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November 8, 2010

BY EMAIL

Hon. G. Paul Bollwerk, III
Hon. Nicholas G. Trikouros
Hon. James F. Jackson
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Southern Nuclear Operating Co., Inc. (COL for Plant Vogtle)
Docket Nos. 52-025-COL and 52-026-COL
Notice of Supplemental Authority

Dear Judges Bollwerk, Trikouros and Jackson:

Applicant, Southern Nuclear Operating Company ("SNC"), hereby provides notice to the Board and the parties in the above-referenced proceeding of the Atomic Safety and Licensing Board Order in Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-10-19 (October 28, 2010). This citation is particularly relevant to pages 2-4, 10-11, and 16-17 of SNC's Answer. For the convenience of the Board and the parties, I have attached a copy of the slip opinion of the Vermont Yankee Order to this letter.

Sincerely,

/s/ M. Stanford Blanton
M. Stanford Blanton

MSB:dc
Enclosure

cc: Stephanie Liaw, Counsel for the NRC Staff
John D. Runkle, Esq.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	**Docket Nos. 52-025-COL and 52-026-COL**
Southern Nuclear Operating Company	)	
	)	
(COL Application for Vogtle Electric Generating Plant, Units 3 and 4)	)	**November 8, 2010**

CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S NOTICE OF SUPPLEMENTAL AUTHORITY in the above-captioned proceeding have been served by electronic mail as shown below, this 8th day of November, 2010, and/or by e-submittal.

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*And upon any other persons designated on the official service list compiled by the Nuclear Regulatory Commission in this proceeding.

/s/ M. Stanford Blanton
M. Stanford Blanton
Counsel for Southern Nuclear Operating Company

Dated this 8th day of November, 2010.

LBP-10-19

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Richard E. Wardwell
Dr. William H. Reed

In the Matter of ENTERGY NUCLEAR VERMONT YANKEE, L.L.C., and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station)	Docket No. 50-271-LR ASLBP No. 06-849-03-LR October 28, 2010

MEMORANDUM AND ORDER
(Ruling on Motion to Reopen Proffering New Contention)

This proceeding involves the application of Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy) for a twenty-year renewal of its license to operate the Vermont Yankee Nuclear Power Station (VYNPS) in Windham County, Vermont. Before this Board is an August 20, 2010, motion by the New England Coalition (NEC) to reopen this proceeding to admit a new contention, which, for simplicity, we will refer to as Contention 7 or C-7.[1] Proposed Contention 7 challenges the adequacy of Entergy's aging management program (AMP) and time-limited aging analysis (TLAA) with regard to the effects

[1] [NEC's] Motion to Reopen the Hearing and for the Admission of New Contentions (Aug. 20, 2010) (Motion).

of moist or wet environments on buried, below grade, underground, or hard-to-access safety-related electrical cables. Motion at 8.

As we discuss herein, a motion to reopen a proceeding to introduce a new contention must successfully navigate at least nineteen regulatory factors. See Attachment A. For the reasons stated below, the Board concludes that NEC's motion founders on several of the initial criteria, i.e., 10 C.F.R. § 2.326(a)(1) and (3), and we therefore find it unnecessary to prolong this ruling by analyzing all of the others.

I. BACKGROUND

This adjudicatory proceeding has a long history that we do not need to repeat here. Instead, we review the highlights that are relevant to the current motion to reopen. The case started with Entergy's January 25, 2006 application to renew its license to operate the VYNPS nuclear reactor (license renewal application or LRA).[2] Several entities challenged the LRA and petitioned to intervene. On September 22, 2006, the Board granted the intervention petitions of NEC and Department of Public Service of the State of Vermont (Vermont) and admitted five contentions for hearing.[3] A long hiatus followed during which the Board and the parties waited (as we must) for the NRC Staff to review and analyze the LRA, and to generate the necessary safety and environmental documents. During this hiatus the five original contentions evolved and changed, as Entergy filed various motions to dismiss a number of the original contentions and NEC filed various new or modified contentions.

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[2] Entergy License Renewal Application, Vermont Yankee Nuclear Power Station (Jan. 25, 2006) (LRA). Entergy has since supplemented and amended its application several times.

[3] Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 209 (2006). In LBP-06-20, the Board also granted interested state status under 10 C.F.R. § 2.315 to the State of New Hampshire and the Commonwealth of Massachusetts.

On July 21-24, 2008, after the NRC Staff completed its safety and environmental reports, the Board conducted the evidentiary hearing on the surviving contentions – NEC Contentions 2A, 2B, 3, and 4. On November 24, 2008, we issued a Partial Initial Decision, ruling that Entergy had met the regulatory requirements applicable to the four contentions, with one exception. LBP-08-25, 68 NRC 763, 896-97 (2008). The exception involved Entergy's metal fatigue analyses for two important nozzles, the core spray and reactor recirculation outlet nozzles. With regard to those nozzles, we ruled that Entergy's analyses had failed to comply with all relevant requirements and therefore that Entergy had not demonstrated that there was a reasonable assurance of safety as required by 10 C.F.R. § 54.29(a). Id. at 780, 895. Thus, the Board declined to authorize the license renewal. Rather than terminating the proceeding however, the Board held Contention 2 in abeyance, invited Entergy to recalculate and resubmit its metal fatigue analyses for the core spray and reactor recirculation outlet nozzles, and specified that NEC would be entitled to challenge any such revised analyses if it viewed those analyses to be defective. Id. at 895. The NRC Staff appealed this ruling. NRC Staff Petition for Review of LBP-08-25 (Dec. 9, 2008).

On March 10, 2009, Entergy submitted its revised metal fatigue analyses for the core spray and reactor outlet nozzles.[4] On April 24, 2009, NEC filed a motion challenging the adequacy of Entergy's revised metal fatigue calculations and proposing a new contention which we denominated Contention 2C.

On July 8, 2009, the Board issued its Full Initial Decision, LBP-09-9, rejecting Contention 2C as not timely. LBP-09-9, 70 NRC 41, 48-49 (2009). On July 23, 2009, NEC appealed LBP-09-9. [NEC's] Petition for Review of the Licensing Board's Full Initial Decision (July 23, 2009).

[4] Letter from Matias Travieso-Diaz to the Atomic Safety and Licensing Board and attached documents (Mar. 10, 2009) at 1.

