to what NRC regulations “require.” Fourth, Dr. Hopenfeld’s complaints about Entergy’s failure to provide documentation needed for his review are inappropriate subjects for testimony because they are irrelevant to the evidence to be presented. If there was such a failure (which Entergy denies) it could and should have been handled by NEC through counsel requests (which were actually made in the course of discovery) or through a motion to compel discovery and a subsequent Board ruling. Indeed, NEC did not properly raised these discovery issues with Entergy or before the Board, and waived any right to complain about them at this late stage.

The last element of the Staff Motion in Limine demonstrates the lack of qualifications of Dr. Hopenfeld to testify as an expert on NEC Contentions 2A, 2B and 4, and of Dr. Hausler to testify as an expert on NEC Contention 4. Entergy agrees with the Staff’s position. Neither witness has shown through their education and experience that they are qualified to opine on the evaluation of environmentally assisted fatigue (as Dr. Hopenfeld seeks to do on NEC Contentions 2A and 2B) or on the development and implementation of programs to manage flow accelerated corrosion in operating nuclear reactors (as both Dr. Hopenfeld and Dr. Hausler seek to do on NEC Contention 4). Their testimony should be excluded for lack of qualifications.

Respectfully Submitted,



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Dated: June 19, 2008

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NUCLEAR REGULATORY COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response in Support of Staff's Motion in Limine" 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 19th day of June, 2008.

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