

November 15, 2010 (8:00a.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

November 12, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

ENTERGY NUCLEAR VERMONT YANKEE, L.L.C.,
and
ENTERGY NUCLEAR OPERATIONS, INC.
(Vermont Yankee Nuclear Power Station)
(License Renewal Application)

No. 50-271-LR
ASLBP No. 06-849-03-LR
November 12, 2010

PETITION FOR COMMISSION REVIEW OF ASLBP MEMORANDUM AND ORDER
(Ruling on New England Coalition Motion to Reopen and Proffering New Contention)

Now comes New England Coalition through its *pro se* representative, Raymond Shadis, respectfully requesting Commission review of the October 28, 2010 ASLBP (“Board”) Memorandum and Order (LBP-10-19) in the above captioned matter.

The Order denies New England Coalition’s motion to reopen (“Motion”) this proceeding¹ (August 20, 2010) for the purpose of considering a new contention, designated by the Board as, “Contention 7”.

Contention 7 challenges the adequacy of Entergy’s aging management program (AMP) and time-limited aging analysis (TLAA) with regard to the effects of moist or wet environments on buried, below grade, underground, or hard-to-access safety-related electrical cables. Motion at 8.

The Board Order 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)”.

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

The Board Order closes with the advice, "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)."

NEC asserts herein that a Commission review of the Board Order is appropriate because:

- (1) The order is based on a biased and arbitrarily selective review of the pleadings and evidence.
- (2) The order is framed in a cribbed and overly narrow view of the acceptance criteria in 10 C.F.R §2.326. (
- 3) The order is in contravention of ALSB and Commission precedent as to interpretation of timeliness.
- (4) The order is, by contortion of the intent of NRC rules, a violation of the public's hearing rights under the Atomic Energy Act.
- (5) The order is counterproductive with respect to the Commission's established policy goals of increasing public confidence and maintaining safety
- (6) The order is effectively dereliction of the Board's duty to investigate all significant safety issues brought before it.
- (7) The order is enabling of continuing NRC failure to enforce its safety regulations
- (8) The order is an effective endorsement of the licensee's plan to continue ignoring NRC regulations during its proposed extended period of operation.
- (9) The order is a result of a rigid reading of NEC's Motion, Affidavit, and Reply that allows zero slack for a *pro se* litigant.
- (10) The order is a mockery of NRC's perennial reassurance in public meetings and scoping sessions on license amendments and renewals that the public 'can always ask for a hearing on genuine issues of concern. '

NEC respectfully requests further, for the foregoing reasons and the good reasons stated below and in its Motion to Reopen the Hearing and for the Admission of New Contentions (Aug. 20, 2010), that the Commission overturn the Board's

Order and remand NEC's Contention 7 to the Board for a hearing on its merits.

I. BACKGROUND

This adjudicatory proceeding is about Entergy Nuclear Vermont Yankee, L.L.C.'s January 25, 2006 application to renew its license to operate the Vermont Yankee Nuclear Power Station (license renewal application or LRA).² Construction of the Vermont Yankee Nuclear Power Station, a GE Mark I boiling water reactor, was begun on December 11, 1967, incorporating the design elements, engineering, and materials of that time.

Due to changing regulatory requirements (purportedly incorporating improvements to safety), the Vermont Yankee design could not be licensed today.

The current operating license was issued on March 21, 1972; prior to issuance of the final General Design Criteria; and prior to issuance of Appendix R, and other applicable design guidance and regulation that purportedly enhance safety and for which compliance would be required of any new reactor construction and license. It is inescapable that imposing a license renewal on the public in the vicinity of a reactor in compliance with obsolete and superseded design entails a lesser level of protection of public health and safety than the licensing of improved designs that are compliant with enhanced regulation.

It might reasonably be assumed that NRC would be sensitive to the disparity in public protection and compensate by just that much more liberality in administering the hearing rights of citizens upon whom living with extended operation of antiquated and less-safe plants is imposed.

But that is not the case.

Following Entergy's March 21, 2006 License Renewal Application ("LRA"), as is the practice, NRC held public information meetings in the plant vicinity. Although NRC Staff told the public that they would have the opportunity to request a hearing, they gave no account of the

rigors of sponsoring a contention through to an actual hearing, a year or more away and following numerous LRA amendments and NRC Staff's Safety Evaluation Report. No hint is given that having established a valid dispute with the licensee over the content (or lack) of the LRA, citizen intervenor's would then be subjected not just to the licensee's opposition, but a veritable legal tag-team match against the full and vigorously applied resources of both the licensee AND NRC Staff Office of General Counsel.

