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RULEMAKINGS AND
ADJUDICATIONS STAFF

March 10, 2011

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)
(License Renewal Application)

March 10, 2011

Docket No. 50-271-LR

ASLBP No. 06-849-LR

MOTION TO STAY ANY AND ALL FINAL COMMISSION DECISIONS
IN THE MATTER OF 50-271 LR PENDING NRC DISPOSITION
OF ENTERGY LICENSE RENEWAL APPLICATION AMENDMENTS
FILED AFTER THE CLOSE OF RECORD

AND

NEW ENGLAND COALITION'S REQUEST THAT THE COMMISSION
PROVIDE AN OPPORTUNITY FOR A HEARING ON ENTERGY LICENSE
RENEWAL APPLICATION AMENDMENTS FILED AFTER CLOSE OF RECORD

I. INTRODUCTION

New England Coalition ("NEC"), through its *pro se* representative, Raymond Shadis, respectfully requests herein, the prompt attention of the U.S. Nuclear Regulatory Commission ("Commission") to three license renewal application ("LRA") amendments on the subject of an aging management program ("AMP") for non-qualified electrical cables susceptible to wetting or submergence which Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. ("Entergy") filed after the record in the above-captioned matter was closed but prior to issuance of a renewed license.

As a consequence their interstitial submission, these amendments, which Entergy styles as "supplements" do not fall within the scope of the review that is specified in the

initial notice of an opportunity for a hearing nor does it appear that they are intended to be amendments to the anticipated renewed license. Further, other than posting the proposed amendments (as supplemental information letters) in ADAMS, NRC has not served notice that Entergy's LRA amendments have been received and are under review.

The amendments all address to some the degree safety-related electrical cable issues similar to those NEC raised in its Motion to Reopen the Hearing and for the Admission of New Contention[s] (Aug. 20, 2010), and which NEC memorializes in its Petition for Commission Review of ASLBP Memorandum And Order [LBP-10-19] (Ruling on New England Coalition Motion to Reopen and Proffering New Contention), November 12, 2010.

New England Coalition, having examined the subject LRA amendments and having concluded that the aging management programs for buried, below grade, and/or hard-to-access electrical cables described therein are inadequate to assure protection of public health and safety, now respectfully requests an opportunity for a hearing and leave to file new contentions.

To be clear, although New England discourses in this filing, citing caselaw, on the Commission's right and obligation to reopen the record to review emerging safety issues, this filing is most emphatically not a motion to reopen the record. It is a motion to stay any final action or actions in the above captioned matter until the Commission considers the nature and effect of Entergy's supplemental filings or amendments, deliberates, and decides its legal obligations to provide a hearing on post-record/pre-license renewal issuance, safety-related amendments to the license renewal application.

Further, New England Coalition moves that the Commission stay all final decisions in the above captioned matter because casting a final decision without having provided the parties an opportunity for a hearing and the filing of new contentions on the subject LRA amendments will have the effect abrogating the parties' rights, under the Atomic Energy Act (42 U.S.C. § 2239) and NRC's own regulations, to litigate safety issues in significant NRC licensing actions.

Finally, casting a final decision or decisions in the above captioned matter before a completion of a substantive review and hearing regarding Entergy's post-hearing/pre-license LRA amendments would be counter to the Commission's responsibility to consider all safety issues of which it is made aware, *sua sponte* if need be, regardless of convenience or source.

II. DISCUSSION

A. Timing of the Amendments

The three amendments in question were filed more than a year after the Full Initial Decision in this matter and the most recent amendment was filed several months after the Atomic Safety and Licensing Board ("Board") rejected NEC's Contention on wet safety-related electrical cables because it was not timely, that is, not based on sufficiently recent information. In its ruling the Board rejected NEC's argument that the information was cumulatively new and further that it was evolving. The three documents quoted below plainly show that Entergy has continued and is continuing to make significant and substantive changes (amendments) to the LRA wet electrical cables AMP for Vermont Yankee. Thus, NEC's contention was filed not only on cumulatively new information, but in the context of emerging information.

B. These are amendments; not as they are titled, supplements.

Entergy's filings are amendments, not supplements and not the update of current licensing basis ("CLB") required by 10 CFR 54.21(b). Clearly, Entergy's amendments reflect changes in the AMP and not changes in the CLB that would affect the LRA and the SER. As evidenced in the extracts quoted below, Entergy alters the language of the AMP to change inspection regimens and their timing; as well as to place certain limits on the AMPs by defining for the first time, or redefining, critical terminology. Thus Entergy significantly alters or amends the LRA that existed at the time that the record was closed. Entergy's changes go well beyond merely supplemental information. Not incidentally, inasmuch as the amendments take up areas of concern expressed in the NEC proffered contention which preceded them, they can be taken as NRC Staff and Entergy admissions of the validity of at least some of the concerns expressed by NEC. The "supplements" are dated September 3, 2010, December 21, 2010, and February 4, 2010. This last amendment was not available to NEC until it was placed in ADAMS on February 17, 2011. Neither Entergy nor NRC Staff has made any disclosures to NEC since issuance of the Full Initial Order.