On July 8, 2010, the Commission issued its ruling on the two appeals.[5] The Commission affirmed the Board's ruling in LBP-09-9 (wherein we rejected Contention 2C). CLI-10-17, 72 NRC at __ (slip op. at 69). However, the Commission reversed the Board's ruling in LBP-08-25 on Contentions 2A and 2B (wherein we had ruled that Entergy's original metal fatigue calculations for the core spray and reactor recirculation outlet nozzles were inadequate), and held that the Board should have decided these matters in Entergy's favor. Id. at __ (slip op. at 2). In light of these rulings, and the fact that the Board had placed the original Contention 2 in abeyance, the Commission remanded the case to us in order to give NEC the opportunity to submit a revised Contention 2 (challenging the adequacy of Entergy's aging management program for metal fatigue). Id. The Commission added, in a footnote, that during the pendency of the remand:

> NEC and Vermont are free to submit a motion to reopen the record pursuant to 10 C.F.R. § 2.326, should they seek to address any *genuinely new* issues related to the license renewal application that previously could not have been raised.

Id. at __ (slip op. at 10 n.37) (emphasis in original).

The Board immediately issued an order setting August 20, 2010, as the deadline for NEC or Vermont to file a revised Contention 2 or a motion to reopen the record with any new contentions. Licensing Board Order (Setting Schedule for Remand Filings) (July 12, 2010) at 2 (unpublished).

On August 20, NEC moved to reopen the record, requesting that the Board admit a new

[5] Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC __ (slip op.) (July 8, 2010).

contention, Contention 7. Motion at 1.[6] Proposed Contention 7 reads as follows:

> Applicant has not demonstrated adequate aging management review and/or time-limited aging analysis nor does the applicant have in place an adequate aging management program to address the effects of moist or wet environments on buried, below grade, underground, or hard-to-access safety-related electrical cables, thus the applicant does not comply with NRC regulation (10 C.F.R. § 54.21(a) and guidance and/or provide adequate assurance of protection of public health and safety (54.29(a) [sic].

Id. at 8.

Entergy and the NRC Staff filed their answers to the motion on September 14, 2010, asserting that the motion should be denied.[7] On September 21, NEC submitted its reply.[8]

II. LEGAL FRAMEWORK GOVERNING MOTIONS TO REOPEN

Motions to reopen that seek to introduce an entirely new contention (i.e., a contention not previously in controversy among the parties) are disfavored and must address at least nineteen different regulatory factors. See Attachment A. The rationale for this approach is that, at some point, the administrative proceeding must end. Once the Board has admitted the original contentions, conducted the evidentiary hearing, and issued its ruling on the merits, and after the parties have appealed that decision, and the Commission has rendered its decision on

---

[6] NEC declined to file a revised Contention 2, stating that it could "find no opening for redress of [the] outstanding dispute with the licensee regarding metal fatigue AMP or TLAA through a revised Contention 2 because the decisions of the Board and the Commission render an AMP unnecessary and a TLAA unassailable." Motion at 4.

[7] Entergy's Answer Opposing New England Coalition's Motion to Reopen (Sept. 14, 2010) (Entergy Answer) with attached Declaration of Norman L. Rademacher and Roger B. Rucker in Support of Entergy's Answer Opposing New England Coalition's Motion to Reopen (Sept. 14, 2010) (Entergy Declaration); NRC Staff's Opposition to the New England Coalition's Motion to Reopen the Hearing and Answer to Proposed New Contention (Sept. 14, 2010) (Staff Answer) with attached Affidavit of Roy K. Mathew (Sept. 14, 2010) (Mathew Affidavit).

[8] New England Coalition's Reply to NRC Staff and Entergy Nuclear Vermont Yankee Opposition to New England Coalition's Motion to Reopen the Hearing and Reply to NRC Staff's Answer to Proposed New Contention (Sept. 21, 2010) (Reply) with attached Declaration of Paul Blanch (Sept. 21, 2010).

the merits of the matter, the adjudicatory proceeding should be over, absent some extenuating circumstances.[9]

The nineteen factors are contained in the three main regulations that govern a motion to reopen a closed case for the consideration of a new contention. The first regulation is 10 C.F.R. § 2.326, entitled "Motions to Reopen." The second main regulation is 10 C.F.R. § 2.309(c), which establishes eight separate factors that must be considered and balanced for any nontimely filing. The third is 10 C.F.R. § 2.309(f)(1), which establishes the six criteria that all contentions must meet. We will review, briefly, each of these regulations.

The first major regulation, 10 C.F.R. § 2.326, states that a motion to reopen a closed record to consider additional evidence must inter alia (1) be timely, (2) address a significant safety or environmental issue, and (3) demonstrate that a materially different result would have been likely. 10 C.F.R. § 2.326(a)(1)-(3). In addition, the motion "must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) . . . have been satisfied." 10 C.F.R. § 2.326(b). These affidavits must "separately address" each of the foregoing criteria set forth in 10 C.F.R. § 2.326(a)(1)-(3). Id. Even more stringent requirements apply if the intervenor seeks to reopen in order to introduce a new contention that was not previously in controversy among the parties. In such a case, the motion to reopen "must also satisfy the requirements for nontimely contentions in § 2.309(c)," 10 C.F.R. § 2.326(d), by addressing the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of 10 C.F.R. § 2.309(c).

[9] See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 n.18 (2005) (quoting Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 555 (1978)); 51 Fed. Reg. 19,535, 19,538 (May 30, 1986).

The second major regulation applicable here – 10 C.F.R. § 2.309(c) – governs untimely new contentions. This regulation specifies that no new contention will be admitted unless the petitioner has satisfied the requirements of 10 C.F.R. § 2.309(c) by providing the information requested therein.

The third major hurdle is 10 C.F.R. § 2.309(f)(1)(i)-(vi). This regulation articulates the familiar six factors that must be satisfied before any contention can be admitted. We have reviewed and discussed this regulation, and these six factors, several times during the course of this proceeding, and will not repeat that discussion here. See LBP-06-20, 64 NRC at 146-51.

III. POSITIONS OF THE PARTIES

A. Arguments Relating to Motion to Reopen and Proposed Contention 7

NEC's motion to reopen the record to admit proposed Contention 7 focuses primarily on the reopening standards of 10 C.F.R. § 2.326(a) and the contention admissibility standards of 10 C.F.R. § 2.309(f)(1). First, NEC asserts that the motion satisfies the three criteria of 10 C.F.R. § 2.326(a)(1)-(3), i.e., that the motion is timely, that it raises a "significant" safety issue, and that it demonstrates that a materially different result would have been likely if the motion were granted. Motion at 4-6.

NEC asserts the motion and new contention are timely because it filed them "as soon as sufficient evidence had accrued to adduce the basis and substance of the contention." Id. at 5. Specifically, NEC points to an NRC Inspection Report published on May 10, 2010 (NRC Inspection Report), in which the NRC inspectors found that Entergy had violated certain requirements relating to submergence of safety-related electrical cables.[10] NEC notes that as of

[10] Motion at 5, 10-13 (citing Letter from Donald E. Jackson, Chief, Projects Branch 5, Division of Reactor Projects to Michael Colomb, Site Vice President, Entergy Nuclear Operations, Inc. with Enclosure: Inspection Report No. 05000271/2010002 (May 10, 2010).

