

December 21, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S OBJECTION TO NEC'S NOTIFICATION OF INFORMATION NOTICE 2010-26

INTRODUCTION

The Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby objects to the "Supplement to New England Coalition's Petition for Commission Review of ASLBP Memorandum and Order" dated December 13, 2010 ("Notification"). New England Coalition's ("NEC") Notification to the Commission contends that the information contained in "Information Notice 2010-26: Submerged Electrical Cables" (Dec. 2, 2010) ("IN") is new, relevant, and material to New England Coalition's petition for review of LBP-10-19.¹ NEC's Notification asserts that NRC Staff counsel was obligated to notify the Commission of the IN.² But, as discussed below, the IN does not contain new information. Moreover, the information in the IN relates to current operating issues and is therefore neither relevant nor material to NEC's

¹ *Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC ___ (Oct. 28, 2010)(slip op.) ("LBP-10-19").

² Notification at 3.

pending petition for review of LBP-10-19,³ which, for procedural reasons, denied NEC's Motion to reopen the record in this license renewal proceeding and add a new contention on aging management of electric cables. Consequently, NEC's assertion that Commission notification is required and that the NRC Staff was remiss in not bringing it to the Commission's attention lacks merit.

BACKGROUND

On August 20, 2010, NEC filed a Motion to reopen the license renewal proceeding to admit a new contention (numbered Contention 7).⁴ The proposed new contention stated:

[The] [a]pplicant 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 electric 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)[]).

Motion at 8.

On October 28, 2010 the Board issued LBP-10-19 denying NEC's Motion to reopen the proceeding to admit new Contention 7. The denial was based upon the Board's determination that NEC's Motion did not meet the timeliness and "materially-different" outcome criteria of 10 C.F.R. §§ 2.326(a)(1) and (3) to reopen the proceeding. *Pilgrim*, LBP-10-19, 72 NRC at ___ (slip op. at 20-21). Because the Motion's failure to satisfy the requirements of C.F.R. §§ 2.326(a)(1) and (3) was dispositive, the Board did not consider whether the Motion met the remaining requirements for reopening the record and admission of a new contention. *Id.* at 27.

³ Petition For Commission Review Of ASLBP Memorandum And Order (Ruling on New England Coalition Motion to Reopen and Proffering New Contention), (November 12, 2010). ("Petition").

⁴ New England Coalition's Motion to Reopen the Hearing and for the Admission of New Contentions (ADAMS Accession No. ML102420042) ("Motion") with attached Declaration and Affidavit of Paul Blanch (Aug. 20, 2010).

Thus, the issue before the Commission is whether the Board erred in denying NEC's Motion to reopen the proceeding, not whether NEC submitted an admissible contention.

On December 2, 2010, the NRC issued "Information Notice 2010-26: Submerged Electrical Cables." Information Notices are one type of generic communication issued by the NRC.⁵ Information Notices are routinely issued by the NRC staff to generally inform the nuclear industry of a significant operating experience that may have generic applicability. See *id.* at 7. However, unlike Bulletins and Generic Letters, Information Notices are not used to convey urgent information, require a response from the licensee, do not request information, or require the licensee to take any action. See *id.*

DISCUSSION

NEC asserts that the IN contains new information that is relevant and material to NEC's Petition and thus the NRC Staff was obligated to notify the Commission of its issuance. Notification at 2-3. Although the IN deals with the same *general* topic as the new contention NEC proposed in its Motion to reopen, the information contained in the IN is neither new, relevant, nor material to NEC's pending Petition.

First, the information in the IN is not new. The instances of submerged cables discussed in the IN occurred and were documented in publicly available NRC inspection reports issued between November 2008 and May 2010. See IN at Appendix A (listing the inspection reports discussed in IN). Thus, all of the allegedly new information in the IN was available months before NEC filed its Motion to reopen on August 20, 2010. The statements in the discussion section of the IN are the same as or similar to statements in prior NRC documents, such as

⁵ See SECY-99-143, Revisions to Generic Communication Program (May 26, 1999) (ADAMS Accession No. ML992850037) (describing the types of generic communications the NRC issues).

Generic Letter 2007-01⁶; GL 2007-01 Summary Report,⁷ and NUREG/CR 7000.⁸ Four of the five passages quoted by NEC in its Notification are identical to passages in GL 2007-01 Summary Report,⁹ a document NEC relied upon in its Motion to reopen, which is a matter of record and before the Commission. See Motion at 14. Compilation of pre-existing, publicly available information into a single document does not make the information new. See *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI 10-27, 72 NRC ___ (Sep. 30, 2010)(slip op. at 14-18) (finding that a contention based on pre-existing information compiled in a safety evaluation report was untimely). Thus, offering of the information in the IN is not new and is duplicitous.

Second, the IN is not relevant or material. As NEC acknowledges, the IN “does not directly address license renewal applications.” In fact, the IN focuses on current operating issues, IN at 5-7, which as the Commission has plainly stated are outside the scope of license renewal. See *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC ___, ___ (June 17, 2010) (slip op. at 8-10) (stating that license renewal is limited to age-related issues, not issues already monitored and reviewed in the ongoing regulatory oversight processes). Thus, the current operating issues the IN addresses are not relevant or material to this license renewal proceeding, which is narrowly focused on managing the effects of age-related degradation during the period of extended operation. 10 C.F.R. § 54.30. Furthermore, the issue before the Commission is whether the

⁶ Generic Letter (“GL”) 2007-01 “Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transients,” (Feb. 7, 2007) (ADAMS Accession No. ML07360665).

⁷ GL 2007-01 “Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transient: Summary Report” (Nov. 12, 2008) (ADAMS Accession No. ML082760385).

⁸ NUREG/CR 7000 “Essential Elements of an Electric Cable Monitoring Program (January 2010) (available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr7000/cr7000.pdf>).

⁹ Compare Notification at 4-5 (quoting IN at 5, 5-6, & 7) with GL 2007-01 Summary Report at 3-4, 2, & 4, respectively.

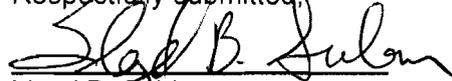
Board properly denied NEC's Motion for failure to satisfy 10 C.F.R. § 2.326(a)(1) and (3), not whether NEC's proposed new contention satisfied the contention admissibility requirements of § 2.309. Thus, the information in the IN is neither relevant nor material to the issue before the Commission.

Finally, because the IN does not contain new, relevant, or material information to this proceeding, NEC's claim that the NRC Staff should have brought the IN to the Commission's attention is not supported.

CONCLUSION

The IN did not contain new information that is relevant and material to NEC's Petition, and consequently, NEC's assertion that the NRC Staff should have notified the Commission of the IN lacks merit.

Respectfully submitted,



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Counsel for NRC Staff

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S OBJECTION TO NEC'S NOTIFICATION OF INFORMATION NOTICE 2010-26" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or, as indicated by an asterisk, by electronic mail, with copies by U.S. mail, first class, this 21st day of December, 2010.

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