

New England Coalition



POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302

on Nuclear Pollution

June 4, 2008

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKETED
USNRC

June 5, 2008 (8:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Vermont Yankee Nuclear Power Station

Dear Rulemaking and Adjudications Staff,

Please find enclosed for filing in the above captioned proceeding a Motion by Nuclear Information And Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers And More For Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; Riverkeeper, Inc.; Pilgrim Watch And New England Coalition for Leave to Reply to NRC Staff's Oppositions to Supplemental Petition for Additional Investigation and Correction of Deficiencies Regarding License Renewal Reviews for Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee Nuclear Power Plants

Thank you for your kind attention,

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for New England Coalition, Inc.

June 4, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

AMERGEN ENERGY COMPANY, LLC
(Oyster Creek Nuclear Generating Station)

)
)
) Docket No.
) 50-219-LR
)

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.
(Indian Point Nuclear Generating
Units 2 and 3)

)
)
) Docket Nos.
) 50-247-LR
) and 50-286-LR
)

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.
(Pilgrim Nuclear Power Station)

)
)
) Docket No. 50-293LR
)

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.
(Vermont Yankee Nuclear Power Station)

)
)
) Docket No. 50-271LR
)

**MOTION BY NUCLEAR INFORMATION AND RESOURCE SERVICE;
JERSEY SHORE NUCLEAR WATCH, INC.; GRANDMOTHERS, MOTHERS
AND MORE FOR ENERGY SAFETY; NEW JERSEY PUBLIC INTEREST
RESEARCH GROUP; NEW JERSEY SIERRA CLUB; NEW JERSEY
ENVIRONMENTAL FEDERATION; RIVERKEEPER, INC.; PILGRIM WATCH
AND NEW ENGLAND COALITION
FOR LEAVE TO REPLY TO NRC STAFF'S OPPOSITIONS TO
SUPPLEMENTAL PETITION FOR ADDITIONAL INVESTIGATION AND
CORRECTION OF DEFICIENCIES REGARDING LICENSE RENEWAL
REVIEWS FOR OYSTER CREEK, INDIAN POINT, PILGRIM, AND VERMONT
YANKEE NUCLEAR POWER PLANTS**

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Nuclear Information and Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers and More for Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; ("Oyster Creek Organizations"); Riverkeeper, Inc. ("Riverkeeper"); Pilgrim Watch; and New England Coalition ("NEC") (collectively "Petitioners") hereby move for leave to reply to the NRC Staff's Answer to Supplemental Petition for Additional Investigation and Correction of Deficiencies in License Renewal Reviews (May 27, 2008) ("NRC Staff Response"), in which the Staff opposes Supplemental Petition For Additional Investigation and Correction of Deficiencies Regarding License Renewal Reviews for Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee Nuclear Power Plants (May 15, 2008) ("Supplemental Petition").

While the Commission's regulations in 10 C.F.R. § 2.323(c) do not permit the filing of replies to motions without permission from the Commission, Petitioners respectfully submit that this case presents the type of "compelling circumstances" which warrant a reply. First, the NRC Staff raises arguments regarding the alleged legality of the Staff's destruction of audit-related documents that Petitioners could not have anticipated. As set forth in Petitioners' Reply, the Staff's arguments are blatantly inconsistent with program plans that were developed by the Staff itself for license renewal reviews at the Oyster Creek and Indian Point plants and with NRC's general document retention policies. Second, the Staff also claims that the audit-related documents are privileged, and therefore that Petitioners would have had no right to see them if they had not been destroyed. This argument is so far afield of NRC's ordinary interpretation of the privilege doctrine that Petitioners could not have anticipated it and in

any event takes no account of the failure to retain licensee documents that could not have been privileged. Thus, Petitioners did not foresee that the Staff's argument that the failure to retain working documents did not affect Petitioners rights to participate in license renewal proceedings. Third, Petitioners could not have anticipated that the Staff would argue that there is sufficient documentation available to show that the relicensing reviews are adequate, when the core finding of the May 8, 2008 memorandum from the Inspector General is that "it was difficult to verify specific details of on-site review activities," because the NRC Staff did not preserve its working files. Petitioners seek leave to respond to the Staff's unfounded claim.