May 10, it was still awaiting a Commission decision on its petition for review of LBP-09-9. Id. NEC states that, since that date, it has "diligently pursued additional evidence . . . concerning Entergy's approach to the problem of aging acceleration due to wetting and submergence of safety-related electrical cables." Id. NEC also notes that the NRC and the nuclear industry have both issued reports that indicate "deep concern on an industry-wide basis" regarding the susceptibility of safety-related electrical cables, such as those present at VYNPS, to wetting or submergence and accelerated aging. Id. at 5-6. Specifically, NEC quotes from NUREG/CR 7000[11] and from a June 2010 report by the Electric Power Research Institute (EPRI Report), to the effect that electric cables are important safety-related components of a nuclear power plant and that these cables must be protected against degradation and aging (via moisture and submergence) to maintain their reliability and integrity. Id. at 6. NEC concludes its discussion regarding 10 C.F.R. § 2.326(a)(1) by stating that it filed this contention "as soon as practicably possible following the apprehension of sufficient information" and that, in any event, the issue is "grave." Id.

NEC next addresses the requirement that a motion to reopen must raise a "significant safety . . . issue" under 10 C.F.R. § 2.326(a)(2). NEC devotes only two sentences to this point, referencing its preceding discussion of timeliness under 10 C.F.R. § 2.326(a)(1). Id. Presumably, NEC is referring to its quotes of NUREG/CR 7000 and the EPRI Report.

NEC then turns to the third criterion for a motion to reopen, and maintains that its motion "demonstrate[s] that a materially different result would be or would have been likely had the newly proffered evidence been considered initially," citing 10 C.F.R. § 2.326(a)(3). Id. at 7. In support of this assertion, NEC says that, had the issue of safety-related electrical cable

[11] See NUREG/CR 7000, Essential Elements of an Electric Cable Monitoring Program (January 2010).

susceptibility to wetting or submergence been in issue earlier in the proceeding, "it is highly unlikely that [the] Board could have" concluded that Entergy's LRA satisfied 10 C.F.R. §§ 54.29(a) and 54.21(a). Id. at 7. NEC cites to the EPRI Report, the NRC Inspection Report, and the declaration of its expert, Paul M. Blanch. Id. at 7.

The declaration of Paul M. Blanch states certain factual and technical bases to support the proposition that NEC's motion satisfies the requirements under 10 C.F.R. § 2.326(a)(1)-(3). Declaration and Affidavit of Paul M. Blanch (Aug. 20, 2010) (Blanch Declaration). With regard to timeliness under 10 C.F.R. § 2.326(a)(1), Mr. Blanch quotes the May 10, 2010, NRC Inspection Report as saying that:

> Entergy did not select and review safety-related cables suitable for application in the environment in which they were found. Specifically, Entergy allowed the continuous submergence of safety-related cables that were not qualified for continuous submergence and failed to demonstrate that the cables would remain operable. . . . Two manholes, MH-32(SH) and MH-33(SH) contained safety-related cables that were submerged.

Blanch Declaration at 5 (quoting NRC Inspection Report at 4, 20). Mr. Blanch maintains that this is new information. Id. at 5-6.

With regard to the second factor of 10 C.F.R. § 2.326(a)(2) (i.e., that the motion to reopen raises a significant safety issue), Mr. Blanch never directly addresses this issue, but does make several assertions that are relevant to it. Mr. Blanch quotes 10 C.F.R. §§ 54.4 and 54.21(a)(1)(i) to show that electrical cables, including low-voltage cables, are safety-related equipment within the scope of license renewal. Id. at 6-7. He states that "a diligent review of the LRA and the Staff's SER finds no such [TLAA or AMP], thus I am led to conclude that the LRA is inaccurate and incomplete with respect to TLAA or AMP of below grade, buried, underground, or otherwise inaccessible safety-related electrical cable." Id. at 8. Strangely, on the next page, Mr. Blanch acknowledges that the LRA does include an AMP for medium-voltage

cables and that the NRC Final Safety Evaluation Report discusses the AMP. Id. at 9. Mr. Blanch states that the failure of safety-related electrical cables may result in beyond design basis accidents and could result in the loss of emergency power to safety-related equipment. Id. Mr. Blanch goes on to focus on low-voltage cables, asserting that they represent the majority of the VYNPS cables and that most of them are within the scope of license renewal, but are not identified, inspected, or maintained by any AMP, even though some of them are periodically submerged and are not qualified for such an environment. Id. at 10.

More generally, Mr. Blanch states that although the integrity and function of instrumentation and control electrical cables may be monitored indirectly through the performance of in-service testing of the instruments and controls, this is inadequate because it does not provide specific information about the status of the cable aging and degradation processes or the integrity of the insulation and jacket materials on the cable. Id. at 11. "A cable circuit with undetected damaged or degraded insulation could pass an in-service functional test, but still fail unexpectedly." Id. He says that several reports, including NRC Generic Letter 2007-01, Inaccessible or Underground Power Cable Failures that Disable Accident Mitigation Systems or Cause Plant Transients, "suggest that licensee approaches to cable testing, such as in-service testing . . . do not fully characterize the condition of cable insulation nor provide information on the extent of aging and degradation mechanisms that can lead to cable failure." Id. at 12.

NEC next presents its arguments that Contention 7 satisfies the six basic admissibility standards of 10 C.F.R. § 2.309(f)(1)(i)-(vi). Given that, as we explain below, the Board has concluded that the motion fails to satisfy at least two of the three criteria of 10 C.F.R. §

2.326(a)(1)-(3), we will review NEC's arguments relating to 10 C.F.R. § 2.309(f)(1) only insofar as they relate to NEC's case with regard to the three hurdles of 10 C.F.R. § 2.326(a)(1)-(3).[12]

With regard to 10 C.F.R. § 2.309(f)(1), NEC alleges, "upon information and belief" that Entergy's "buried, underground, and inaccessible low and medium-voltage cables . . . have not been adequately monitored" and that its AMP fails to address "deficiencies now apparent in their current wholly inadequate monitoring program." Motion at 9. NEC cites various regulations and quotes at length from the NRC Inspection Report. Id. at 10-13. This material describes how "Entergy allowed the continuous submergence of safety-related cables that were not qualified for continuous submergence and failed to demonstrate that the cables would remain operable." Id. (quoting NRC Inspection Report at 4). The quoted sections of the Inspection Report describe how NRC inspectors "concluded that Entergy failed to ensure that the cables were maintained in a design condition for the anticipated environmental conditions by not thoroughly evaluating the effect of continuous cable submergence." Id. (quoting NRC Inspection Report at 20).

