

RAS H-409

DOCKETED  
USNRC

March 9, 2009 (10:10am)

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March 9, 2009

**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 OPPOSITION TO NEW ENGLAND COALITION'S  
MOTION TO ALTER OR AMEND THE SCHEDULE**

Pursuant to 10 C.F.R. § 2.323(c), Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") oppose the "New England Coalition, Inc. (NEC) Motion to Alter or Amend the Schedule in the Above Captioned Proceeding" ("NEC Motion"). The NEC Motion requests that the Atomic Safety and Licensing Board ("Board") extend the deadline for NEC to file "comment, response, and timely new amended contentions" in the above captioned proceeding. Motion at 1. NEC's proposed extension would end "thirty days after Entergy has filed final, accurate and complete analyses and until at least fifteen days after the NRC Staff has filed its planned Supplemental Safety Evaluation Report and Audit Summary regarding the confirmatory analyses of the CS [core spray] and RO [recirculation outlet] nozzles." *Id.* NEC lacks any valid grounds for the lengthy extension of time it seeks -- an extension whose only effect would be to unduly prolong the conclusion of this proceeding. The NEC Motion should therefore be denied.

Nevertheless, in the interest of providing an expeditious resolution to the remaining issues relating to NEC Contentions 2A and 2B, Entergy would not oppose a ten day extension to

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the time to file any contentions on fatigue calculations, starting from the time when the revised calculations are provided to the parties, which Entergy expects during the week of March 9.

### Summary of Relevant Facts

In its Partial Initial Decision (Ruling on Contentions 2A, 2B, 3 and 4), LBP-08-25, 68 NRC \_\_\_ (Nov. 24, 2008) (“Decision”), the Board ruled that its decision would “remain open until 45 days after Entergy performs the confirmatory CUF<sub>en</sub> analyses on the CS and RR nozzles, ... and Entergy serves NEC and Vermont with full written results of such analyses.” Decision at 67. During that period of time, NEC could file a new or amended contention challenging the adequacy of the confirmatory analyses on the CS and RO nozzles. Id. Any such contention could only be based on challenging whether the “CUF<sub>en</sub> analyses are (1) done in accordance with the above stated guidance and the basic approach used in the Confirmatory CUF<sub>en</sub> Analysis for the FW nozzle, (2) contain no significantly different scientific or technical judgments, and (3) demonstrate values less than Unity.” Id. at 67. Entergy subsequently consented to extending this period to sixty days, until March 9, 2009, to give the parties’ experts more time to review the confirmatory analyses. Order (Granting Unopposed Motion for Extension of Time) (January 26, 2009) at 1.

Entergy provided its confirmatory analyses for the CS and RO nozzles to the parties on January 8, 2009. On February 26, 2009, Entergy’s counsel wrote to the Board and parties advising that an inconsequential error had been found in a non-limiting calculation. Entergy stated:

In connection with an NRC Staff audit of the confirmatory environmentally assisted fatigue (CUF<sub>en</sub>) analyses that were provided to the parties to this proceeding on January 8, 2009, Entergy identified that Table 6 of Calculation 0801038.306 for the reactor recirculation outlet (RO) nozzle utilized Alloy 600 material properties instead of those for stainless steel. A supplemental evaluation using the proper input values determined that the environmentally adjusted

cumulative usage factor  $CUF_{en}$  at a non-limiting location in that nozzle (the safe end) increased from less than 1% of the allowable value to approximately 4% of the allowable value. In performing this supplemental evaluation, all calculation methods have been maintained; the limiting calculated  $CUF_{en}$  for the RO nozzle of 0.119 remains unaffected. Therefore, the result of this finding is inconsequential.

Letter to Board and parties (February 26, 2009) at 1. The letter identified other minor changes which were either of an editorial nature or did not alter the results of the two calculations or their conclusion that the  $CUF_{ens}$  for both nozzles remained well below unity.

A week after receiving the February 26 letter, and only three days before the expiration of the sixty-day period to file new contentions, NEC filed its Motion.<sup>1</sup> NEC avers that it “cannot confirm that the amendments to the inputs and assumptions to the confirmatory analyses do not skew the process and the results or that they have been properly integrated into the calculations unless NEC seeks and has an opportunity to review the changes as they have been completely integrated into the calculations in their final form.” Motion at 6. In addition, NEC makes reference to an Audit Summary and a Supplemental Safety Evaluation Report to be issued in the future by the NRC Staff based on the Staff’s technical review of the confirmatory analyses for the two nozzles. NEC claims that “since NRC Staff has identified itself as adversarial to the intervenors, the intervenors should, as a matter of simple fairness, have the opportunity to review and to respond to, a document that may sway the Board’s final decision in this matter.” Motion at 6-7. Based on these arguments, NEC moves the Board to “extend the time permitted for intervenors to file comment, response, and timely new or amended contentions” regarding the confirmatory analyses “until thirty (30) days after Entergy has filed final, accurate and complete

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<sup>1</sup> NEC filed its Motion while Entergy was conferring with the Vermont Department of Public Service (“DPS”) regarding NEC’s proposed extension of time. Counsel for the DPS attempted to contact NEC by telephone on Friday, March 6, to relay a proposed ten-day extension of time file any contentions on fatigue calculations, starting from the time when Entergy provides revised calculations to the parties, but was unable to reach the NEC representative. By that time, however, NEC had already filed its Motion, foregoing the opportunity to consider Entergy’s proposal.

analyses and until at least fifteen days after the NRC Staff has filed its planned Supplemental Safety Evaluation Report and Audit Summary regarding the confirmatory analyses of the CS and RO nozzles.” *Id.* at 7.