As stated in the attached Certificate of Counsel, in conformance with 10 C.F.R. § 2.323, Petitioners made a sincere attempt to obtain the NRC Staff's consent to the filing of the attached Reply, but consent was denied.

Respectfully submitted,



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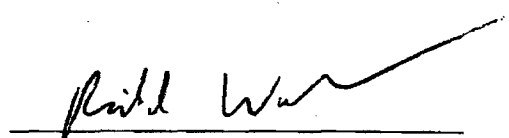

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June 4, 2008

CERTIFICATE OF COUNSEL

I, Richard Webster, of full age, hereby certify that on May 29, 2008, I contacted Mary Baty, counsel to NRC Staff, to consult about this Motion. After a brief discussion about the issues Petitioners intended to raise in their reply, Ms. Baty stated that the NRC Staff would oppose Petitioners' Motion.

Signed:


Richard Webster

Dated: June 4, 2008

June 2, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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AMERGEN ENERGY COMPANY, LLC
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Docket No. 50-271-LR

**REPLY BY NUCLEAR INFORMATION AND RESOURCE SERVICE; JERSEY
SHORE NUCLEAR WATCH, INC.; GRANDMOTHERS, MOTHERS AND MORE
FOR ENERGY SAFETY; NEW JERSEY PUBLIC INTEREST RESEARCH
GROUP; NEW JERSEY SIERRA CLUB; NEW JERSEY ENVIRONMENTAL
FEDERATION; RIVERKEEPER, INC.; PILGRIM WATCH
AND NEW ENGLAND COALITION
TO NRC STAFF OPPOSITION TO SUPPLEMENTAL PETITION FOR
ADDITIONAL INVESTIGATION AND CORRECTION OF DEFICIENCIES
REGARDING LICENSE RENEWAL REVIEWS FOR OYSTER CREEK, INDIAN
POINT, PILGRIM, AND VERMONT YANKEE NUCLEAR POWER PLANTS**

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I. INTRODUCTION

Nuclear Information and Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers and More for Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; (“Oyster Creek Organizations”); Riverkeeper, Inc. (“Riverkeeper”); Pilgrim Watch; and New England Coalition (“NEC”) (collectively “Petitioners”) hereby reply to NRC Staff’s Answer to Supplemental Petition for Additional Investigation and Correction of Deficiencies in License Renewal Reviews (May 27, 2008) (“NRC Staff Answer”), in which the Staff opposes Petitioners’ Supplemental Petition For Additional Investigation and Correction of Deficiencies Regarding License Renewal Reviews for Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee Nuclear Power Plants (May 15, 2008) (“Supplemental Petition”).

This Reply focuses on legal arguments by the Staff to the effect that it did not violate any laws or NRC guidance when it destroyed documents generated during its audit of license renewal applications for the Browns Ferry, Brunswick, D.C. Cook, and Oyster Creek nuclear power plants, and that the Staff’s destruction of its review documents did not compromise the Commission’s ability to make statutorily required findings regarding the safety of license renewal or undermine public hearing rights. The Reply does not address arguments in the NRC Staff’s Response that were made by the Staff and/or other parties in previous pleadings (such as their argument that Petitioners must satisfy the standard for a stay); instead, Petitioners refer the Commission to Petitioners’ Reply to Oppositions to Petition to Suspend License Renewal Reviews for Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee Nuclear Power Plants Pending Investigation of NRC Staff Review Process and Correction of Deficiencies (January 25, 2008). Finally, this Reply does not address the responses by Entergy Nuclear Operations, Inc. and AmerGen,

Inc., because the arguments they make were anticipated in Petitioners' Supplemental Petition.

II. ARGUMENT

A. The Staff's Destruction of Audit Documents Violated Federal Law and NRC Policy.

The NRC Staff contends that because, in his May 2, 2008 memorandum to the Commissioners, the Inspector General ("IG") did not conclude that the destruction of Staff reviewers "working papers" was illegal or violated NRC policy, the practice therefore must be legal and acceptable. NRC Staff Answer at 7, citing Memorandum from Hubert T. Bell, Inspector General, to Dale E. Klein, NRC Chairman (May 2, 2008) ("IG Memo"). This line of argument is completely without merit, and should be summarily rejected by the Commission. As stated in the IG Memo, the scope of the IG's inquiry was limited to "the extent of the NRC staff review of license renewal applications." *Id.* at 1. While evaluating the legality of the Staff's destruction of documents certainly lies within the scope of the IG's authority, the issue simply was not the subject of the IG Memo. Just as the IG's September 6, 2007, audit, did not take the logical next step of determining exactly what the NRC Staff actually did in its audits of license renewal applications (leaving that subject for the May 2 Memorandum), so the May 2 Memorandum stops short of addressing the legality of the Staff's practice of destroying its review documents. Nothing can or should be inferred from the IG's failure to address the question, other than the fact that it was not included within the scope of the IG inquiry.

