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ADJUDICATIONS STAFF

RAS H-458

December 30, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

BEFORE THE COMMISSION

In the Matter of

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

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-LR

**NEW ENGLAND COALITION'S MOTION FOR LEAVE TO REPLY
TO
NRC STAFF'S OBJECTION TO NEC'S NOTIFICATION OF INFORMATION
NOTICE 2010-26 AND ENTERGY'S RESPONSE TO THE SUPPLEMENT
TO
NEC'S PETITION FOR COMMISSION REVIEW OF LBP-10-19**

Submitted by:

Raymond Shadis
Pro se Representative
Friends of the Coast
New England Coalition

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December 30, 2010

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New England Coalition ("NEC") hereby respectfully moves for (requests) leave to reply to the NRC Staff's Objection to NEC's Notification of Information Notice 2010-26 and Entergy's Response to the Supplement to NEC's Petition for Commission Review of LBP-10-19.

I. MOTION FOR LEAVE TO REPLY IS NECESSARY. This Motion for Leave to Reply is necessary because the Board's permission (leave) to file a reply is required.

The Commission's regulations do not contemplate the filing of replies under the present circumstances, that is, in reply to objections.

Even if, for the sake of argument, NEC's Petition Supplement, transmitting material new information, were taken as a petition amendment, there is no provision for reply without the permission of the Commission, as under 10 C.F.R. § 2.323(c).

II. REPLY IS WARRANTED BY UNFORESEEABLE AND COMPELLING

CIRCUMSTANCES - NEC respectfully submits that Leave to Reply should be granted because this situation presents the type of “unforeseeable” and “compelling circumstances” which warrant a reply.

A. NEC could not have anticipated NRC Staff and NextEra’s baseless and erroneous assertions that the information cited by NEC in NRC Information Notice 2010-26 “Submergence of Electrical Cables” (IN) is irrelevant and immaterial when, in fact, it is clear that the IN is relevant because it speaks directly to aging management of below grade and inaccessible electrical cables, a requisite element of all License Renewal applications. Further, the IN is material because it serves to inform the requested Commission review regarding the “materially-different” outcome threshold criterion for late contention acceptance (10 CFR § 2.326(a)(3)). Conclusions in the IN are in agreement with concerns raised by NEC in its late-filed contention and thus support the likelihood that NEC would prevail at hearing, the consequence of which would mean, with close to certainty, a materially different outcome.

B. NEC could not have foreseen the NRC Staff counsel’s claim that the IN, published December 12, 2010, is not new information when NRC Staff conclusions regarding the efficacy of certain testing procedures (for degradation or aging of electrical insulation) are to found in no preceding Generic Letter or Information Notice that NEC can discover.

C. NEC could not have foreseen NRC Staff counsel’s brazen assertion, based on the foregoing false claims, that it was under no obligation, legal, ethical, or

otherwise, to lay the newly generated on-topic staff report before the
Commission.

III. CONCLUSION – NEC respectfully submits, for all of the good reasons above, that
the Commission should allow a reply.

In keeping with ordinary practice, and with respect for NRC's goals of orderly
and timely adjudication, NEC has attached its proposed Reply for the Commission to
consider without delay if it grants the Motion or reject if it does not.

IV. CERTIFICATE OF COUNSEL

Pro Se Representative for NEC hereby certifies that in conformance with 10 C.F.R. §2.323, NEC made a sincere attempt to obtain the consent of Entergy and NRC Staff to the filing of the foregoing Motion for Leave to Relay and by extension the attached Reply, but consent was denied.

Respectfully submitted,

/s



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NUCLEAR REGULATORY COMMISSION

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I. INTRODUCTION

New England Coalition ("NEC") hereby replies to NRC Staff's Objection to NEC's Notification of Information Notice 2010-26 and Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc.'s ("Entergy") Response to the Supplement to NEC's Petition for Commission Review of LBP-10-19. NRC Staff's "Objection" was filed on December 21, 2010 and Entergy's "Response" was filed on December 23, 2010.

II. BACKGROUND

Pending before the Commission is NEC's November 12, 2010 Petition for Commission Review of ASLBP Memorandum and Order (LBP-10-19) (October 28, 2010) denying NEC's Motion to reopen the record in the Entergy Vermont Yankee license renewal proceeding and add a new contention on aging management of electric

cables not qualified for service in the environments to which they are subjected, namely prolonged wetting and submergence.

The Board held that NEC's proposed contention failed on two threshold acceptance criteria to reopen the proceeding of 10 C.F.R. 2.326(a)(1) and (3); the timeliness and "materially-different" outcome. The Board also considered whether the issue raised in the proposed contention was a safety concern of such sufficient gravity as to allow by-pass of the timeliness criterion and decided it was not.

On December 2, 2010, the NRC Staff issued Information Notice 2010-26:" Submergence of Electrical Cables" ("IN").

On December 13, 2010, NEC filed a "Supplement to New England Coalition's Petition for Commission Review of ASLBP Memorandum and Order."

On December 21, 2010, NRC Staff filed its "Objection."

On December 23, 2010, Entergy filed its "Response."

III. DISCUSSION

A. NRC Staff claims that the IN contains no new or material information. NRC Staff is in error. The IN contains information that is both new and material to the Petition for Review now before the Commission.

1. The IN contains information that is new in every respect. NEC could nowhere in a search of the preceding Generic Letters or Information Notices on cable issues (that NRC Staff cited) find the following quote (or anything in paraphrase) from the IN at Page 6¹:

¹ NRC Staff did not discuss this quote in its Objection.