NEC argues that Entergy's corrective action in response to the discovery of the cable submergence (i.e., a plan to dewater the manholes containing submerged cables and to develop a preventive maintenance frequency for subsequent pump-downs) does not constitute an adequate AMP. Id. at 13 (quoting NRC Inspection Report at 20). NEC asserts that Entergy has failed to amend the aging management program in its LRA, or to propose a license condition, to encompass the newly discovered vulnerability of safety-related cables to wetting, submergence, and a resulting increased rate of aging. Id. at 13. NEC found no evidence that

[12] We apply a similar approach in reviewing the answers. We focus on their analysis of 10 C.F.R. § 2.326(a)(1)-(3), and review their arguments relating to 10 C.F.R. § 2.309(c) and (f)(1) only to the extent that the latter may support the former.

Entergy's AMP has been amended to include a review of cable environmental qualification, an inventory of cables susceptible to wet or submerged conditions, or a schedule of preventative inspection, testing, maintenance, or systematic replacement in order to assure operability of vulnerable safety-related cables under accident conditions. Id. NEC contends Entergy had "ample notice of the issue" citing to NRC information notices and generic letters (concerning the submergence of inaccessible electrical cables) issued in 1989, 2002, and 2007. Id. at 14.

Turning finally to NEC's discussion of 10 C.F.R. § 2.309(c), NEC asserts that the motion to reopen is timely because the underlying information supporting the motion "was not manifest until recently" and thus could not be raised earlier in this proceeding. Id. at 23. NEC argues that admission of Contention 7 will not broaden or delay the proceeding because the contention is not highly technical in nature and NEC is willing to discuss settlement or to participate in an expedited proceeding. Id. at 24.

Entergy opposes NEC's motion to reopen on all nineteen grounds. Entergy says that the Commission remanded this proceeding for the limited purpose of allowing NEC to submit a revised Contention 2 and, instead, NEC is seeking to restart the process on a completely different issue. Entergy Answer at 2. Entergy asserts that NEC could have raised Contention 7 at the outset of this proceeding, when Entergy first submitted its AMP for electrical cables. Id. at 3. Entergy cites the Commission as stating that "applicants for a license are . . . entitled to a prompt resolution of disputes concerning their applications" and says that the NRC rules, as well as fundamental fairness, dictate that this proceeding be brought to a close. Id. Entergy argues that NEC's motion fails to satisfy the criteria of 10 C.F.R. § 2.326(a), the evidentiary

requirements of 10 C.F.R. § 2.326(b), the balancing criteria of 10 C.F.R. § 2.309(c), or the contention admissibility criteria of 10 C.F.R. § 2.309(f)(1). [13]

Entergy's answer, supported by the Declaration of Norman L. Rademacher (the Director of Engineering at VYNPS) and Roger B. Rucker (an electrical engineering consultant to Entergy), (Entergy Declaration) recounts the following facts:

1. Entergy's LRA includes an AMP for Non-Environmentally qualified inaccessible medium-voltage cable that is based upon and consistent with the GALL Report.[14]

2. The Non-EQ AMP for medium-voltage cable is designed to manage the potential effects of wetting, including submergence, on inaccessible electrical cable.

3. The Non-EQ AMP for medium-voltage cable requires periodic actions to prevent cables from being exposed to significant moisture, such as inspecting manholes at least biennially and draining water as needed.

4. The Non-EQ AMP for medium-voltage cable requires the testing of cable insulation at least every ten years.

5. The Non-EQ AMP for medium-voltage cable was amended on September 3, 2010, so that it now includes low-voltage cable.

Entergy Answer at 27-29; Entergy Declaration at 1-3. Thus, according to Entergy, NEC ignores the already-existing AMPs in Entergy's LRA that specifically address the electrical cabling issues and that are the focus of NEC's motion and new contention. Entergy Answer at 2-3.

In addition, Entergy maintains that the issue is not new, because in 2007 the NRC Staff issued a Generic Letter informing licensees of failures that had occurred in inaccessible cable subject to wetted environments and requesting information from the licensees. Id. at 9. Entergy notes that, in late 2008, the NRC Staff issued another report on this subject. Id. Then, in

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[13] Again, we review Entergy's arguments related to 10 C.F.R. § 2.309(c) and (f)(1) only to the extent that they might inform our analysis of 10 C.F.R. § 2.326(a)(1)-(3).

[14] See Generic Aging Lessons Learned (GALL) Report, NUREG-1801, Vol. 1, Rev. 1 (Sept. 2005) (GALL Report).

January 2010, the NRC Staff issued NUREG/CR 7000 "Essential Elements of a Cable Monitoring Program". Id. at 10. Entergy further recounts that the submergence of the electrical cables in two manhole covers was discovered by Entergy itself on November 28, 2009, when it performed an inspection of underground cable access points, and it was this inspection that was the subject of NRC's review in the Spring of 2010. Id.

Finally, Entergy recounts that the September 3, 2010, revision to its AMP (to include low-voltage cables) was the result of an April 2010 draft revision to the GALL Report wherein the NRC staff proposed extending the AMPs applicable to medium-voltage non-EQ inaccessible electrical cables to also cover low-voltage cables. Id. at 11.

Based on the foregoing alleged facts, Entergy asserts that NEC's motion to reopen fails to satisfy the criteria of 10 C.F.R. § 2.326(a)(1)-(3). As to the first factor – timeliness – Entergy notes that, even at the outset of this proceeding in 2006, its LRA included an AMP (as prescribed by the GALL Report) to cover the exposure of inaccessible electrical cabling to wet conditions, including submergence. Id. at 20-22. Entergy asserts that NEC failed to bring this issue into contention at that time and that it is now too late to do so, regardless of the May 10, 2010 NRC Inspection Report. Id. Entergy refers to the part of its LRA that explicitly addresses a "Non-EQ Inaccessible Medium-Voltage Cable Program," and claims that it "has committed to implement this program by March 21, 2012."[15] Specifically, Entergy notes its commitment to inspect for cable submergence, and to use the results of those inspections to adjust frequency of inspection and draining where necessary. Id. at 23-24.

[15] Entergy Answer at 22 (citing Office of Nuclear Reactor Regulation, Safety Evaluation Report Related to the License Renewal of Vermont Yankee Nuclear Power Station, NUREG-1907, at 3-22 (May 2008)).

Entergy also claims that NEC's motion fails to demonstrate that Contention 7 raises a significant safety issue as required by 10 C.F.R. § 2.326(a)(2). Entergy argues that NEC ignores the AMPs in Entergy's LRA that manage aging effects on electrical cables, fails to explain why they are defective, and thus fails to show that the safety issue is "significant." Id. at 23-24. Entergy also cites the NRC Inspection Report, which characterizes the NRC findings to be "of very low significance," and states that "continuously submerged cables [at VYNPS] were still fully capable of performing their design." Id. at 24.