C. Information from Entergy's filings shows that they represent significant, substantive change in the AMPs.

1. Letter, Entergy Michael J. Colomb, Site Vice President to USNRC, "License Renewal Application Supplemental Information," Entergy Nuclear Operations, Inc., BVY 10-050, dated September 3, 2010 – ML102500065 (added to ADAMS September 15, 2010)

...This letter provides supplemental information to the LRA to address issues that have been discussed in industry correspondence concerning the possibility of non-EO inaccessible cables failing in the presence of water intrusion. Entergy has completed a review of relevant operating experience and addressed it as discussed in Attachment 1 of this letter.

New regulatory commitments to implement related aging management activities have been entered into the VYNPS License Renewal Commitment List, Revision 10... [Emphasis added]

2. Letter, Entergy Michael J. Colomb, Site Vice President to USNRC, "License Renewal Application Supplemental Information," Entergy Nuclear Operations, Inc," BVY 10-058, dated December 21, 2010 – ML103630357 (added to ADAMS January 7, 2011)

...Attachment 1 of this letter provides supplemental information to the LRA to address the inspection frequency of manholes and conduits containing in-scope inaccessible low and medium voltage cables...[Emphasis added]

3. Letter, Entergy Michael J. Colomb, Site Vice President to USNRC, "License Renewal Application Supplemental Information," Entergy Nuclear Operations, Inc," BVY 11-010, dated February 4, 2011 – ML110400114 (added to ADAMS February 17, 2011).

...Attachment 1 of this letter provides supplemental information to the LRA to address questions discussed with the NRC staff on teleconferences held on January 6, 2011, January 26, 2011 and January 31, 2011.

Revised regulatory commitments are provided in Attachment 2.

Non-EQ Inaccessible Medium-Voltage Cables

Based on a teleconference held with NRC staff on January 31, 2011, VYNPS is providing the following supplemental information. Section A.2.1.19 of Appendix A to the LRA and B.1.17 of Appendix B to the LRA are revised to specify that the testing frequency of non-EQ inaccessible medium-voltage cables is at least once every six years for consistency with the test frequency of low-voltage cables within the scope of the program and to specify that the test results will be evaluated to determine if the test frequency should be modified. Section B.1.17 of Appendix B to the LRA is also revised to add a definition of significant moisture to be consistent with Section A.2.1.19 of Appendix A to the LRA...[Emphasis added]

D. As of February 8, 2011, Entergy rightfully did not anticipate Commission approval before issuance of a NRC Staff supplemental SER.

As recently expressed by Entergy Chairman and CEO J. Wayne Leonard:

Starting in Vermont, at the end of October, the Atomic Safety and Licensing Board denied a late filed contention on hard-to-access electric cables, finding that reopening the case was not likely to lead to a different outcome. The petitioner, the New England Coalition, appealed that decision to the Nuclear Regulatory Commission. In parallel, we continued to supply the NRC staff information on related issues to assure the safety valuation report remains complete as time continues to pass. And as you know, we are over five years since our original filing.

Regardless, once the expected supplement to that safety valuation report is issued, we're expecting a positive decision from the NRC on VY [Vermont Yankee] license renewal application. Importantly, NRC regulations allow for the commission to issue the license during a pending appeal. [Emphasis added]

“Entergy's CEO Discusses Q4 2010 Results - Earnings Call Transcript”
Entergy (ETR) Q4 2010 Earnings Call February 08, 2011 11:00 am ET
(Third paragraph) Transcript by Seeking Alpha \at
www.SeekingAlpha.com.

E. The amendments cannot be folded into the LRA without an opportunity for a hearing.

As NEC stated in its Petition for review, “NEC can find no regulation that allows a free pass to filing a substantive “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.

F. The Commission has both the right and the obligation to take up late emerging safety issues through the hearing process.

1. The Commission has previously opined that because the Commission is responsible for all actions and policies of the NRC, the Commission has the inherent authority to act upon or review *sua sponte* any matter before an NRC tribunal. The Commission, as part of a regulatory agency, has a special responsibility to insure an orderly, efficient proceeding with an appropriate level of inquiry; therefore it is not held to the same standards of ripeness and exhaustion as would be inappropriate, for example, to the judiciary.

Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503, 516 (1977); North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-98-18, 48 NRC 129 (1998). Also see Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-90-3, 31 NRC 219, 228-29 (1990).

2. The Commission (as opposed to the Licensing Board) retains jurisdiction to reopen a closed case up until a license has actually been issued.

