



USCA Case #11-1177
MAY 20 2011

Document #1309248 Filed: 05/20/2011

Page 1 of 6
MAY 20 2011

RECEIVED

United States Court of Appeals,
District of Columbia Circuit

New England Coalition,)
Petitioner)
v.)
United States Nuclear Regulatory Commission,)
Respondent)

Docket No. 11-1177

Petition for Review

NEW ENGLAND COALITION'S PETITION FOR REVIEW

The New England Coalition (NEC), by and through its Pro Bono Counsel Conservation Law Foundation, hereby petitions the Court for review of the Nuclear Regulatory Commission's (NRC) issuance of a final operating license for the Vermont Yankee Nuclear Power Station owned and operated by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy"). The NRC is in violation of 33 U.S.C. § 1341(a) because it granted a federal license without obtaining either a water quality certification or a waiver thereof from the State of Vermont for the license.

"A precondition of licensing is receipt of a State certification that any discharges into navigable waters will comply with sections 301-03 and 306-07 of the Clean Water Act, 33 U.S.C. §§ 1311-13, 1316-17," *Alcoa Power Generating Inc. v. Federal Energy Regulatory Commission*, __ F.3d __, 2011 WL 1642442, at *1 (D.C. Cir. 2011); *see also* 33 U.S.C. § 1341(a)(1) ("No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence."). But Entergy has neither applied for nor received a § 401 water quality certification from the State of Vermont, though Entergy has applied for the § 401 certification in other states where it operates nuclear power plants. Because Entergy has not applied for a § 401 certification from the State of Vermont, the statutory precondition for a grant, denial, or waiver of certification has not occurred. *Id.* § 1341(a).

The NRC and NRC license applicants like Entergy are clearly obligated to comply with § 401 requirements. *See Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission*, 449 F.2d 1109, 1124–25 (D.C. Cir. 1971) (“Water quality certifications essentially establish a *minimum condition* for the granting of a license”) (emphasis added). The NRC’s interpretation of Section 401 to the contrary is entitled to no deference by the Court because the Environmental Protection Agency, and not the NRC, is charged with administering the Clean Water Act. *See Alcoa Power*, 2011 WL 1642442, at *8 (Federal Energy Regulatory Commission’s “interpretation of Section 401 is entitled to no deference by the court because the Environmental Protection Agency, and not the Commission, is charged with administering the Clean Water Act.”).

The NRC issued Renewed Facility Operating License No. DPR-28 on March 21, 2011. Exh. A. License issuance is a final agency action reviewable by the Court. Jurisdiction in this Court is proper based on 28 U.S.C. § 2342 and 42 U.S.C § 2239(b)(1). Petitioner prays that the Court grant the petition for review and set aside Renewed Facility Operating License No. DPR-28 pending a determination from the State of Vermont on water quality certification.

Dated this 19th day of May, 2011.



Christopher M. Kilian, Esq.
Conservation Law Foundation
15 East State St. #4
Montpelier, VT 05602
802.223.5992 ph, 802.223.0060 fx
ckilian@clf.org
Pro Bono Counsel for Petitioner

United States Court of Appeals,
District of Columbia Circuit

New England Coalition,)	Docket No. _____
Petitioner)	
)	
v.)	
)	
United States Nuclear Regulatory Commission,)	
Respondent)	

PETITIONER'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, Petitioner New England Coalition, a nongovernmental corporate party to the above-captioned litigation, has nothing to disclose.

Petitioner has no parent company in which any entity or person owns stock.

Respectfully submitted,

NEW ENGLAND COALITION

By 

Christopher M. Kilian, Esq.
Conservation Law Foundation
15 East State St. #4
Montpelier, VT 05602
802.223.5992 ph, 802.223.0060 fx
ckilian@clf.org
Pro Bono Counsel for Petitioner

New England Coalition, Petitioner)	Docket No. _____
)	
v.)	Petition for Review
)	
United States Nuclear Regulatory Commission, Respondent)	
)	

PETITIONER'S CERTIFICATE OF SERVICE

I, Christopher M. Kilian, on behalf of Petitioner, New England Coalition, hereby certify that on May 20th, 2011, I served¹ a copy of Petitioner's Petition for Review by mailing the same via first-class United States mail, postage pre-paid, to the following persons:

Administrative Judge
Alex S. Karlin, Esq., Chairman
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
William H. Reed
1819 Edgewood Lane
Charlottesville, VA 22902

Office of the Secretary
ATTN: Rulemakings & Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

¹ It is Petitioner's understanding that, pursuant to 28 U.S.C. § 2344, service of the petition upon Respondent is accomplished by the clerk. Nevertheless, in an abundance of caution, Petitioner is also serving the petition as described above.

Lauren Bregman, Law Clerk
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, LLP.
1726 M Street, N.W. - Suite 600
Washington, DC 20036

Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
84 East Thetford Road
Lyme, NH 03768

Matthew Brock, Esq
Assistant Attorney General
Office of the Attorney General
One Ashburton Place – 18th Floor
Boston, MA 02108

Karen Tyler, Esq.
Andy Raubvogel, Esq.
Shems, Dunkiel, Kassel & Saunders, PLLC.
91 College Street
Burlington, VT 05401

Dan MacArthur, Director
Town of Marlboro
Emergency Management
PO Box 30
Marlboro, VT 05344

Callie B. Newton, Chair
Gail MacArthur, Lucy Gratwick,
Marcia Hamilton
Town of Marlboro Selectboard
PO Box 518
Marlboro, VT 05344

Susan Uttal
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Marcia Carpentier, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

David R. Lewis, Esq.
Matias F. Travieso-Diaz
Blake J. Nelson
Pillsbury, Winthrop, Shaw, Pittman, LLP.
2300 N Street, N.W.
Washington, DC 20037-1128

Jonathan M. Rund, Esq., Law Clerk
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Eric Holder
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Lawrence J. Chandler, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Peter L. Roth, Esq.
Office of the New Hampshire Attorney General
33 Capitol Street
Concord, NH 03301



Christopher M. Kilian, Esq.
Conservation Law Foundation
15 East State St. #4
Montpelier, VT 05602
802.223.5992 ph, 802.223.0060 fx
ckilian@clf.org
Pro Bono Counsel for Petitioner