Nevertheless, as discussed in the Supplemental Petition, the IG *should* have addressed the key issue raised by his inquiry, *i.e.*, the NRC Staff reviewers interviewed by the IG routinely disposed of their "working papers," and this practice made it difficult for

IG auditors to verify important details of the staff's onsite reviews. IG Memo at 5. Based on this information, the "working papers" are federal records appropriate for preservation under the Federal Records Act ("FRA") and NRC Management Directive 3.53, and their destruction therefore violates NRC Policy and federal law. Supplemental Petition at 7.

The NRC Staff's argument regarding the alleged legitimacy of the Staff's destruction of audit documents is also directly contradicted by the Audit and Review Plans for the Indian Point and Oyster Creek relicensing reviews. These documents, which were prepared by the NRC Staff as the framework for conducting its audits of aging management programs ("AMPs"), aging management reviews ("AMRs"), and time limited aging analyses ("TLAAs"), contain specific requirements regarding the retention of documents used by Staff during their reviews. *See Audit and Review Plan for Plant Aging Management Reviews and Programs for Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket No. 50-247, 50-286* (September 27, 2007) ("Indian Point Audit Plan") (ADAMS Accession No. ML072290180); *Audit and Review Plan for Plant Aging Management Reviews and Programs, Oyster Creek Generating Station, Docket No. 50-219, Revision 1* (January 17, 2006) ("Oyster Creek Audit Plan") (ADAMS Accession No. ML060200084).¹

For instance, Section 6.6 of the Indian Point Audit Plan clearly requires the retention of a wide range of documents created by Staff reviewers and contractors,

¹ *See also Audit and Review Plan for Plant Aging Management Reviews and Programs, Donald C. Cook Nuclear Plant, Units 1 and 2, Revision 1* (June 28, 2004) (ADAMS Accession No. ML042670493); *Audit Plan for License Renewal Application Aging Management Programs Aging Management Review Results-Brunswick Steam Electric Plant, Units 1 and 2, Revision 6*, (December 23, 2004) ("D.C. Cook Audit Plan") ("Brunswick Audit Plan") (ADAMS Accession No. ML050110445); *Audit and Review Plan for Plant Aging Management Programs and Reviews, Browns Ferry Nuclear Plant, Units 1, 2 and 3* (June 10, 2004) ("Browns Ferry Audit Plan") (ADAMS Accession No. ML041950100).

including worksheets and basis documents that form the foundation of the Safety Evaluation Report (“SER”). The Indian Point Audit Plan specifically requires staff reviewers to keep “all copies of documents collected and all documents generated to complete the SER input, such as audit worksheets.” *Id.* at 41.² These documents must be retained until “*after the NRC has made its licensing decision.*” *Id.* (emphasis added). In addition, contractors and NRC personnel are instructed to submit all completed worksheets to the NRC Project Team Leader. *Id.*³ The Oyster Creek Audit Plan contains nearly

² At pages 15-17, the Indian Point Audit Plan further describes the types of documents prepared by the Project Team, and that must be retained during the review process. These documents include worksheets, questions, an audit and review summary, and inputs to the SER. Appendix F and G of the Audit Plan contain examples of audit worksheets to be used by staff reviewers. Worksheets consist of checklists and sections for documenting Operating Experience, FSAR Supplement Review, and space for listing References/Documents used. *Id.* at F-1 – F-4.

³ The text of Section 6.6 of the Indian Point Audit Plan reads as follows.

6.6 Documents Reviewed and Document Retention

Any documents reviewed that were used to formulate the basis for resolution of an issue, such as the basis for a technical resolution, the basis for the acceptance of an exception or an enhancement, etc., should be documented as a reference in the SER input.

