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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'88 AUG 17 P3:21

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF PUBLIC AFFAIRS  
DOCKETING & SERVICE  
BRANCH

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In the Matter of )

Vermont Yankee Nuclear )  
Power Corporation )

(Vermont Yankee Nuclear )  
Power Station) )

) Docket No. 50-271-OLA  
) (Spent Fuel Pool)

JOINT MOTION OF NEW ENGLAND COALITION ON NUCLEAR POLLUTION  
AND THE COMMONWEALTH OF MASSACHUSETTS  
FOR LEAVE TO FILE LATE-FILED CONTENTIONS

Introduction

On July 25, 1988, the NRC Staff issued an environmental assessment of the Licensee's proposed amendment to expand its spent fuel pool storage capacity, and which concluded that the proposed amendment would have no significant radiological or non-radiological impacts and no significant impact on the quality of the human environment. Pursuant to 10 C.F.R. § 2.714(a), and this Licensing Board's Prehearing Conference Order in LBP-87-17, 25 NRC \_\_\_\_, 862 (1987), the New England Coalition on Nuclear Pollution (NECNP) and the Commonwealth of Massachusetts (hereinafter referred to as "Intervenors") respectfully move that this Board admit the following late-filed contentions:

Contention 1

The Environmental Assessment prepared by the Staff fails to consider the consequences and risks posed by the proposed amendment of a hypothesized accident which would be greater than those

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previously evaluated in connection with the Vermont Yankee reactor. A self-sustaining fuel cladding fire in a spent fuel pool with high density racking could be caused by an accident which involves substantial fuel damage without full core melt, if hydrogen leaks to the reactor building. This is within the design basis for fuel damage. This risk is sufficient to constitute the proposed amendment as a "major federal action significantly affecting the environment" requiring the preparation and issuance of an Environmental Impact Statement prior to approval of the amendment.

Basis

The National Environmental Policy Act (NEPA) requires the preparation of an environmental impact statement detailing, inter alia, the environmental impact of the proposal and considering alternatives, for any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). The proposed amendment, which would substantially increase the risk to public health and safety associated with operation of the Vermont Yankee Plant, is such an action. The NRC has not prepared an environmental impact statement, as required by law and by 10 C.F.R. § § 51.20.

The Environmental Assessment prepared by the NRC incorrectly concludes that no environmental impact statement is required, based on a failure to consider significant environmental hazards posed by the proposed amendment: a self-sustaining cladding fire. According to NUREG/CR-4982, "Severe Accidents in Spent Fuel Pools

in Support of Generic Safety Issue 82," Brookhaven National Laboratory (July 1987), one postulated event initiating a severe accident in a spent fuel pool storage pool includes pool heatup due to loss of cooling water circulation capability, resulting in a self-sustaining oxidation of the Zircaloy cladding (i.e. a cladding fire) or a cladding rupture. A self-sustaining fuel cladding fire in a spent fuel pool with high density racking could be caused by an accident which involves substantial fuel damage without full core melt, if hydrogen leaks to the reactor building. See NUREG-1150, Reactor Risk Reference Document, Draft for Comment, Feb, 1987, at 4-34 and 4-35. This is within the design basis for fuel damage, and could result in severe long-term health effects (i.e. person-rem).

#### Contention 2

The Environmental Assessment prepared by the Staff fails to consider adequately the consequences and risks posed by the proposed amendment of increased worker exposure to radiation resulting from the proposed amendment. This risk is sufficient to constitute the proposed amendment as a "major federal action significantly affecting the environment" requiring the preparation and issuance of an Environmental Impact Statement prior to approval of the amendment.

#### Basis

The basis for Contention 1 is reasserted herein. The Staff environmental assessment does not provide an adequate scientific basis to assess occupational risk resulting from the proposed

amendment. The environmental assessment does not state the number of workers who will be exposed as a result of the proposed amendment. The environmental assessment postulates a 33-person rem dose goal, but fails to provide any data to support its hypothesis that the dosage will not exceed that amount.

A number of events could occur during the re-racking process that could increase the collective person-rem dose, such as if a worker breaches his or her protective garments, or drops a rack. Workers could be exposed to isotopes other than Krypton-85 from leaking rods. Worker exposure to the heavily radioactive gamma rays could result if the Purification filter does not work, and releases gamma rays to the pool. The increase in the collective person-rem dose if any of these events occur could result in an occupational risk constituting a significant radiological impact.

### Contention 3

The NRC has failed to give adequate consideration to the alternative of dry cask storage, and has thus not complied with the provisions of the National Environmental Policy Act, nor of its own rules in 10 C.F.R. Part 51.

### Basis

The bases for Contentions 1 - 3 are reasserted herein. Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(E), and NRC regulations, 10 C.F.R. § 51.30(a)(ii) and (ii), require an environmental assessment to consider such alternatives to the proposed action as may partially or completely meet the proposal's goal. Natural Resources Defense Council, Inc. v. Callaway, 524 F.2d 79, 93 (2nd

Cir. 1975). The Staff's consideration of the alternatives of dry cask storage -- called "independent spent fuel storage installation" -- is wholly inadequate. The sole reason stated by the Staff for its failure to consider this alternative is that "[t]here is little likelihood" that the design, construction, or NRC review of this new storage facility would be completed in sufficient time to meet Vermont Yankee's need for additional capacity.