Citizen intervenors would not likely guess that NRC Staff's opposition could be more vigorous and mean-spirited than that of the licensee. In the present proceeding NRC Staff at first refused to acknowledge that it was an opponent of the intervenors, claiming that the Staff (Office of General Counsel) was serving the proceeding as interpreter and arbiter of NRC regulation. Nonetheless, with rare exception in the succeeding motions practice, NRC Staff supported the licensee's positions and opposed those of the intervenor. Only late in the game, just prior to the issuance of the Safety Evaluation Report and upon an order from the Board, did the Staff finally declare whether it was litigating opposed to the LRA or in favor of it.

Nor was the NRC Staff forthcoming in discovery or disclosures regarding the numerous amendments to the LRA that Entergy filed; withholding documents as subject to 'deliberative privilege' until they were useless to intervenors.

After more than a year of adjustments and amendments to the LRA failed to resolve fundamental questions of time limited aging analysis ("TLAA") or an aging management plan ("AMP") of reactor component metal fatigue that NEC had raised, the Staff agreed with Entergy that it should be permitted to round out its insufficient analyses sometime after the license was renewed but before entering the period of extended operation. In other words, NRC Staff struck a deal with the licensee to take resolution of a safety issue, that was raised by intervenors, out of hearing space where it would be next-to-impossible for the citizen intervenors to either access in

full or act on (without leaping the deliberately onerous nineteen legal hurdles for reopening of the hearing and admission of a new contention recounted in the Board's Order of October 28, 2010).

NEC raised the question of what effect this NRC Staff maneuver would have on its hearing rights.

While it did not respond in writing to NEC's question, the Board nonetheless ordered in a Partial Initial Decision (PID) , November 24, 2008, that the licensee perform TLAA on an additional sample of components before the Board would issue a Full Initial Decision . The Board stipulated that Entergy must now take the exactly same approach to TLAA as it had taken on an earlier set of sample components; and that NEC could, if new information emerged; that is, if NEC had reason to believe the new TLAAs were invalid, file a new contention. However, said the PID, NEC could not "rehash" issues raised in litigating the earlier sample set of components regarding basic inputs to the analysis, such as heat transfer coefficients, dissolved oxygen content, distance to laminar flow, and so on.

Entergy filed the new TLAAs with the Board and the parties. NEC's expert witness, a PhD nuclear engineer with more than 40 years of experience in review of reactor design at both the Atomic Energy Commission and NRC

NRC Staff then submitted a Petition for Review of LBP-08-25 (PID) (Dec. 9, 2008). Because, Staff claimed, the Board had erroneously interpreted NRC regulation with respect to TLAA and AMP requirements and had exceeded its authority in ordering the new sample set TLAA.

In a July 12, 2010 Memorandum and Order (CLI-1 0-17), the Commission overturned the PID with respect to its requirement of additional reactor component metal fatigue analysis.

In that same Memorandum and Order the Commission responded to NEC's Petition for

Review of the Board's Full Initial Decision²; upholding the Full Initial Order, save in one respect, that NEC be allowed, as it had been promised by the Board, to submit an amended contention 2.

NEC had also filed by letter a request that the Commission suspend the LRA proceeding pending resolution of issues raised in an NEC 10 C.F.R. §2.206 petition regarding, primarily, the aging management of underground, subsurface, and difficult-to-access, safety-related and radionuclide-bearing piping at Vermont Yankee.

In its July 12, 2010 Order, the Commission also turned down NEC's request, but apparently divining NEC's perception that new information with respect to aging management issues was emerging at Vermont Yankee that in NEC's view potentially should be incorporated into the LRA proceeding, the Commission noted,

We observe, however, that the proceeding will remain open during the pendency of the remand. During that time, 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. (page 10, note 37)

NEC in the interim had been apprised of details of Entergy's approach to aging management of safety-related non-qualified electrical cables susceptible to wetting or submergence; details not available in the LRA. These details emerged over a period of several weeks beginning with the issuance of an NRC Inspection Report, which revealed to NEC for the first time that Entergy Vermont Yankee's newly deployed (November 2009) AMP for cables susceptible to wetting or submergence had no provision for actually mitigating the effects of wetting or preventing the wetting of cables. Management consisted only of plans to detect wetting, by semi-annual inspection of manholes, for example; plans to test cables for degradation but not plans to remove unqualified cables from harm's way or replace them with qualified cables; and plans, pathetically short-sighted, to shorten the duration of submergence by pumping water