Upon issuance of the SER input, all worksheets that were completed by contractor and NRC personnel shall be given to the NRC project team leader.

After the NRC has made its licensing decision, all copies of documents collected and all documents generated to complete the SER input, such as audit worksheets, question and answer tracking documentation, etc., are to be discarded.

Id. at 41.

identical language proscribing destruction of review documents until after a Commission decision on license renewal is made. *Id.* at 24.⁴

While the Indian Point and Oyster Creek Audit Plans do not reference Directive 3.53 directly, it is reasonable for Petitioners to assume that Section 6.6 of the Audit Plan was written to comply with Directive 3.53 and NRC policy implementing the requirements of the FRA, 44 U.S.C. §3301.

The OIG Memo clearly shows that NRC Staff reviewers violated the requirements of the Audit Plans at Oyster Creek, because the Staff destroyed working papers before the end of the license renewal proceeding.⁵ The worksheets, checklists and basis documents referred to in Section 6.5 of the Oyster Creek Audit Plan as requiring preservation are undoubtedly the same types of documents referenced in the IG Memo as “working papers.” The IG Memo describes the “working papers” as checklists that listed the specific documents reviewed, notes from the document reviews, and additional information supplied by applicant staff. IG Memo at 3. The “working papers” were then used by the reviewers as the basis for their input to the audit report, which is then used to prepare the draft SER. *Id.* Yet, as the IG Memo observes, “the reviewers who participated in audits told OIG that the working papers prepared during on-site reviews were not retained as

⁴ The D.C. Cook, Brunswick and Browns Ferry Audit Plans contain virtually the same language addressing document retention requirements as the Indian Point and Oyster Creek plans.

⁵ It is not clear when the Staff destroyed working papers for the D.C. Cook, Brunswick, and Browns Ferry license renewal reviews. If they waited until after the license renewal proceedings concluded, they would not have violated the Audit Plans for those plants. In any event, Petitioners believe that a document retention policy that allows documents to be destroyed immediately after a licensing decision is extremely unwise. In the course of its investigation and reform of the license renewal review process, the Commission should ensure that license renewal audit documents are retained for a reasonable period after the licensing decision.

agency records, and were not maintained in any formal record keeping system.” *Id.*

Based on the information in the OIG Memo, this practice has resulted in numerous violations of NRC policy and the FRA.

The document retention requirements of the Audit Plan also support Petitioners’ claim that the “working papers” should be classified as Working Files for purposes of compliance with NRC Management Directive 3.53, despite NRC Staff’s claims to the contrary. See NRC Staff Answer at 10-11, Supplemental Petition at 9-10. The Staff asserts that because the IG Memo does not state that the “working papers” were circulated and contained unique information, then Petitioners’ claim that the “working papers” qualify as Working Files is without basis. Staff Answer at 11. But the Audit Plan clearly states that both contractors and NRC personnel are required to submit “all worksheets to the NRC Project Team Leader.” Indian Point Audit Plan at 41. The worksheets presumably contain the individual team members’ input for the SER. Indian Point Audit Plan, Section 6.6 at 36. Section 6.6 also states that “the technical assistance contractor shall *collect, assemble and prepare* the complete SER input.” *Id.* (emphasis added). The “collection” of the individual reviewers’ worksheets and SER input and the submission of the worksheets to the Project Team Manager clearly meet the definition of “circulated” found in NRC Directive 3.53, as follows:

They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation or follow-up, and to communicate with agency staff about agency business.

Supplemental Petition at 10, quoting Directive 3.53. Regarding the requirement that Working Files are of a “unique nature,” Petitioners refer the Commission to their explanation of the unique nature of the “working papers” in the Supplemental Petition, at

pg. 11-12. Thus, the “working papers” described in the IG Memo were “circulated” and contain “unique information,” thereby qualifying as Working Files that must be maintained and filed with official records in order to comply with NRC policy and the FRA. The destruction of these “working papers” constitutes a violation of said policy and federal law, and must be halted by the Commission.