With regard to 10 C.F.R. § 2.326(a)(3), Entergy claims that the motion and Blanch Declaration both fail to show, beyond mere speculation, how consideration of the electrical cable submergence issue would likely lead to a materially different result in the instant proceeding. Id. at 25-26.

The NRC Staff also opposes the grant and admission of NEC's motion and new contention on all nineteen grounds, arguing that NEC fails to show that the motion satisfies the requirements of 10 C.F.R. § 2.326(a)(1)-(3), fails to show how its newly proffered contention meets the eight-factor balancing test for nontimely filings of 10 C.F.R. § 2.309(c), and fails to address sufficiently the admissibility requirements of 10 C.F.R. § 2.309(f)(1). As stated above, we will focus primarily on the Staff's arguments relating to 10 C.F.R. § 2.326.

First, the NRC Staff argues that the motion fails to show that proposed Contention 7 raises a "significant" safety issue as required by 10 C.F.R. § 2.326(a)(2). Staff Answer at 5-6. The NRC Staff notes that the NRC Inspection Report relied upon by NEC states that the cabling issue was of "very low safety significance" in terms of operability or functionality of VYNPS. Id. at 7 (citing NRC Inspection Report at 4). The NRC Staff also attached the Affidavit of Roy K. Mathew, which explains that submergence of safety-related electric cables at VYNPS is the subject of ongoing oversight of licensee operations, and that Entergy recently expanded the

scope of its AMPs to address low-voltage cabling. Id. at 7 (citing Mathew Affidavit at ¶ 4-5). On the basis of this explanation, the NRC Staff maintains that Entergy's AMP for electrical cabling is not a significant safety issue under 10 C.F.R. § 2.326(a)(2). Id.

The NRC Staff then asserts two main reasons why the motion to reopen fails the timeliness requirement of 10 C.F.R. § 2.326(a)(1). First, the NRC Staff says that even if the NRC Inspection Report of May 10, 2010 was the triggering event, the motion should have been filed within 30 days thereof, because this is the time frame established by the Board's initial scheduling order. Id. at 8-9; see also Initial Scheduling Order (Nov. 17, 2006) at 7 (unpublished). The NRC Staff asserts that the pendency of the petitions for Commission review does not absolve litigants of their responsibility to file motions to reopen promptly. Id. at 9. Second, the NRC Staff argues that "NEC has long had sufficient information to file this Motion and contention" because "NEC references as bases for its contention documents [2007 NRC Generic Letters] that . . . have been available for one and a half to three years." Id. at 11. The NRC Staff says that, if, as NEC asserted, these documents "gave Entergy ample notice" of the issues of submergence of electrical cables, "then they also gave NEC ample notice of this issue for a least a year and a half, making NEC's new contention untimely." Id.

The NRC Staff next maintains that NEC has not demonstrated that the admission of the proposed contention would likely lead to a materially different result. Id. at 12. "To satisfy 2.326(a)(3), the evidence supporting Contention 7 must show a likelihood that the contention would be resolved in NEC's favor." Id. The NRC Staff argues that neither the motion nor the Blanch declaration demonstrates how NEC's evidence shows that it is likely to prevail. Id. The Staff reiterates that its Inspection Report characterized the cable issue to be of "very low safety significance." Id. at 13. The Staff notes that the NRC inspection "was not conducted to review the adequacy of Vermont Yankee's aging management programs" because they were not in

effect yet. Id. It adds that neither the motion nor the Blanch declaration acknowledges Entergy's already-existing AMP for cabling submergence or its recent amendment to that AMP to address specifically low-voltage cable submergence. See id. at 14. The Staff also points out that NUREG/CR 7000 does not specify that it is necessary to preclude submergence of safety-related cables, but instead requires that they be managed to assure that they can perform their intended functions even if submerged. Id. at 14 (citing Mathew Affidavit at ¶ 8). For all of these reasons, the Staff avers that NEC would not prevail on this contention. The NRC Staff thus claims that, even if admitted, a hearing on Contention 7 is not likely to lead to a materially different result – the showing that required by 10 C.F.R. § 2.326(a)(3) to reopen this proceeding. Id. at 13-14.

In its reply, NEC asserts that its motion to reopen this proceeding meets the three criteria of 10 C.F.R. § 2.326(a)(1)-(3). First, NEC argues that Contention 7 raises a significant safety issue. NEC notes that "NRC Regulations, Guidance, and industry literature are rife with references to the serious safety implications of vulnerable electrical cables." Reply at 5. NEC says that "the central issue . . . whether or not the Entergy VY LRA proposes or has in place . . . an adequate program . . . to address the deleterious effects of moisture or wetness on safety-related cables is of grave safety significance." Id. at 6. NEC avers that the fact that NRC's May 10, 2010, Inspection Report characterized the wet cabling issue to be of "low safety significance" is irrelevant because the inspection was done in the context of the NRC reactor oversight process which uses both consequences and probability to assess the significance of a problem, whereas "in most NRC regulation . . . safety significance is considered . . . in an absolute or prescriptive sense." Id. NEC quotes NUREG/CR7000 as follows: "Electric cables are one of the most important components of a nuclear power plant because they provide the power needed to operate safety-related equipment and to transmit signals . . . used to perform

safety operations." Id. at 7. NEC quotes Mr. Roy Matthews of the NRC Staff to the same effect. Id.

As to the timeliness of the motion to reopen, NEC takes the position that the May 10, 2010 Inspection Report was the critical event.

> Entergy wastes a good deal of type explaining the many opportunities NEC had to take issue with the AMPS from early 2006 to the present. What was wrong with the AMPs was not readily apparent until events at Vermont Yankee revealed the details of Entergy's intentions which are masked in the omissions, vagaries, and generalities of the AMPs. Who could have guessed that Vermont Yankee had a history of flooded non-waterproof cables to which the AMPs would be applied, or that Entergy had no intention of preventing periodic and sustained immersion of these many cables? No, NEC's first notice of a fly in the ointment was the Inspection Report of May 10, 2010.

Id. at 3. NEC argues that "[w]hat NEC saw in the May 10th NRC inspection report was a revelation of detail regarding Entergy's approach to the AMP that NEC could not have been expected to ascertain from the LRA, or the SER and FSER." Id. at 9.

NEC says that even the Inspection Report was not enough to form the basis of Contention 7, and that NEC used the time subsequent to the issuance of the report, until its filing of the motion on August 20, 2010, to attempt to gather further information on Entergy's handling of flooding and electrical cabling and regarding the industry and regulatory context of this issue. Id. at 3, 8-11. In this regard, NEC notes that on September 3, 2010, Entergy filed a "supplement" to its LRA that extends the AMP for medium-voltage cables to also cover low-voltage cables. Id. at 11. NEC questions the status of this supplement. Id. at 11-12.