² *NRC Staff's Petition for Review of the Licensing Board's Partial Initial Decision, LBP-08-25* (Dec. 9, 2008) (Staff Petition); *New England Coalition's Petition for Review of the Licensing Board's Full Initial Decision, LBP-09-09* (July 23, 2009) (NEC Petition)

found in semi-annual inspections out of manholes. A full range of more effective prevention and mitigation techniques (effective aging management) was immediately apparent to NEC. NEC then, believing that this single report, provided insufficient basis for a new contention diligently sought additional information in the form of dialogue with NRC Region 1 and NRR Staff at an Annual Assessment Meetings (June 14, 2010) and a search of NRC, academic, and trade literature; as well as monitoring communications and public statements from Vermont Yankee through mid-August 2010.

The Board issued a Scheduling Order, which reiterated the Commission's note to the effect that NEC and Vermont (still an interested state party, albeit, inactive) were free to file new contentions, in conformity with 10C.F.R.326 and based on genuinely new information, during the period of pendency of the remand. The schedule set the deadline for all intervenor filings at August 20, 2010. NEC saw that it simply could not allow more time to slip away while it engaged in a research project because any attempt to file after August 20th was certain to meet with the Board's disfavor.

Initially, NEC intended to file contentions regarding AMP on buried piping (an continuing and emerging issue at Vermont Yankee) and electrical cables, however NEC's resources have been nearly exhausted with over four years of litigation on the LRA and so a choice had to be made. Unqualified safety-related electrical cables presents the far greater risk to public safety at nuclear power stations, and NEC has the able assistance of a volunteer expert, an electrical engineer with 40 years of experience in nuclear maintenance and operation.

NEC had also received notice that its 2.206 petition on leaking pipes and NRC oversight would be taken up by NRC with investigations requested by NEC incorporated into NRC's follow-up the high-publicized leaks of tritiated Vermont Yankee process

water to local groundwater³.

In consideration of the foregoing, on August 20, 2010, NEC submitted its Proposed Contention [7], which 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) .

On September 3, 2010, Entergy filed an Amendment to the LRA (styled a Supplement) addressing the issue of aging management of non-qualified low voltage cables⁴, susceptible to wetting, virtually identical to the AMP for medium voltage cables filed in the original (January 26, 2006) LRA. NEC can find no regulation that allows filing a “supplement” or amendment to an LRA before a renewed license is issued and after the record in an LRA hearing is closed. If the citizens hearing rights and rights to reasonable notice are to be preserved then such a supplement must either be held until the renewed license is issued and then filed as a license amendment, or it must be filed as an amendment to the LRA triggering an opportunity for a hearing, at least for the parties, if not the interested public. If NRC Staff is involved in this sordid little attempt to bypass the LRA review process and the citizen’s hearing rights and the Commission supports it, then the Commission’s goal of increased public confidence is utterly defeated and NRC’s hearing process is further exposed as a hollow exercise. In any case, the “Supplement” is an open admission by Entergy that its original cables AMP was deficient and if need be it provides additional “new” information to support admission of NEC’s proposed Contention 7.

On September 14, 2010 NRC Staff and Entergy filed Opposition and Answer (respectively) to NEC’s August 20, 2010 Motion. On September 20, 2010, NEC filed its reply.

On September 24, 2010, Entergy filed a Motion to Strike the Reply Declaration of NEC’s

³ More recently, NEC has been informed that a Director’s decision is expected in January (E-mail, James Kim, Project Manager, USNRC, October 26, 2010)

⁴ NEC understands low-voltage cables to include instrumentation and control cables vital to nuclear safety and nuclear accident mitigation.

expert Paul M. Blanch. On September 30, 2010, NEC provided an Answer to Entergy's Motion.

On October 28, 2010, the Board issued its Order denying New England Coalition's motion to reopen this proceeding (August 20, 2010) for the purpose of considering a new contention, designated by the Board as, "Contention 7". \

II. THIS PETITION SATISFIES COMMISSION STANDARDS FOR REVIEW

A. Governing Regulation - 10 C.F.R §2.34 1(b)(1) provides for discretionary Commission review of a presiding officer's decision . The Commission may consider a petition for review under 10 C.F.R. § 2.341 (b)(4) if the petition raises a substantial question with respect to one or more of the following:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy, or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.³⁹

B. Affirmation -This Petition demonstrates one or more of the preceding § 2.341 (b)(1) criteria which are brought to exposition in the following discussion.

