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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	
VERMONT YANKEE NUCLEAR POWER CORPORATION	No. 50-271-OLA-2
(Vermont Yankee Nuclear Power Station)	(Testing Requirements for ECCS and SLC Systems)
	ASLBP No. 88-567-04-OLA

LICENSEE'S RESPONSE TO "JOINT CONTENTION OF THE STATE OF VERMONT AND THE COMMONWEALTH OF MASSACHUSETTS"

Under date of June 13, 1988, pursuant to 10 C.F.R. § 2.714(b) and this Board's Order of May 24, 1988, the petitioners for leave to intervene, the State of Vermont and the Commonwealth of Massachusetts (the "Petitioners"), have filed, jointly, a single proposed contention. Because this proposed contention fails to state a basis on which the Board might grant the petitioners the relief sought, namely denial of the proposed license amendment, Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") hereby responds and says that the proposed contention should be excluded and the petitions for leave to intervene denied.

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Statement of the Case

Vermont Yankee Nuclear Power Station ("VYNPS") received its operating license in 1972. At that time, the VYNPS Technical Specifications directed that, in the event of the loss of one train of certain two-train systems, the other train of that system (as well as certain other equipment) must be tested for functionality immediately and daily thereafter.[1] This provision has remained a part of the VYNPS Technical Specifications ever since.

As more plants were licensed, however, it became accepted wisdom that such a testing regime was neither required nor appropriate, and consequently such a regime has neither been imposed on other plants nor is it contained in the Staff's Standard Review Plan for boiling water reactors.[2] The present

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[1]See *Proposed Change No. 85, Supplement 1*, Letter of Warren P. Murphy, Vice President and Manager of Operations, Vermont Yankee Nuclear Power Corporation, to U.S.N.R.C., dated December 7, 1987, Table 1. While the exact basis for the imposition of this requirement is now lost to history, knowledgeable people believe that it derived from the then-state of reliability modelling, which assumed that all failures of stand-by systems were random, and thus of a probability directly proportional to time. Today it is generally accepted that proper modelling of reliability is significantly more complex and must take into account the effects upon availability of operating or testing the system or component.

[2]Indeed, while the same requirement at one time existed in the Technical Specifications of plants of similar vintage, the Commission has allowed amendments eliminating it. See, *e.g.*, "Safety Evaluation by the Office of Nuclear Reactor Regulation Supporting Amendment to Provision Operating License Number DPR-21, Northeast Nuclear Energy Company, Millstone Nuclear Pov Station, Unit 1, Docket No. 50-245," April 16, 1981, at 2-3:

> "The current Millstone Unit No. 1 Technical Specifications, in the event a subsystem or component is out of service, require the remaining subsystem or train of that system, and the other core and containment cooling system, and emergency power sources to be tested immediately and daily thereafter.
>
> "The proposed Technical Specification changes would eliminate the present requirements to test the remaining train(s) of the ECCS and SLC systems when one train has a component out of service so that there is always at least one train in the proper

proposed operating license amendment was submitted by Vermont Yankee to bring the VYNPS Technical Specification into conformity with those approved by the Commission for other plants and with the Standard Review Plan, based on the judgment of Vermont Yankee, as the facility operator, that the existing VYNPS Technical Specification requirement decreases the overall availability of these safety systems.

The petitioners apparently contend that the VYNPS Technical Specifications should remain unchanged.

The Proposed Contention

The Petitioners have proposed a single contention that reads in its entirety thus:

> "The license amendment proposed by Vermont Yankee Nuclear Power Corporation (Vermont Yankee) is inconsistent with the protection of the public health and safety and of the environment, in that the increase in risk of failure of the subject systems occasioned by the proposed elimination of testing is not outweighed by any reduction in risk attributable to the testing changes proposed by the amendment."

Joint Contention at 1-2. In the "basis" for this proposed contention, the Petitioners advance this syllogism:

A. That whenever there has been a failure of one train of a system, there is likely to be a similar failure of the other train.

B. That testing of the other train will eliminate the risk associated with the hypothesized failure correlation.

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lineup to perform its design function. . . .

"The referenced NRC guidelines ["NRC Guidelines for Excluding Exercising (Cycling) Tests of Certain Valves During Plant Operation"] notes that when one train of a redundant system such as in the Emergency Core Cooling System (ECCS) is inoperable, nonredundant valves in the remaining train should not be cycled since their failure would cause a loss of total system function. . . . The proposed changes are in accord with the BWR Standard Technical Specifications that have been approved by the NRC. . . ."

C. That there is no countervailing increase in risk associated with immediate and continuous testing.

D. Therefore, implementation of proposed amendment will effect a net diminution in the level of safety produced by adherence to the Technical Specifications.

Joint Contention at 2.

On the strength of this proposed contention, the Petitioners seek to have this Board deny the requested amendment and remit VYNPS to testing requirements that are outdated, unnecessarily deleterious to safety, and not required for granting of an operating license.