Finally, NRC Staff’s attempt to categorize the “working papers” as exempt from disclosure under the “deliberative process privilege” is completely off-base and premature. NRC Staff Answer at 16. Petitioners are primarily concerned with the apparent violation of NRC Policy and the FRA resulting from the destruction of staff “working papers” described in the IG Memo, and the resulting lack of supporting documentation that such destruction represents. The question of whether any portion of the “working papers” may or may not be protected by the deliberative process privilege is premature at best. The Commission must first determine what specific documents were disposed of, when they were disposed of, and under what circumstances. Based on the information in the IG Memo, it appears to Petitioners that the destruction of “working papers” is a common practice during NRC staff reviews of license renewal applications, in violation of written NRC Policy and specific Audit Review plans for at least two plants, Indian Point and Oyster Creek. The destruction of these foundational documents raises serious questions about the adequacy of NRC staff reviews, as well as the ability of Petitioners, the Commission and the interested public to have access to technical documents that support the staff’s decisionmaking process.

If and when it is determined that some portion of the “working papers” were preserved by staff reviewers, it remains doubtful that the deliberative process privilege

would apply, particularly to worksheets and checklists of applicant documents which are purely factual in nature.⁶ As it stands, the Staff's arguments in this regard constitute nothing more than a misguided attempt to distort Petitioners' legitimate concerns regarding the destruction of NRC documents, and should be disregarded by the Commission.

B. The Commission Does Not Have Sufficient Information to Support A Safety Finding for Any of the Audited Plants.

As discussed in the Supplemental Petition at 15-16, the Oyster Creek Audit Report – which constitutes the only surviving record of what was done in the relicensing review for Oyster Creek – shows that the for many elements of AmerGen's AMP, the NRC Staff reviewers relied exclusively or heavily on high level summary program basis documents ("PBDs") that were prepared by AmerGen for relicensing, without independently verifying the content of those documents by examining the raw records summarized by the PBDs. Further, the IG memo shows that the Staff destroyed essential working papers that might have provided additional information about the extent of the Staff's review. Given the apparent restriction of some of the AMP reviews to PBDs, and the lack of any record of an acceptable review, the Commission lacks an adequate basis for a safety finding to support re-licensing of Oyster Creek. The Oyster Creek experience also raises questions as to whether the Commission has or will have any basis for safety findings with respect to the Indian Point, Pilgrim and Vermont Yankee plants.

The Staff argues that Petitioners cite no authority for their claim that review of the PBDs was insufficient to verify the adequacy of AmerGen's license renewal review. But

⁶ Courts have found that two requirements must be met for the deliberative process privilege to hold. Privileged documents must be both pre-decisional and deliberative, that is, they must be prepared in order to assist an agency decisionmaker in making his decision and they must be deliberative in a way that is distinguishable from "purely factual, investigative matters." *Trentadue v. Integrity Comm.*, 501 F.3d 1215 (10th Cir. 2007).

the NRC Staff's own Audit and Review Management Program for the Oyster Creek plant shows that the materials reviewed in an audit must be more detailed than just the summary information in PBDs. For instance, Section 5.5, entitled "Documents Reviewed by the Project Team," states:

In performing its work, the project team will rely heavily on the OCGS LRA, the audit and review plan, the SRP-LR, and the GALL Report. The project team will also examine the applicant's precedent review documents, its AMP and AMR [Aging Management Review] basis documents (catalogs of the documentation used by the applicant to develop or justify its AMPs and AMRs), and other applicant documents, including selected implementing procedures, to verify that the applicant's activities and programs will adequately manage the effects of aging on structures and components.

Oyster Creek Audit Plan at 10.⁷ In Section 6, entitled "Planning Activities," the Audit Review Plan provides a list of "audit/review-related documents" to be reviewed, including "[b]asis documents (catalogues of information assembled by the applicant to demonstrate the bases for its programs and activities)," "[i]mplementing procedures," "[o]perating experience reports," "RAIs, audit reports, and SERS for similar plants," and "Applicant's UFSAR [Updated Final Safety Analysis Report]." Clearly, the other documents provide more detail than the summary information contained in the PDBs and serve to verify that the information in the PDB is accurate. Thus, the Staff is now attempting to completely ignore its own criteria for conducting a license renewal audit.

The Staff also contends that Petitioners have ignored the "volume of information available through the Staff's safety evaluation reports, licensee responses to Staff audit questions, and licensee responses to Staff requests for additional information [RAIs]."