III. DISCUSSION

In a preliminary section of its order, the Board explains the 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 the merits of the matter, the adjudicatory proceeding should be over, absent some extenuating circumstances.⁵ [emphasis added]

Order at 5,6.

NEC finds it hard to reconcile the Board's upfront invocation of disfavor of entirely new contentions and the necessity of extenuating circumstances in considering new contentions because 'what's over is over' with the fact that the Board is reading NEC's Motion to Reopen in part because of the Commission's order remanding for the purpose of permitting NEC to file a new contention on reactor component metal fatigue⁶ and further, containing , in response to NEC's concern for emerging issues , a proviso that during the period of pendency Vermont and NEC are free to file new contentions on genuinely new issues; subject to applicable regulation.

Clearly, the Board's choice is to cleave to the most stringent interpretation of the letter of the law rather than to the fair hearing spirit and assurance of public health and safety focus evident the Commission's Order.

The Board disingenuously remarks that the Commission's advice that Vermont and NEC are free to file new contentions based on genuinely new information during the pendency of the remand was in a "footnote" as if it were an afterthought, passing remark, or inadvertence; without explaining the context and therefore the importance and meaning of the footnote to the intervenors. The footnote, the Board might have said, alludes to NEC's concern implied in its letter motion to suspend the proceedings that AMP safety-related issues were then emerging at Vermont Yankee and that NEC hoped to deal with them in the context

⁵ Here the Board cites, 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).

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.

of the LRA proceeding..

The Board's righteous warning is also a striking contrast that fact that the Board accepted with out demur Entergy's unexplained September 3, 2010 filing of an amendment to its LRA in part on the subject of NEC's Motion to reopen and even after the pendency of remand has lapsed. No, 19 legal hurdles here. There is no recounting of all of the amendment and motions opportunities Entergy has had throughout this long, tedious doling out of hearing rights; no chilling invocation of 'enough-already'. It is clear that before this Board licensees get to back-and-fill and polish the application endless, irrespective of where we are in the process but the citizen intervenor must get it right the first time; one strike, you're out. Certainly, this Board's contrasting treatment of the litigants is an odd measure of NRC impartiality and even-handedness.

The Board's Order, under the general heading Positions of the Parties, then discusses a range of highly selected excerpts from the pleadings; summarizing and comparing NRC Staff, Entergy, and NEC filings, including :

NEC's Motion to Reopen (August 20, 2010)

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).

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).

NEC contends that the Board made several gross factual errors in its summation of the parties' positions and in its conclusions regarding them, which, in turn informed an erroneous analysis and ruling denying NEC's Motion to Reopen. NEC will address the more

egregious of these errors below as it discusses the Board's Analysis and Ruling on Motion to Reopen (beginning at page 20)

The Board's analysis of NEC's motion to reopen begins with the words of 10 C.F.R. § 2.326(a), which establishes three key criteria, which a motion to reopen a closed record must meet:

- 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.

For the reasons stated below, the Board concludes that the motion to reopen does not satisfy this regulation. Further, the Board concludes that, given NEC's Motion fails to satisfy the criteria for a Motion to Reopen; the Board need not and would not delve into the remaining sixteen criteria, governing Late Filed Contentions and Admissibility of Timely Filed Contentions.

A. Timeliness

The Board correctly states,

... 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).

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).

Now the Board takes a sharp departure from what NEC represented in its Motion and Reply as new information, arguing that the issue of submerged electrical cables, for example, is not new. This is true but irrelevant. NEC did not claim that the issue, industry-wide, was new.

Likewise, NEC did not claim that anything that was in the LRA, and therefore available from the onset, was new. In fact NEC claimed that much of what was new regarding Entergy Vermont Yankee aging management of safety-related electrical susceptible to submergence was new because it was only vaguely described or not described at all in the LRA .

As stated in its Reply NEC directly disputes Entergy's claim that its AMP is a departure from current practice because NEC could find no significant difference in the major action components of the AMP listed in the LRA and those in today's program, except that the AMP in the LRA lacks sufficient detail to inform the reader whether Entergy will take adequate steps to preclude age-hastening submergence of non-qualified safety-related cables ; whether Entergy will institute a testing and inspection program sufficient to insure cable function, particularly for those cables that serve accident mitigated equipment, and whether Entergy will undertake adequate training of employees to address issues emerging from the discovery of submerged cables.