NEC then insists that its motion satisfies the "materially different result" requirement of 10 C.F.R. § 2.326(a)(3), because the Board's admission of Contention 7 "is certain to result in an amendment to and/or conditioning of the initial order(s) and a positive effect on assurance of adequate protection of public safety." Id. at 3. NEC maintains that it has put forth "ample testimony" to show "defects and omissions in Entergy VY's buried, underground, and difficult-to-

access safety-related electrical cable AMP." Id. at 12. According to NEC, the Board will reasonably conclude that Entergy's cabling AMP is "wholly inadequate to assure protection of public health and safety," and that upon admitting the new contention, the Board will order Entergy to correct these deficiencies. Id.

Finally, NEC states that Contention 7 is within the scope of this license renewal proceeding as that contention relates not to ongoing compliance issues, but instead to "events to come" during the period of extended operation at VYNPS. Id. at 14. NEC replies that the Blanch declaration provides sufficient factual basis for Contention 7 in satisfaction of 10 C.F.R. § 2.309(f)(1)(v). Along with its reply, NEC submitted another declaration of Mr. Paul Blanch in which Mr. Blanch further "addresses uncertainties and fallacies" that NEC claims are contained within NRC and Entergy filings and in the LRA, SER, NUREG 1800, NUREG/CR 7000, and other EPRI documents as they relate to Entergy's AMP for cabling at VYNPS. Id. at 15-16.

B. Arguments Related to Motion to Strike the Second Blanch Declaration

On September 23, 2010, Entergy moved to strike the declaration of Paul Blanch that NEC attached to its reply (the Second Blanch Declaration). Entergy's Motion to Strike the Declaration of Paul Blanch (Sept. 23, 2010) (Motion to Strike). Entergy argues that 10 C.F.R. § 2.326(b) requires that the motion to reopen (not the reply) be accompanied by affidavits that set forth the factual and or technical basis for the movant's claim that that the criteria of 10 C.F.R. § 2.326(a)(1)-(3) have been met. Id. at 1. Entergy cites to Commission precedent prohibiting litigants from using a reply to cure an otherwise deficient contention. Id. at 1-2. Such a practice, says Entergy, "would effectively bypass and eviscerate [the Commission's] rules governing timely filing, contention amendment, and submission of late-filed contentions" and "deprives other parties of an opportunity to challenge the new evidence." Id. (internal citations omitted). Entergy states that the NRC Staff supports the motion to strike. Id. at 2.

NEC opposes the motion to strike.[16] It asserts that the Second Blanch Declaration was "offered as a direct response to the affidavits of NRC Staff and Entergy witnesses; in part to affirm that a live dispute on the adequacy of the LRA with respect to aging management of certain safety-related electrical cables remains." NEC Answer at 3. NEC argues that a reply may include arguments and alleged facts that are focused on the legal or logical arguments presented in the answers and may focus on the "legal or factual arguments . . . raised in [the] answers."[17] Id. at 3 (citations omitted). NEC argues that no regulation prohibits appending an affidavit to a reply and that past practice supports it. Id. at 4. NEC asserts that the Second Blanch Declaration was not an attempt to cure an otherwise deficient contention, and that if Entergy thought that it was deprived of an opportunity to challenge any new evidence in the reply then it should have filed a request for leave to reply to NEC's reply. Id. at 5-6.

IV. ANALYSIS AND RULING ON MOTION TO REOPEN

Our analysis of NEC's motion to reopen starts with the words of the regulation – 10 C.F.R. § 2.326(a). It establishes three key criteria that must be met:

> (a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:
>
> 1. The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
> 2. The motion must address a significant safety or environmental issue; and
> 3. The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

[16] New England Coalitions' Answer and Opposition to Entergy's Motion to Strike the Declaration of Paul Blanch (Sept. 30, 2010) (NEC Answer).

[17] Id. (citing Nuclear Management Co., LLC (Palisades Nuclear Plant), CLI 06-17, 63 NRC 727, 732 (2006).

10 C.F.R. § 2.326(a)(1)-(3) (emphasis added). For the reasons stated below, the Board concludes that the motion to reopen does not satisfy this regulation.

A. Timeliness

The timeliness of NEC's motion to reopen depends primarily on an assessment as to when NEC first knew, or should have known, enough to raise the issues presented in Contention 7. If the motion and the proposed new contention are based on material information that was not previously available, then it qualifies as timely. See, e.g., 10 C.F.R. § 2.309(f)(2). Thus, we need to examine Contention 7 and the information upon which it is based.

The essence of Contention 7, quoted in full supra, is that Entergy's AMP relating to the aging and degradation of buried, below grade, underground, or hard-to-access safety-related electrical cables due to submergence and wet environments is inadequate under 10 C.F.R. §§ 54.21(a) and 54.29(a).[18] As we understand it, NEC asserts that the AMP is inadequate because it: (1) fails to provide for frequent enough monitoring and inspections of the cables (Motion at 13, 22, Blanch Declaration at 12), (2) fails to provide for appropriate and/or frequent enough testing of the cables (Motion at 13, 21; Blanch Declaration at 11), (3) fails to preclude the submergence of electrical cables (Motion at 13, 17, 19-20; Blanch Declaration at 9), and (4) fails to cover low-voltage cables (Motion at 9, 13, 20; Blanch Declaration at 10).

[18] At one point, NEC seems to be arguing that the LRA contains no AMP that addresses the subject of age related degradation of safety-related electrical cables. Blanch Declaration at 8 ("A diligent review of the LRA . . . finds no such [TLAA or AMP]"). This is patently incorrect because the LRA contains an AMP for such cables. Entergy Answer at 27, Entergy Declaration at 1-3. Thus, we do not examine this issue. Likewise, given that the LRA contains an AMP, there is no need for a TLAA on the same subject. See 10 C.F.R. § 54.21(c)(1)(i)-(iii). Thus, we do not need to analyze the TLAA prong of Contention 7.

For purposes of the timeliness analysis under 10 C.F.R. § 2.326(a)(1), the question is: when should these issues have been identified and asserted? Are these complaints based on new information, or on information that has been available for a significant time period?