⁷ The Audit Review Plan appears to be a standardized document that is used across the board in license renewal reviews, with very little variation, if any. For instance, the Oyster Creek Audit Plan is virtually identical to the Indian Point Audit Plan.

NRC Staff Answer at 13. This argument directly contradicts the findings of the OIG. As Petitioners showed in the original Petition, the OIG found it was impossible to tell from the SER what the Staff actually did to review the LRA. Supplemental Petition at 23. This was in part because much of the SER text was copied almost verbatim from the LRA and the SER provided little or no information about what review work the Staff actually did. *Id.* at 14. The Supplemental Petition showed, based on the OIG's further work, that the May 9, 2006 Audit Report for Oyster Creek similarly failed to provide adequate documentation of what was done during the audit and that there are no other documents available to show what was done because they have been prematurely destroyed. Supplemental Petition at 3-5.

Although the Staff suggests that the responses to Staff information requests show that the audit was thorough, this is incorrect for a number of reasons. Most importantly, the RAI responses are yet again summary documents provided by the licensee for the purposes of relicensing. They therefore cannot act as independent checks on the quality of the LRA or the underlying PBDs. Moreover, not every AMP was the subject of an RAI, and the Staff has provided no analysis to show which information requests were associated with which AMPs.

With regard to the other plants that are the subject of this Petition, it is highly likely that the documentation suffers from the same defects as at Oyster Creek. As requested in the original Petition, the Commission should now conduct a full investigation into how the safety reviews for all four plants were actually carried out and remedy the problems found.

C. The Staff's Destruction of Audit Documents Hindered the Public's Right to Participate in the License Renewal Proceedings.

As stated in the Supplemental Petition, it is highly likely that the licensee documents upon which the NRC Staff relied to review the Oyster Creek LRA contained information that could have formed the basis for contentions in the hearing process; and by concealing the information, the Staff frustrated the hearing process. Supplemental Petition at 16-17. The Staff makes several arguments in response to Petitioners' claim, none of which has merit.

First, the Staff contends that "Petitioners have presented no evidence that the Staff improperly withheld licensees' documents." NRC Staff Answer at 14. But the Staff misses the point that some license renewal auditors were forbidden from removing licensee documents from the audit site. Audit of NRC's License Renewal Program, OIG-07-A-15, Office of the Inspector General, (September 6, 2007)("IG Memo") at 15. Obviously, if the Staff *never collected the documents it audited, and therefore never incurred a legal obligation to release them to the public.* By leaving the documents at the licensees' sites, the Staff effectively evaded its obligation to share with the public the bases for its safety findings. Region-based inspectors achieve the same result in a slightly different way by destroying any licensee-provided documents removed from the inspection site after the inspection reports are complete. IG Memo at 16; Answer given by Richard Conti of NRC Region 1 at the Oyster Creek annual assessment exit meeting on May 15, 2008. Thus, the public had no way to compare the generalizations made in the safety findings with the actual information presented in the licensee documents that were audited.

The Staff also argues that Petitioners contradict themselves because they concededly received "thousands of documents from Oyster Creek" in the discovery process. But the Oyster Creek discovery process related to a single issue; in contrast, the

audits related to many issues, each of which could have formed the basis for a contention. For example, had the Oyster Creek Organizations known how the metal fatigue for the recirculation outlet nozzle was calculated, they could have made a timely contention regarding that issue while the hearing record was still open. Instead, because this fact was only revealed by an NRC Staff Notification to the Commission after the record closed, the Oyster Creek Organizations were forced to move to both reopen the record and admit a new contention on the fatigue issue. As both the NRC Staff and the licensee have argued at length, the burden for reopening the record is considerable. Thus, the Oyster Creek Organizations have already suffered from the lack of available information regarding the fatigue issue.

Finally, the practice of avoiding public release of the basis for the Staff's findings not only harms potential petitioners, it also harms the agency and the licensees. Licensees are harmed because this practice leads directly to the danger that issues will come to light at a late stage of the relicensing process, leading to delays and protracted litigation. The NRC is harmed because well-founded interventions generally lead to better decision-making, as the proceedings regarding Oyster Creek and Vermont Yankee have already demonstrated. Thus, the NRC should encourage intervenors by publicly releasing the documents supporting the Staff's safety review. In the long-run this approach would lead to safer nuclear power plants, a goal that is presumably shared by Petitioners, the agency, and the licensees.