### Argument

NEC’s arguments in support of the requested extensions lack merit. First, NEC ignores its obligation to file any new contentions with respect to the confirmatory fatigue calculations for the CS and RO nozzles by March 9, 2009. The methodology used to calculate the fatigue on these nozzles is the same employed in the feedwater nozzle confirmatory analysis – which was disclosed to the Staff and the parties over a year ago, and was litigated at the evidentiary hearings in July 2008. NEC has had the confirmatory calculations themselves for two months, leaving sufficient time to identify any disagreement it has as to whether the calculations are “(1) done in accordance with the above stated guidance and the basic approach used in the Confirmatory CUFen Analysis for the FW nozzle, (2) contain no significantly different scientific or technical judgments, and (3) demonstrate values less than Unity.” NEC cannot demonstrate under these facts that it has been somehow prejudiced.

Second, as explained in detail in our February 26, 2009 letter to the Board and parties, the only substantive change to the fatigue calculations has to do with the fatigue properties of the recirculation outlet nozzle safe end set forth in Table 3, page 12 of Calculation No. 0801038.306, Rev. 0. The table correctly identifies the material property parameters *E*, *S<sub>m</sub>*, and *S<sub>y</sub>* of stainless steel as a function of temperature. Thus, the inputs and assumptions have been fully disclosed. However, in the underlying fatigue calculation files, values of *E*, *S<sub>m</sub>*, and *S<sub>y</sub>* corresponding to Alloy 600 material were inadvertently used. As the February 26, 2009 letter explains, correcting this error increases the CUF<sub>en</sub> at the safe end of the nozzle from less than 1% to approximately

4% of the allowable value. The  $CUF_{en}$  value for the limiting location of the nozzle (the blend radius or “nozzle corner”) remains .119, approximately 12% of the allowable value. Therefore, the change in computed  $CUF_{en}$  for the RO nozzle is inconsequential and provides no basis for new contentions.<sup>2</sup>

Third, NEC’s request for an extension of time to file new contentions until fifteen days after the Staff issues its Supplemental Safety Evaluation Report and Audit Summary regarding the confirmatory analyses of the CS and RO nozzles is clearly unsupported and contrary to the Board’s orders. As the Board and the Commission have made clear, the reviews by the Staff of an applicant’s license renewal application are independent of the adjudicatory proceedings on the application and provide no basis for contentions therein. Decision at 67; Order (Granting Entergy’s Motion for Clarification) (December 22, 2008) (time for NEC and other intervenors to file new contentions based on Entergy’s new calculations begins when they are provided to the other parties, not when the Staff’s SER supplement addressing the calculations is issued); see also Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3), CLI-08-17, 68 NRC \_\_\_ (2008), slip op. at 8; Pa’ina Hawaii, LLC, CLI-08-3, 67 NRC 151, 168 n.73 (2008). Any deficiencies that NEC may wish to raise with respect to Entergy’s calculations must be based on the adequacy of the calculations themselves and not on whether, when or on what basis the Staff approves them.

While the changes in the February 26, 2009 letter do not affect the methodology and are shown to be immaterial, and therefore do not provide any grounds for an extension, Entergy would not oppose a ten-day extension running from the filing of revised confirmatory calculations, expected to be provided to the parties during this week beginning March 9, so that

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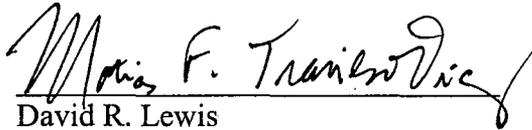
<sup>2</sup> Also, contrary to NEC’s assertions in the Motion (see Motion at 5), neither the geometry that is modeled in the calculations nor the assumptions in the analysis have been modified by the changes discussed in the February 26, 2009 letter.

the parties can confirm the very limited changes and Entergy's representations concerning their immateriality. Entergy has discussed this proposal with the DPS and understands it is acceptable to the DPS. Unfortunately, NEC filed its motion before Entergy had an opportunity to communicate this proposal to NEC.

**Conclusion**

For the above stated reasons, the NEC Motion should be denied. However, Entergy would not oppose a ten day extension to the time to file any contentions based on the confirmatory fatigue calculations for the CS or RO nozzles, starting from the time when the revised calculations are provided to the parties.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David R. Lewis", is written over a horizontal line.

David R. Lewis

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Dated: March 9, 2009

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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 the foregoing "Entergy's Opposition to New England Coalition's Motion to Alter or Amend the Schedule" 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 9<sup>th</sup> day of March, 2009.

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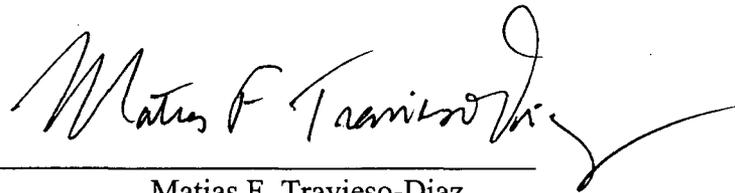
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