Cables are not typically designed or qualified for submergence unless they are procured as submarine cables. Demonstration that a cable is designed or qualified for long-term submergence (i.e., submerged in water continuously or for extended periods of time) requires a qualification test report or certification from the cable vendor. The industry's previously conducted post-loss-of-coolant accident cable submergence tests do not demonstrate qualification for long-term cable submergence, and the use of the Arrhenius methodology by some licensees to demonstrate qualification for long-term cable submergence is invalid. For areas in which cables could be submerged, the licensee should identify and demonstrate that these cables are designed or qualified by documented testing for the required duration. (emphasis added)

The quoted paragraph goes to the heart of NEC's Contention. The license renewal application's aging-management plan of dewatering and surveillance, proposed by the Entergy Vermont Yankee and demonstrated by Entergy Vermont Yankee (as first reported in the May 10, 2012 NRC Inspection report), is largely ineffective at addressing either aging management or compliance with design criteria.

As former NRC Chairman Shirley Jackson once famously said (in NEC's presence) "Safety is compliance; compliance is safety." Something similar might be said, as a kind of corollary, of aging management and compliance with design criteria. Aging management should not be a workaround for non-compliance with design criteria.

2. If NRC Staff Counsel, the Commission, the Intervenors and the public did not know what NRC Staff would write in their IN, then it matters not whether it is cut and pasted, or lifted verbatim from earlier letters and notices; it is new to us as a statement of NRC's position and perspectives as of December 2, 2010. That fact, of itself, is "new" information.

The Commission is entitled to be informed, for purposes of their deliberations regarding the possibility of a "materially-different" outcome, that NRC Staff has, following NEC's Motion to Reopen and its Petition for Review, reiterated supporting or complimenting positions and perspectives.

B. Both NRC Staff and Entergy argue that the information in Information Notice 2010-26, "Submergence of Electrical Cables" (IN) is neither relevant nor material. They are in error. It is both.

1. As discussed above, information contained in the IN is material to the Commission's review of the criterion regarding potential for a "materially different" outcome because, as in the quotation from IN Page 6, the new information goes straight to the heart of NEC's proposed contention, and more pointedly to the question of whether or not, given a hearing, NEC is likely to prevail.

2. NRC Staff and Entergy say that the IN is irrelevant and not material because it concerns itself with current operations and the current licensing basis; and not with license renewal. This argument is both inaccurate and specious.

The IN speaks directly to "managing the effects of age-related degradation" (NRC Staff at 4). Further, all should recognize that, though the regulations regarding aging management may change, the physics of aging management does not; if anything, what may or may not work now is even less likely to work as aging progresses during the period of extended operation ("PEO").

Therefore, the NRC's observations regarding aging-phenomena at operating plants are totally relevant to considerations of how to effectively manage these phenomena during the PEO. It is, in NEC's view, terminally obtuse to suggest, as NRC Staff and Entergy seem to, that lessons-learned while ambulatory should not be carried into life-support.

More to the matter before the Commission, comparison of NRC Staff's observations with those of NEC in bringing its contention is ready, relevant and material grist for deliberation regarding the gravity of submergence of unqualified cables as a safety issue; and the likelihood that hearing on NEC's cable contention would likely result in a materially different outcome.

IV. CONCLUSION – The Commission should take notice of Information Notice 2010-26; "Submergence of Electrical Cables" as well as NUREG/CR-7000, Generic Letter 2007-01 and the 2007-01 Summary Report² and include consideration of their contents and applicability when deliberating on NEC's Petition for Review.

NRC Staff says at 4 that "the issue before the Commission is whether the Board properly denied NEC's Motion for failure to satisfy 10 C.F.R. § 2.326(a)(I) and (3), not whether NEC's proposed new contention satisfied the contention admissibility requirements of § 2.309."

NEC agrees with this statement. However, for all of the good reasons stated above, NEC affirms that the information in the IN is timely and both relevant and material to the issue before the Commission.

(IV) CERTIFICATE OF COUNSEL

Pro Se Representative for NEC hereby certifies that in conformance with 10 C.F.R. §2.323, NEC made a sincere attempt to obtain the consent of Entergy and NRC Staff to

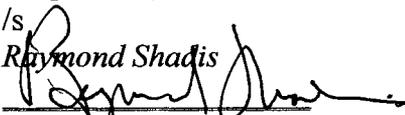
² Generic Letter 2007-01 "Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transients," (Feb. 7, 2007) (ADAMS Accession No. ML07360665); GL 2007-01 "Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transient: Summary Report" (Nov. 12, 2008) (ADAMS Accession No. ML082760385); NUREG/CR 7000 "Essential Elements of an Electric Cable Monitoring Program (January 2010) (available At www.nrc/electronicreadingroom/doc.collect/nuregs/contract/NuregCR7000).

the filing of the foregoing Motion for Leave to Reply and by extension the attached Reply, but consent was denied.

Respectfully submitted,

/s/

Raymond Shadis


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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)

December 30, 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 Motion For Leave To Reply and Reply To NRC Staff's Objection To NEC's Notification of Information Notice 2010-26 And Entergy's Response to The Supplement to NEC's Petition For Commission Review of LBP-10-19 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 30th day of December 2010.

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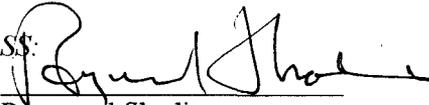
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December 30 , 2010

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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Vermont Yankee Nuclear Power Station (Petition for Commission Review)

Dear rulemaking and Adjudications Staff,

Please find attached for filing in the above captioned matter, New England Coalition's Motion For Leave To Reply and Reply To NRC Staff's Objection To NEC's Notification of Information Notice 2010-26 And Entergy's Response to The Supplement to NEC's Petition For Commission Review of LBP-10-19.

Thank you for your help with this filing,

/RS



for New England Coalition, Inc.

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