ARGUMENT

I. DEVOID OF ANY ASSERTION THAT THE PROPOSED AMENDMENT WOULD REDUCE THE SAFETY OF VYNPS BELOW ACCEPTABLE MINIMA, THE PROPOSED CONTENTION ADVANCES A THEORY OF "COMPARATIVE SAFETY" THAT PROVIDES NO BASIS FOR THE DENIAL OF AN OPERATING LICENSE AMENDMENT.

Crucial to the admissibility of the proposed contention is the absence of the words, or the thought, that implementation of the proposed amendment would violate any substantive Commission requirement or that it would render VYNPS incapable of being operated without undue risk to the health and safety of the public. Nothing of the sort is contended, and this is by apparent design.[3]

Rather, the manifest theory of the contention devolves into this syllogism:

A. That the existing VYNPS Technical Specifications yield some level of safety, which is greater than the minimum level of safety required for licensing.

B. That the proposed Technical Specification amendment would reduce the level of safety by some amount, so that it is below the present level of safety (but still above the minimum required for licensing).

C. Therefore, the amendment is invalid and should be denied.

Prescinding entirely from the correctness of Premise B,[4] the proposed contention fails to state a basis on which the Board might legally grant the Petitioners the relief they seek (namely, denial of the amendment), because

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[3]It seems plain that the Petitioners have consciously abjured sponsorship of a contention that would fly in the face of the Commission's licensing judgments reflected in so many other BWR cases as well as in the Staff's Standard Review Plan. See note 2, *supra*.

[4]Premise A is axiomatically correct. Should this matter go to hearing, however, Vermont Yankee is prepared to demonstrate that what the Commission and the technical community have previously concluded, namely that the elimination of the testing requirements at issue *increases* safety, is clearly correct.

the concept of "comparative safety" is not recognized by the Commission for licensing purposes. So long as the proposed action is not contrary to the Commission's substantive regulations and so long as the Commission finds that "[t]here is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter," 10 C.F.R. § 50.57(a)(2), then operating authority may be conferred.[5] No different rule applies to operating license amendments.[6]

Nor would the theory of "comparative safety" make sound regulatory policy. Under the current regulations, while licensing is based upon satisfaction of minimum requirements, the regulations impose no disincentive upon exceeding those requirements -- something Vermont Yankee and other operators regularly strive for. Adoption of the theory of "comparative

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[5]Were this an operating license proceeding, a contention to the effect that the license should be denied on these grounds would be required to assert either that the applicant was not in compliance with the applicable Commission regulation -- in this case 10 C.F.R. § 50.55a(g) -- or that, on account of a regulatory gap the Commission's regulations were inadequate to assure adequate safety. *Maine Yankee Atomic Power Corp.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003 (1973). The proposed contention asserts no violation of section 50.55a(g), by apparently conscious choice, and it asserts neither the existence nor any basis for perceiving a regulatory gap -- which, given the existence of that comprehensive regulation, would surely be a difficult task.

[6]10 C.F.R. § 50.92 provides that "[i]n determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate." This mandate infers the notion that the standard of safety by which a license amendment is to be judged is one other than the standard by which an initial license would be measured. Even if the petitioners were correct that the proposed amendment reduces safety, in the studied absence of a contention that it reduces safety below the minima applicable to initial operating license cases, the assertion is without legal significance.

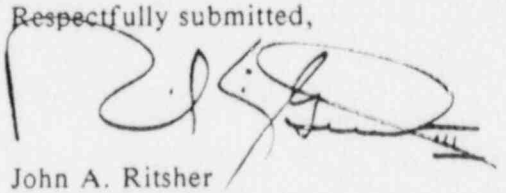
safety," however, would impose such a disincentive, for each time an operator elected to self-impose a higher standard than the licensing minima, he would forever after be locked-in to that higher standard. Achieving superior performance is laudable; being bound to such an achievement is to be avoided. The inexorable consequence of "comparative safety" as a licensing amendment norm would be that no operator would ever propose anything perceived to be above the minimum licensing requirements.

In short, the proposed contention asserts that, with the proposed amendment, VYNPS would be "less safe," but is does *not* assert that with the proposed amendment VYNPS would be "*un*safe." Stated a bit differently, the proposed contention asserts only that we are stepping backwards, *not* that we have stepped over the line. Only the latter formulations state a legally cognizable basis for opposing a license amendment.

Conclusion

For the foregoing reasons, the proposed "Joint Contention of the State of Vermont and the Commonwealth of Massachusetts" should be excluded and the petitions of those parties for leave to intervene should be denied.

Respectfully submitted,



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Dated: June 23, 1988.

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CERTIFICATE OF SERVICE

I, R. K. Gad III, hereby certify that on June 23, 1988, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to:

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Adjudicatory File
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