1. All of these issues were raised fresh in the May 10, 2011 NRC Inspection Report, which gave NEC a first glance at Entergy's approach to mitigation (exclusive of after-the-fact pumping of flooded chambers) and prevention, which could involve moisture alarms and cable relocation or replacement, but doesn't. NEC's position is first derived from the NRC's Inspection Report of Vermont Yankee dated May 10, 2010 which states:

"The inspectors identified an NCV of very low safety significance (Green) of 10 CFR Part 50, Appendix S, Criterion III, "Design Control," because 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. Entergy initiated CR-VTY-2009-04142 and CR-VTY-2010-01422 to address the issues, commenced dewatering of the affected manholes, and initiated a preventive maintenance plan to ensure proper conditions.”

And

“Two manholes, MH-32(SII) and MH-33(SII) contained safety-related cables that were submerged. *These cables were control cables for the EDGs, and control and power cables for the EDG fuel oil transfer pumps [Emphasis added].* Neither of the manholes with submerged safety-related cables contained sump pumps or other de-watering devices.”
Blanch Declaration, August 20, 2010

In the Inspection Report, NRC showed NEC what Entergy did not clearly state or clearly did not state about an AMP for the subject cables in the LRA. That’s new.

As detailed in its Motion, NEC could not immediately file a new contention on this issue because the information was insufficient to support a new contention. The NRC Inspection Report informed NEC that Entergy would put the submerged cable issue into its corrective action program, which is not accessible to the public, so NEC was forced to set an information watch to gather what further information it could from correspondence in ADAMS or from public sources.

NEC also began a search of the technical literature in order to inform its concern and substantiate its case that submergence of non-qualified safety-related cables is a grave nuclear safety issue. Among the documents was a PowerPoint presentation from an August 2010 NRC meeting led by NRC Staff’s expert witness, Roy K. Matthew, in which it is stated that safety-related non-qualified cable submergence is a very serious safety issue. This is new and it was included in NEC’s Reply filing. The fact that this information was in direct contradiction to Mr. Matthew’s testimony that, the finding related to submerged safety-related cables at Vermont Yankee described in the May 10, 2010 NRC Inspection Report does not present a significant safety issue...(Matthews Declaration at 13, September 14, 2010)

The Board’s review repeatedly misses the point of NEC pleadings and witness testimony to the degree that the review sometimes appears to be deliberately obtuse

For example, the Board takes a shot at NEC witness Blanch as follows

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. Order at p.21, note 18

In fact the Blanch declaration at 22 is preceded by a definition of the cables in question at 21.

Mr. Blanch first says at 21,

Based on my review of 10 C.F.R. § 54.21(a)(1), and 10 CFR § 54.4, electrical cables are included within the scope of § 10 CFR 54, irrespective of the design of or the applied voltage. [Emphasis added]

And then says at 22,

A diligent review of the LRA and the NRC Staff's SER finds no such [Emphasis added] Time Limited Aging Analysis (TLAA) or Aging Management Program (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.

Indeed no such TLAA or AMP for cables irrespective of the design of or the applied voltage exists in the LRA

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 Yes, but NEC has stated repeatedly in its Motion and Reply and through its witness that the NRC Inspection Report revealed more about Entergy's approach to submerged cables than did the LRA. The point, repeated throughout NEC's pleadings, is that Entergy does not include in its AMP much in the way of prevention and mitigations strategies and actions. Nor does it specify, so a reviewer can judge their adequacy, what test programs they intend to use to bound aging effects- largely the breakdown of insulation.

The NRC Inspection Report identifies a non-cited violation of very low safety significance of 10 C.F.R. Part 50, Appendix B, Criterion III, "Design Control," because certain cables had not been selected for suitability in a submerged environment. Rademacher at 16

This information is new. Nowhere in the LRA does it state that AMPS are in place to handle cables that remain in place in violation of Appendix B. But NEC does, based on what it learned from the NRC report. NEC is at a loss as to how to make the status of portions of the May 10th NRC Inspection Report as new information any plainer to a Board that simply will not have it regardless of the evidence.

Further along the Board persists with a little lecture on the contents of NUREG-1801, 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. ... 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).

This last paragraph should be ample evidence that the Board has based its ruling on timeliness on something other than an intelligent reading of NEC's Motion and Reply and the Declaration's of its witness, Paul Blanch. NEC has nowhere claimed that wet cables was unexpected or new information.