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 35-36 (2006) (citing Tex. Utils. Elec. Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-1, 37 NRC 1 (1993); Tex. Utils. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1 (1992)).

3. Until a license has actually been issued, “an operating license ‘proceeding’” remains viable and can be ‘reopened.’ Further the Commission still has authority to add conditions to a license if NRC Staff or intervenors uncover newly emerging, previously unconsidered, and significant safety impacts.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 24 (2006) (quoting Comanche Peak, CLI-92-1, 35 NRC at 6 n.5).

4. Hearings may be reopened, in appropriate situations, either upon motion of any party or sua sponte.

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973).

5. When a Board becomes aware, from any source, of a significant unresolved safety issue sua sponte reopening is required

Commonwealth Edison Co. (LaSalle County Nuclear Station, Units 1 & 2), ALAB-153, 6 AEC 821 (1973); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973).

6. When a party changes its position or seeks to materially alter its earlier presentation in a licensing proceeding, the hearing record no longer accurately reflects the reality of the case. Opposing parties should be given an appropriate opportunity to challenge any new information which is material to the resolution of issues.

Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), ALAB-944, 33 NRC 81, 115-17 (1991).

G. The effectiveness of an AMP for non-qualified safety-related electrical cables susceptible to submergence is a significant safety issue.

Electric cables are one of the most important components in a nuclear plant to provide the various plant systems function to mitigate the effects of an accident and preserve the safety of the plant during normal, abnormal, and anticipated operational occurrences.

..If cable degradation from aging or other mechanisms remain undetected, it can lead to deterioration of cable performance or result in cable failure when it is relied on to mitigate design bases accidents and transients.

..In response to Generic Letter 2007-01, licensees provided data showing that the number of cable failures is increasing with plant age, and that cable failures are occurring within the plants' 40-year licensing periods. These cable failures have resulted in plant transients and shutdowns, loss of safety redundancy, entry into limiting conditions for operation, and undue challenges to plant operators.

..The staff's safety determination during plant licensing was based on licensees meeting the regulatory requirements cited above to ensure that components such as cables will perform its design functions during the design bases events. occurring within the plants' 40-year licensing periods.

USNRC Regulatory Issue Resolution Protocol "Inaccessible or Underground Cable Performance Issues at Nuclear Power Plants" – Presentation Slides -August 19, 2009

H. Regulatory requirements affecting non-qualified safety-related electrical cables susceptible to submergence.

10 CFR Part 50, Appendix A, General Design Criterion (GDC) 2, "Design Bases for Protection Against Natural Phenomena."

10 CFR Part 50, Appendix A, General Design Criterion (GDC) 4, "Environmental and Dynamic Effects Design Bases."

10 CFR Part 50, Appendix A, GDC 17, "Electric Power Systems."

10 CFR Part 50, Appendix A, GDC 18, "Inspection and Testing of Electric Power Systems."

10 CFR 50.65(a)(1), "Maintenance Rule." 10 CFR 50.49, "Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants."

10 CFR 50.49, "Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants,

10 CFR Part 50, Appendix B, Criterion III, "Design Control."

10 CFR Part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings."

10 CFR Part 50, Appendix B, Criterion XI, "Test Control."

10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Actions."

III. CONCLUSION

For all of the foregoing good reasons, New England Coalition respectfully moves that the Commission stay any and all final Commission decisions in the matter of 50-271 LR pending NRC disposition of Entergy license renewal application amendments filed after the close of record and provide an opportunity for a hearing on Entergy license renewal application amendments filed after close of record.

(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 but consent was denied.

Respectfully submitted,



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March 10, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

Entergy Nuclear Vermont Yankee LLC
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(Vermont Yankee Nuclear Power Station)
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March 10, 2011

Docket No. 50-271-LR

ASLBP No. 06-849-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing New England Coalition "Motion To Stay Any And All Final Commission Decisions In The Matter Of 50-271 LR Pending NRC Disposition Of Entergy License Renewal Application Amendments Filed After The Close Of Record and New England Coalition's Request That The Commission Provide an Opportunity for a Hearing on Entergy License Renewal Application Amendments Filed After Close Of Record", dated March 10, 2011, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid and, where indicated by an asterisk, by electronic mail this 10th day of March, 2011.

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March 10, 2011

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RE: Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Vermont Yankee Nuclear Power Station

Dear rulemaking and Adjudications Staff,

Please find attached for filing in the above captioned matter, Motion to Stay Any and All Final Commission Decisions in the Matter of 50-271 LR Pending NRC Disposition of Entergy License Renewal Application Amendments Filed After the Close of Record

And

New England Coalition's Request That the Commission Provide an Opportunity for a Hearing on Entergy License Renewal Application Amendments Filed After Close of Record

Thank you for your help with this filing,

/RS



for New England Coalition, Inc.

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