The Staff has rejected an admittedly environmentally acceptable alternative because it may cause an operational inconvenience to the Licensee. The Licensee's asserted need for storage capacity in the near term (more than two years after the initial license amendment application was filed) may not be used to foreclose an environmentally-preferable alternative, particularly where the urgency is attributable to the Staff's own failure to issue an environmental assessment in a timely fashion, and the delays caused by the Licensee's failure to recognize that it has a spent fuel pool cooling system that does not meet even the current applicable safety standards. In any event, no effort is made by the Environmental Assessment to explain why dry cask storage could not be implemented in sufficient time to meet Vermont Yankee's need for additional capacity.

ARGUMENT

B. Intervenors Has Satisfied the Criteria for Admission of a Late-Filed Contention

The criteria for admission of late-filed contentions, set out in 10 CFR 2.714(a)(1)(i-v), require a balancing of the following factors: (i) good cause, if any, for failure to file on time; (ii) the availability of other means whereby the petitioner's interest will be protected; (iii) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (iv) the extent to which the petitioner's interest will be represented by existing parties; (v) the extent to which the petitioner's participation will broaden the issues or delay the proceeding. Intervenors, on balance, satisfy these criteria.

1. Intervenors Have Good Cause for the Late Filing

First, Intervenors clearly have "good cause" for their failure to file these environmental contentions on time. Intervenors proposed these contentions in a timely manner, in response to the NRC's notice of opportunity for hearing on the proposed License Amendment, and inviting intervention requests.<sup>1</sup> At that time, the NRC had yet to prepare any environmental assessment required under NEPA and the NRC's regulations. Nonetheless, Intervenors proposed several environmental contentions based on the failure of the NRC to prepare an environmental impact statement on the proposed amendment, noting that these contentions would be sub-

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1 51 Fed. Reg. 47324.

ject to change at such time that NEPA-related documents are issued by NRC. On appeal, however, these environmental contentions were disallowed by the Appeal Board as "premature."<sup>2</sup> In so ruling, the Appeal Board invited the present submission, stating "intervenors must await the issuance of the staff's environmental assessment and, then if dissatisfied with its consideration of alternatives, formulate promptly an appropriate contention in accordance with the Commission's regulations for late-filed contentions, 10 C.F.R. § 2.714(a)(1)." ALAB -869, slip opinion, at 34. As this Licensing Board recognized,<sup>3</sup> to now disallow these environmental contentions would place Intervenors in a "procedural quagmire," by now rejecting the contentions as late-filed, and would deprive Intervenors of their hearing rights due to delays not of its own making. It would also encourage the NRC to delay the issuance of environmental documents in the hopes of thereby insulating these documents from public review in an adjudicatory proceeding.

2. There Are No Other Means By Which Intervenors' Interests Will Be Protected

There is no other means to protect Intervenors' -- or the public's -- interests in the safety of the Vermont Yankee plant, than to have a thorough airing of the environmental assessment. The Staff admits that its environmental assessment does not

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2 ALAB-869.

3 LBP-87-17, at 29.

include any "generic assessment for the dry cask alternative storage." The Staff notes as well that assessments for dry cask storage made at other plants show that this option is "environmentally acceptable." Yet it declines to evaluate this alternative because of the possibility that it may not be implemented in sufficient time to satisfy the Licensee's need for storage capacity. Admission of a contention challenging the consideration of alternatives contained in the NRC's environmental assessment is the only means of ensuring that this admittedly environmentally acceptable alternative is given its due consideration.

Moreover, the fatal failure of the environmental assessment to consider the risk of a self-sustaining cladding fire directly implicates the safety of the plant, and has not been directly considered by the Licensing Board. Therefore, admission of this new contention is the only means of adequately resolving it.

3. There are No Other Parties to Represent this Interest.

Admission of these new contentions would not be repetitive or duplicative and Intervenors' interests could not be represented by other parties, as no other parties have raised these issues.

4. Admission of these Contentions Will Not Delay the Proceeding.

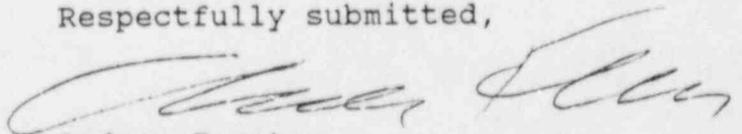
Admission of these contentions will not unduly broaden the issues or delay the proceeding. As noted above, any delay in the process is directly attributable to the Licensee's own failure to recognize that it has a spent fuel pool cooling system that does

not meet the current standards for single failure criterion, and to the Staff's failure to issue its environmental assessment in a timely fashion. Moreover, since there is still no Staff Safety Evaluation Report for the proposed amendment, the proceeding has been delayed for months. Admission of these contentions will not affect the schedule.

### III. CONCLUSION

For the foregoing reasons, Intervenors have satisfied the criteria for admission of a late-filed contention. Accordingly, the Board should grant this motions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 15, 1988, copies of the foregoing pleading were served by first-class mail, or as otherwise indicated, on all parties listed below. 88-00147 P3:21

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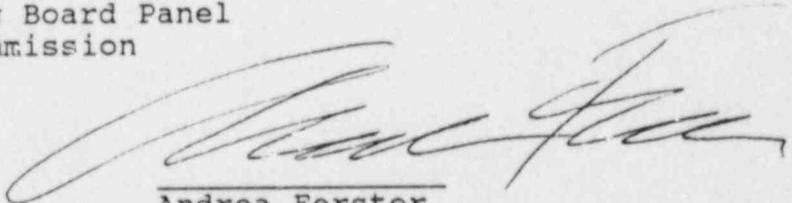
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