NEC asserts that NRC's May 10, 2010 Inspection Report was the critical event and that its motion and new Contention 7 are timely. In its motion, NEC quotes the NRC Inspection Report, which states that on November 29, 2009, an inspection of VYNPS by Entergy revealed that, of the 57 manholes or handholes that were inspected, 12 contained cables that were submerged, two of which (manholes MH-32(SH) and MH-33(SH)) contained safety-related cables. Motion at 11 (quoting NRC Inspection Report at 19-20). These two safety-related cables were control cables for the emergency diesel generators and control and power cables for the generator's fuel oil transfer pumps. Id. (quoting NRC Inspection Report at 20). The Inspection Report indicated that Entergy responded by dewatering the affected manholes and initiating a preventive maintenance plan to insure proper conditions. Id. Thereafter, the NRC inspectors determined that this situation was a violation "because Entergy staff did not select and review safety-related cables in the environment in which they were found." Id. at 10 (quoting NRC Inspection Report at 4). The inspectors stated that "the finding is more than minor because if left uncorrected, the performance deficiency had the potential to lead to a more significant safety concern. Specifically, the inspectors noted that the insulation of continuously submerged cables would degrade more than dry or periodically wetted cables which would lead to failure." Id. at 12 (quoting NRC Inspection Report at 4). The inspectors characterized the finding to be of "very low safety significance (Green) because it was a design or qualification deficiency which was confirmed to have not resulted in a loss of operability or functionality. Specifically, the continuously submerged cables were not designed or qualified for that

environment but were still capable of performing their design functions." Id. (quoting NRC Inspection Report at 4).

We reject the proposition that the May 10, 2010 Inspection Report entitles NEC to file a new contention at this late date. The Inspection Report revealed that, at two locations, safety-related electrical cables were, in fact, submerged. But the potential for such submergence, and the need to manage and address it, has been apparent from the outset of this proceeding. Indeed, the potential for wetting or submergence is a central point of Entergy's AMP. As Entergy pointed out, its LRA includes an AMP for medium-voltage cable. Entergy Declaration at 1. The AMP provides for biennial inspections of manholes, the draining of water as needed, and the testing of cable insulation at least every ten years. Entergy Answer at 7; Entergy Declaration at 1-3. NEC does not challenge these assertions. If Entergy's AMP suffers from the inadequacies enumerated by NEC, then it has been inadequate since the beginning of this proceeding.[19]

The issues raised in Contention 7 are not new. NRC's GALL Report, issued in September 2005, addresses the issue of aging management for safety-related electrical cables and clearly recounts that "there could be potential for long-term submergence." See GALL Report at XI.E-8. Likewise, issues associated with the aging and degradation of safety-related electrical cable due to submergence and wet environments have been the subject of an EPRI report and of numerous formal issuances by NRC, including documents issued by NRC in 1989, 2002, and 2007. Motion at 14. NEC stated that the issues raised in Contention 7 were "within Entergy's ability to foresee" and that Entergy failed to consider these issues "despite ample

[19] In its motion, NEC notes its then-pending petition for Commission review of LBP-09-9 in its argument for timeliness of its motion to reopen. See Motion at 5. However, pendency of NEC's petition for Commission review of LBP-09-9 does not absolve NEC of its duty to file a motion to reopen in a timely fashion.

notice of the issue by both EPRI and NRC." Id. (Emphasis added). If NEC is correct, then the same principle applies to the timeliness of the motion to reopen. Given this background, including the fact that the potential for submergence was anticipated and part of the AMP, the May 10, 2010 disclosure that two safety-related cables were actually submerged is not an unexpected revelation that entitles NEC to raise these issues now. As we see it, Contention 7 is based on information that has been available since the beginning of this proceeding (e.g., the AMP and NRC and Industry concerns associated with the wetting or submergence of safety-related electrical cables) and the motion to reopen is not timely under 10 C.F.R. § 2.326(a)(1).[20]

B. Significance

The regulation specifies that a motion to reopen "must address a significant . . . safety issue." 10 C.F.R. § 2.326(a)(2). Raising a safety issue is not sufficient. The safety issue must be significant. Thus, we must examine Contention 7 to assess whether the safety issues it raises are significant.

NEC and its expert, Mr. Blanch, cite several authorities for the proposition that the integrity of safety-related electric cables is an important part of the safety of a nuclear power plant. "Electric cables are one of the most important components in a nuclear plant because they provide the power needed to operate safety-related equipment and to transmit signals to and from the various controllers used to perform safety operations in the plant." Motion at 6 (citing NUREG/CR 7000). NEC notes that cables play a vital role in the operation of a nuclear

[20] Although 10 C.F.R. § 2.326(a)(1) normally requires that the motion to reopen be timely, it also specifies that "an exceptionally grave issue" may be considered even if the motion is not timely. For the reasons stated in section IV.A, we conclude that the motion is not timely. While the Board declines to determine whether NEC has established that the issues raised in Contention 7 are "significant," see section IV.B, exceptional gravity is a much higher threshold. We have no doubt in concluding that NEC has failed to show that the issues raised in Contention 7 are "exceptionally grave."

power plant, citing 10 C.F.R. §§ 54.4 and 54.21. Id. at 17; Blanch Declaration at 4. Mr. Blanch alleges that NRC Information Notices and Generic Letters recount that

> Recent incidents involving early failures of electric cables and cable failures leading to multiple equipment failures . . . suggest that licensee approaches to cable testing, such as in-service testing, surveillance testing, preventative maintenance, maintenance rule [sic], etc., do not fully characterize the condition of cable insulation nor provide information on the extent of aging and degradation mechanisms that can lead to cable failure.
>
> Blanch Declaration at 12.

Our analysis of 10 C.F.R. § 2.326(a)(2) is as follows. We agree that Contention 7 raises a safety issue. The wetting and submergence of safety-related electrical cable is a safety issue. We also agree that the general topic – the integrity of safety-related electrical cables in the context of wetting and submergence of such cables – is significant. But it is less clear whether the specific issues raised in Contention 7 are significant safety issues.

As discussed above, Contention 7 alleges four basic defects in the AMP for safety-related electrical cable: (1) biennial inspections are not frequent enough, (2) decennial testing is not frequent enough, (3) the AMP does not preclude submergence, and (4) it does not cover low-voltage cables. But, even acknowledging the general significance of managing the aging of safety-related electrical cables, it is unclear, based on NEC's pleadings, how or why these specific complaints are significant. What, specifically, is wrong with Entergy's inspection and testing schedules, and why do these schedules raise a significant safety issue? Should the AMP prescribe annual inspections? Quarterly? Is the difference between biennial and quarterly a "significant" safety matter? Other than arguing that the general topic is important (which we posit), NEC has given us little or nothing that might support the conclusion that these alleged problems are safety significant. Likewise, while the total preclusion of wetting or submergence below grade cables might be ideal, it does not appear that the mere existence of such wetting or

submergence is automatically significant. Indeed, the potential for such wetting or submergence seems to be assumed, otherwise there would be no need for an AMP to manage it. As to NEC's complaint that the AMP should cover low-voltage cables, even if this issue were significant, it has been rendered moot by Entergy's September 3, 2010 supplement to its AMP which expanded the AMP to cover low-voltage safety-related cables. NEC never even addresses this point. See Reply at 11-12.