III. CONCLUSION

As demonstrated in Petitioners' initial Petition and their Supplemental Petition, the NRC Staff's process for reviewing license renewal applications is in a serious state of

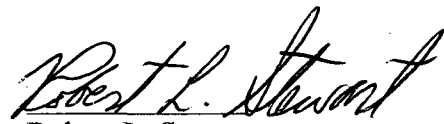
disrepair. After initially finding a disturbing pattern that NRC Staff reviewers were simply parroting licensee assertions, the OIG looked further and found that the NRC Staff does not maintain its audit records in a way that would permit verification that the audits have been performed adequately. And by failing to retain the licensee documents that it audits, the Staff frustrates the public's ability to challenge the adequacy of license renewal applications. Therefore, for all the reasons discussed above, in Petitioners' initial Petition, and in their Supplemental Petition, the Commission should grant the relief requested by Petitioners, by commencing an in-depth investigation and instituting reforms to the license renewal review process.

Respectfully submitted,

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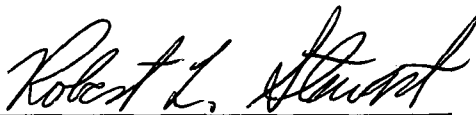


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June 4, 2008

**REPRESENTATIVE'S CERTIFICATE
of
COMPLIANCE WITH 10 C.F.R. 2.323(b)**

I, Robert L. Stewart, hereby certify that on May 30, 2008, in order to comply with 10 C.F.R. 2.323(b), New England Coalition contacted via e-mail (reproduced below) all parties to consult about the subject Motion for Leave to Reply. New Hampshire and New York replied that they would not oppose such a Motion. NRC Staff replied that NRC Staff would oppose the motion absent extraordinary cause, per 2.323 (c). The remaining parties did not respond.

/s
Signed: 
Robert L. Stewart
For New England Coalition
Dated: June 4, 2008

-----Original Message-----

From: Raymond Shadis [mailto:shadis@prexar.com]

Sent: Friday, May 30, 2008 7:52 AM

To: sarah.hofmann@state.vt; usl3@nrc.gov; mcb1@nrc.gov;
aroisman@nationallegalscholars.com; Roth, Peter; david.lewis@pillsburylaw.com;
mmatias.travieso-diaz@pillsburylaw.com; ktyler@sdkslaw.com;
jim.milkey@state.ma.us; dcurran@harmoncurran.com

Subject: Motion For Leave to File Reply Supplemental Petition

Importance: High

May 29, 2008

To All Parties in Docket No. 50-271-LR, ASLBP No. 06-849-03-LR

RE: , Vermont Yankee Nuclear Power Station , Supplemental Petition By Nuclear Information And Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers And More For Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; Riverkeeper, Inc.; Pilgrim Watch And New England Coalition For Additional Investigation And Correction Of Deficiencies Regarding License Renewal Reviews For Oyster Creek, Indian Point, Pilgrim, And Vermont Yankee Nuclear Power Plants

Dear Parties,

In order to comply with 10 CFR 2.323(b) I am contacting you on behalf of New England Coalition to ask if you will oppose or not oppose our pending motion for leave

to reply to NRC Staff, Amergen, and Entergy answers to our Supplemental Petition, filed May 15. We are working on the motion and reply and plan on filing late this afternoon.

Thank you for your kind attention,

Raymond Shadis

For

New England Coalition, Inc.

Robert L. Stewart

229 Kibbee Extension

Brookfield, Vermont 05036

802-276-3095

jakeskis@aol.com

**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))	

CERTIFICATE OF SERVICE

I, Robert L. Stewart, hereby certify that copies of a **Motion for Leave to Reply** and **Reply By Nuclear Information And Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers And More For Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; Riverkeeper, Inc.; Pilgrim Watch And New England Coalition to NRC Staff Opposition To Supplemental Petition For Additional Investigation And Correction Of Deficiencies Regarding License Renewal Reviews For Oyster Creek, Indian Point, Pilgrim, And Vermont Yankee Nuclear Power Plants**, filed 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 the 4th day of June 2008.

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