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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)

Entergy Nuclear Vermont Yankee, LLC)
and Entergy Nuclear Operations, Inc.)

Docket No. 50-271-LR
ASLBP No. 06-849-03-LR

(Vermont Yankee Nuclear Power Station))

**ENTERGY'S OPPOSITION TO NEW ENGLAND COALITION'S
MOTION TO HOLD ACTION ON PROPOSED CONTENTION IN ABEYANCE UNTIL
ISSUANCE OF NRC STAFF SUPPLEMENTAL SAFETY EVALUATION REPORT**

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.'s ("NEC") "Motion to Hold in Abeyance Action on this Proposed Contention Until Issuance of NRC Staff Supplemental Safety Evaluation Report" ("NEC Motion to Hold Action in Abeyance"). The NEC Motion to Hold Action in Abeyance is part of NEC's filing dated April 24, 2009 entitled "New England Coalition, Inc.'s Motion for Leave to File a Timely New Contention and Motion to Hold in Abeyance Action on this Proposed Contention Until Issuance of NRC Staff Supplemental Safety Evaluation Report" ("NEC Motion"), which moves for the admission of a new contention challenging the "reanalysis of environmentally assisted metal fatigue for Recirculation Outlet (RO) and Core Spray (CS) nozzles" performed by Entergy in accordance with the Board's instructions. NEC Motion at 1; Partial Initial Decision (Ruling on

1
Exhibit Secy-037

DS-03

Contentions 2A, 2B, 3 and 4), LBP-08-25, 68 NRC ____ (Nov. 24, 2008) (“LBP-08-25”), slip op. at 66-67.¹

In support of its Motion to Hold Action in Abeyance, NEC argues that the Audit Summary and Supplemental Safety Evaluation Report (“SSER”) to be issued by the NRC Staff regarding the Staff’s review of Entergy’s confirmatory analyses of the RO and CS nozzles “will be helpful in both building a record in this docket and helpful to the Board and the Parties in evaluating the merits of NEC’s proposed contention.” NEC Motion at 7. NEC further argues that the Commission depends, and the Board relies on, the Staff “to assist in informing decisions regarding what should or should not go to hearing.” *Id.* at 8.

On April 30, 2009 the NRC Staff filed its “Answer in Opposition to NEC Motion to Hold in Abeyance Action on Proposed Contention until Issuance of NRC Staff Supplemental Safety Evaluation Report” (“Staff’s Answer”), which provides a cogent explanation of the reasons why the NEC Motion to Hold Action in Abeyance should be denied. Entergy wholly agrees with and supports the Staff’s Answer.

NEC filed a very similar motion only a few weeks ago seeking an extension of time to file new contentions until fifteen days after the Staff issued its SSER and Audit Summary regarding the confirmatory analyses of the CS and RO nozzles. New England Coalition, Inc. (NEC) Motion to Alter or Amend the Schedule in the Above Captioned Proceeding (March 6, 2009). That motion was denied by the Board. March 9, 2009 Order at 4. As that decision and others by the Board have made clear, the reviews by the Staff of Entergy’s license renewal

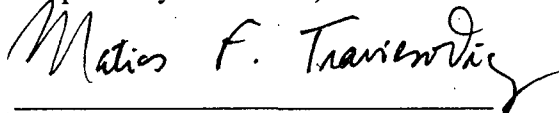
¹ Entergy will file a separate response opposing admission of the new contention propounded in the NEC Motion because the contention fails to meet the general admissibility requirements in 10 C.F.R. §2.309(f)(1), the additional requirements set forth in 10 C.F.R. § 2.309(f)(2) for the admission of contentions submitted after the initiation of a proceeding, the provisions of 10 C.F.R. § 2.309(c) governing untimely filings, and the very specific requirements for the admissibility of contentions challenging the new RO and CS calculations set by the Board in LBP-08-25 and in its March 9, 2009 Order (Clarifying Deadline for Filing New or Amended Contentions).

application are independent of the adjudicatory proceedings on the application and, after the issuance of the initial SER, the two proceed on separate schedules. LBP-08-25 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 SSER addressing the calculations is issued). The Board's rulings are consistent with repeated Commission decisions emphasizing the separation between the Staff's review of a license application and the adjudicatory proceedings on the application. See, AmerGen Energy Co. LLC (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 N.R.C. __ (Oct. 6, 2008), slip op. at 18; Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3), CLI-08-17, 68 N.R.C. __ (2008), slip op. at 8; Pa'ina Hawaii, LLC, CLI-08-3, 67 N.R.C. 151, 168 n.73 (2008). Accordingly, there is no basis for the Staff's SSER schedule to affect the Board's disposition of NEC's Motion.

Conclusion

For the above stated reasons, the NEC Motion to Hold Action in Abeyance should be denied.

Respectfully Submitted,



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Dated: May 1, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
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Entergy Nuclear Vermont Yankee, LLC)	Docket No. 50-271-LR
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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 Hold Action on Proposed Contention in Abeyance Until Issuance of NRC Staff Supplemental Safety Evaluation Report" 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 1st day of May, 2009.

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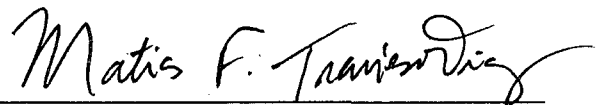
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