In the end, we remain uncertain as to whether NEC has shown that the issues in proposed new Contention 7 raise a "significant safety . . . issue" as required by 10 C.F.R. § 2.326(a)(2).[21] Given that we hold that the motion to reopen fails to satisfy 10 C.F.R. § 2.326(a)(1) and (3), it is unnecessary to decide the "significance" prong of this regulation.

C. Materially Different Result Likely

The third criterion that must be met by a motion to reopen is that the motion "must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially." 10 C.F.R. § 2.326(a)(3). The possibility of a materially different result is insufficient. The movant must show that it is likely that the result would have been materially different, i.e., that it is more probable than not that NEC would have prevailed on the merits of the proposed new contention. NEC has not satisfied this criterion. NEC devotes two sentences to this issue:

> Had the newly proffered evidence been considered initially, it is reasonable to assume, based on the weight of the evidence and the safety significance of the issue, that, in keeping with 10 CFR §54 [sic] the Board would have rejected Entergy's LRA pending a submittal and demonstration of an adequate AMP or TLAA for electrical cables susceptible to wetting or

[21] In the May 10, 2010 Inspection Report, the NRC Staff characterized the finding with regard to the safety-related electric cables as being of "very low safety significance" in part, because no loss of operability or functionality was found to have occurred. Inspection Report at 4. This characterization, while worthy of some consideration, was of a different legal requirement (the AMP is not even in effect now) and for a different purpose, and is not central to our analysis of 10 C.F.R. § 2.326(a)(2).

> submergence, because in considering the evidence it is highly unlikely that the Board could have positively contributed to a Commission finding that aging management review, aging management planning, or aging analysis had been properly performed in keeping with 10 CFR § 54.29(a) and 54.21(a). (Please see EPRI Report above, NRC Inspection Report following, and the Declaration of Paul M. Blanch (attached). [sic].

Motion at 7 (emphasis added).

These are conclusory assumptions and predictions as to what NEC thinks that the Board would have done. Certainly, if the Board had admitted Contention 7 and if the Board had ruled in NEC's favor on the merits of Contention 7, then the result would have been materially different (e.g., some additional conditions would have been imposed on Entergy relating to the frequency of testing safety-related cable). But NEC has not demonstrated that it is likely that it would have prevailed on the merits of Contention 7. For example, we see nothing in NEC's pleadings, or in either declaration of Mr. Blanch, that makes it appear likely that NEC is correct that biennial inspections or decennial testing is inadequate. A motion to reopen requires more than a possibility. It requires a demonstration that the petitioner is likely to succeed. That is lacking here.

In conclusion, the Board holds that the motion to reopen this proceeding fails to satisfy 10 C.F.R. § 2.326(a)(1) and (3). Given that this is fatal to the motion, we find it unnecessary to analyze the other sixteen hurdles that are also applicable to this motion. Accordingly, NEC's motion to reopen is denied.

V. RULING ON MOTION TO STRIKE

Given our ruling on 10 C.F.R. § 2.326(a), Entergy's motion to strike the Second Blanch Declaration is moot. Even assuming the admissibility of all of Mr. Blanch's statements in the second declaration, NEC has not satisfied the requirements to reopen this proceeding at this late date.

VI. ORDER

The Board denies NEC's motion to reopen this proceeding to admit new Contention 7 for failure to satisfy 10 C.F.R. § 2.326(a)(1) and (3). This decision shall constitute the final decision of the Commission forty (40) days from the date of its issuance unless, within fifteen (15) days of its service, a petition for review is filed with the Commission in accordance with 10 C.F.R. §§ 2.1212 and 2.341(b). Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of this action. 10 C.F.R. § 2.341(b)(1).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD[22]

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

/RA by E. Roy Hawkens for:/

Dr. William H. Reed
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 28, 2010

[22] Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) licensee Entergy; (2) intervenors Vermont Department of Public Service and New England Coalition of Brattleboro, Vermont; (3) the NRC Staff; (4) the State of New Hampshire; and (5) the Commonwealth of Massachusetts.

ATTACHMENT A

REGULATORY FACTORS APPLICABLE TO NEC MOTION TO REOPEN TO INTRODUCE A NEW CONTENTION

Criterion	Regulation
1. Motion is timely (or raises exceptionally grave issue)	10 C.F.R. § 2.326(a)(1)
2. Significant safety or environmental issue	10 C.F.R. § 2.326(a)(2)
3. Demonstrate that a materially different result would have been likely	10 C.F.R. § 2.326(a)(3)
4. Accompanied by affidavits that (a) set forth factual or technical bases for claim that 10 C.F.R. § 2.326(a)(1)-(3) criteria have been satisfied; (b) by competent individuals; (c) with evidence that is admissible; and (d) with each of the foregoing criteria separately addressed	10 C.F.R. § 2.326(b)
5. Satisfy 10 C.F.R. § 2.309(c)	10 C.F.R. § 2.326(d)
6. Good cause, if any, for failure to file on time	10 C.F.R. § 2.309(c)(1)(i)
7. Nature of right to be a party	10 C.F.R. § 2.309(c)(1)(ii)
8. Nature of interest	10 C.F.R. § 2.309(c)(1)(iii)
9. Possible effect on requestor's interests	10 C.F.R. § 2.309(c)(1)(iv)
10. Availability of other means to protect interests	10 C.F.R. § 2.309(c)(1)(v)
11. Extent represented by other parties	10 C.F.R. § 2.309(c)(1)(vi)
12. Extent to which participation will broaden the issues or delay the proceeding	10 C.F.R. § 2.309(c)(1)(vii)
13. Extent to which participation will assist in developing a sound record	10 C.F.R. § 2.309(c)(1)(viii)
14. Specific statement of issue of law or fact	10 C.F.R. § 2.309(f)(1)(i)
15. Brief explanation of the basis for the contention	10 C.F.R. § 2.309(f)(1)(ii)
16. Demonstrate that the issue is within scope	10 C.F.R. § 2.309(f)(1)(iii)
17. Demonstrate that the issue is material	10 C.F.R. § 2.309(f)(1)(iv)
18. Provide concise statement of the alleged facts or expert opinion which support the contention	10 C.F.R. § 2.309(f)(1)(v)
19. Provide sufficient information to show that a genuine dispute exists on a material issue of law or fact.	10 C.F.R. § 2.309(f)(1)(vi)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (RULING ON MOTION TO REOPEN PROFFERING NEW CONTENTION) (LBP-10-19) have been served upon the following persons by U.S. mail, first class, or through NRC internal mail.

Office of Commission Appellate
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Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket

Atomic Safety and Licensing Board Panel
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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of October 2010