B Significance 10 C.F.R. § 2.326(a)(2). specifies that a motion to reopen "must address a significant . . . safety issue." Raising a safety issue is not sufficient. The safety issue must be significant.

NEC and its expert, Mr. Blanch, cite NRC's own study, NUREG 7000, Two Major EPRI Reports, and a recent NRC NRR working group meeting to the effect that submerged unqualified safety-related cables is a very significant safety issue. NRC Staff, Entergy, and the Board counter with oblique observation that that single incident at Vermont Yankee was rated of low safety significance in the ROP green coloring book. The proposed contention does not stem from the incident but from what the report reveals about Entergy's approach to the problem. The problem is very safety significant.

"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.

And,

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.

The Board digs deeper,

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.”

NEC is hard press to find comparative examples of exceptional gravity comparable to having electrical cables on nuclear accident mitigation systems short and burnout on the brink of a reactor meltdown. NEC failed to make this argument to the Board.

NEC, misunderstanding the Board’s grasp of matters of nuclear safety, mistakenly did not believe, given the overwhelming evidence that NEC presented regarding the seriousness (gravity) of the issue that NEC would have to.

The Board goes on,

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.

This analysis is ridiculous and unsupportable. It is tantamount to saying, “Sure, electricity can kill you, but you haven’t show me why sticking your finger in a light socket can be dangerous.”

The Board adds, 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. NEC is again at a loss. NEC did not have time to review this document and cannot understand why the Board would expect it to without any indication from the Board or NRC of the documents acceptance and incorporation into the LRA.

The Board concludes “, 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

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 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].

The Board states, “... 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.

NEC has presented the testimony of a credentialed electrical engineer with more than 40 years of experience in nuclear power generation, and cited in support of its pleadings numerous authorities, including NRC’s own technical studies, all of it more than sufficient to show that its proposed contention has merit sufficient to be heard and at some level to raise issues requiring , if nothing more, additional analysis and/or improvements to the cable amps. NEC cannot be expected to prove its case at this point for that would be an impossibly high standard; one negating the basic purpose of the hearing for which NEC is asking.

IV. CONCLUSION

NEC has amply shown in this and in its pleadings before the Board that the Motions to Reopen is timely, of great safety significance, and in a fair hearing likely, at least in some degree to prevail. In light of the foregoing and the obvious flaws in the Board's analysis of NEC's Motion to Reopen, and given the seriousness of the safety issue that NEC has raised, NEC respectfully requests that the Commission review the Board's Order, exercise its full discretion and remand this matter for hearing.

Respectfully Submitted,

New England Coalition.

By 

Raymond Shadis
New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
207-882-7801

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of
ENTERGY NUCLEAR VERMONT YANKEE, LLC
AND ENTERGY NUCLEAR OPERATIONS, INC.

(Vermont Yankee Nuclear Power Station)

November 12, 2010

Docket No. 50-271-LR

ASLBP No. 06-849-03-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of NEW ENGLAND COALITION'S Petition for Review " in the above-captioned proceeding have been served on the following as indicated by an asterisk, by electronic mail, with copies by U.S. mail, first class, this 12th day of November 2010.

Alex S. Karlin, Chair
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

William H. Reed*
Administrative Judge
Atomic Safety and Licensing Board
1819 Edgewood Lane
Charlottesville, VA 22902
E-mail: whrville@embarqmail.com

Ann Hove, Law Clerk
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ann.hove@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAmal@nrc.gov

Peter C.L. Roth, Esq*
Office of the Attorney General
33 Capitol Street
Concord, NH 3301
E-mail: peter.roth@doj.nh.gov

Anthony Z. Roisman, Esq.*
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768
E-mail: aroisman@nationallegalscholars.com

Sarah Hofmann, Esq.*
Director of Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601
E-mail: sarah.hofmann@state.vt.us

David R. Lewis, Esq.*
Matias F. Travieso-Diaz, Esq
Elina Teplinsky, Esq
Blake J. Nelson, Esq
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
E-mail: david.lewis@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com
elina.teplinsky@pillsburylaw.com
blake.nelson@pillsburylaw.com

Matthew Brock*
Assistant Attorney General, Chief
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
E-mail: matthew.brock@state.ma.us

Mary B. Spencer
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Mary.Spencer@nrc.gov

SS: 

Raymond Shadis
New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
shadis@prexar.com