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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
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_____)
In the Matter of)
)
VERMONT YANKEE NUCLEAR)	Docket No. 50-271-OLA
POWER CORPORATION)	
)	(Spent Fuel Pool
(Vermont Yankee Nuclear)	Expansion)
Power Station))	
_____)

MOTION TO STRIKE NECNP "TESTIMONY"
SUBMITTED ON ENVIRONMENTAL CONTENTION 3
AND
TO DISMISS ENVIRONMENTAL CONTENTION 3
FOR LACK OF CONTEST

MEMORANDUM OF
VERMONT YANKEE NUCLEAR POWER CORPORATION
IN SUPPORT OF ITS MOTION TO STRIKE AND TO DISMISS
AND
IN RESPONSE TO BOARD QUESTIONS

SWORN WRITTEN REBUTTAL TESTIMONY OF
DONALD A. REID, PETER S. LITTLEFIELD,
DANIEL E. YASI AND KEVIN J. BURNS,
SUBMITTED BY VERMONT YANKEE NUCLEAR POWER CORPORATION
PURSUANT TO 10 C.F.R. § 2.1113(a)

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June 9, 1989.

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**MOTION TO STRIKE NECNP "TESTIMONY"
SUBMITTED ON ENVIRONMENTAL CONTENTION 3
AND
TO DISMISS ENVIRONMENTAL CONTENTION 3
FOR LACK OF CONTEST**

All parties now having had an opportunity to submit "a detailed written summary of all the facts, data, and arguments which are known to the party at such time and on which the party proposes to rely at the oral argument either to support or to refute" Environmental Contention 3, as provided by 10 C.F.R. § 2.1113(a); and the Commonwealth of Massachusetts and the State of Vermont having submitted no testimony or argument (but, rather, only statements of position on a collateral position requested by this Board in its Order of April 21, 1989); and NECNP having submitted matter relevant only to that portion of the proffered version of Environmental Contention 3 that has not been admitted into this proceeding, but nothing relating to the portion of Environmental Contention 3 that was admitted, Vermont Yankee now respectfully moves that this Board enter an order:

1. Determining that the NECNP submission is not relevant to Environmental Contention 3 as admitted by this Board on October 11, 1988, and therefore striking the same; and

2. Determining that, no party have submitted any material as required by 10 C.F.R. § 2.1113(a) *in support of* the contention as admitted by the Board on October 11, 1988, the invalidity of the contention stands uncontested and is, therefore, dismissed.

In support of this motion, Vermont Yankee says as follows:

I.

As originally submitted by NECNP, Environmental Contention 3 explicitly referred only to certain NEPA issues relating to within design-basis implications of the proposed spent fuel pool expansion by re-racking. Specifically, the explicit "basis" of the contention was limited to a critical attack upon the NRC Staff's supposed disposition of a potential dry cask storage alternative as not being available in time to fill the need to which the proposed re-racking responded. See "Joint Motion of New England Coalition on Nuclear Pollution and the Commonwealth of Massachusetts for Leave to File Late-Filed Contentions" at 4; *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Plant), LBP-88-26, 28 NRC 440, 448 (1988). However, NECNP had purported to incorporate by reference its purported "basis" for another contention, Environmental Contention 1, which explicitly dealt with beyond design-basis accident considerations.

This Board admitted Environmental Contention 3 only insofar as it did not deal with beyond design-basis accident considerations, consistent with its exclusion (earlier in the same order) of Environmental Contention 1 (and thus of the "basis" for that contention that appeared to have been incorporated by reference into the "basis" for Environmental Contention 3). LBP-88-26, 28 NRC at 450 n.16, referring to this language at 28 NRC at 446:

"In evaluating this contention against the bases provided, it is clear that, as the Applicant claims, the severe-accident portion of the basis can be no more successful in founding a basis for this contention than for Environmental Contention 1. Whether in an EIS or an EA, we must abide by the conclusions of ALAB-869 and ALAB-876 that 'beyond design basis accidents' of the type alleged cannot be considered in a license amendment proceeding of this type."

Subsequently, this Board "reconsidered" its exclusion of Environmental Contention 1, and of the portions of Environmental Contentions 2 and 3 excluded in LBP-88-26, determined to admit them, and then stayed its order of admission pending Appeal Board review. *Vermont Yankee Nuclear Power*

Corporation (Vermont Yankee Nuclear Power Plant), LBP-89-6, 29 NRC _____ (February 2, 1989), slip opinion at 18. That stay of LBP-89-6 has never been lifted and remains in effect. Consequently, so much of Environmental Contention 3 as may relate to beyond design-basis accident considerations stands excluded at the present time.

II.

The deadline for testimonial submissions under Sub-Part K was set by this Board in its Pre-Hearing Conference order of April 21, 1989. In response to that order, the Commonwealth of Massachusetts and the State of Vermont filed no testimonial submissions either in support of or in opposition to Environmental Contention 3, though each did file an additional statement relating to certain collateral matters on which the Board directed the intervenors and interested states to submit statements.

NECNP did file a testimonial submission. However, that submission is limited to certain highly qualified assertions by a purported expert witness all relating to the consequences of certain beyond design-basis accidents at Vermont Yankee. In particular, NECNP filed *nothing* in support of the proposition that the Staff erred in concluding that the so-called dry cask storage alternative did not appear to be available in time to meet the need served by the proposed operating license amendment. Neither did NECNP file *anything* concerning the comparative non-accident-based radiological environmental impacts of dry casks and re-racking, nor did it file anything about the comparative non-radiological environmental impacts of these two technologies, nor did it file *anything* about the comparative costs of the two technologies.¹ Finally, NECNP attempted no showing that the proposed amendment involves the commitment of any resources concerning the alternative use of which there is unresolved conflict, a necessary predicate to any challenge under section 102(E) of NEPA to an EA.

III.

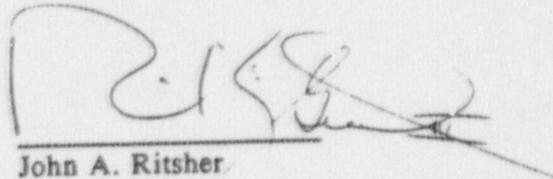
In this posture, Vermont Yankee respectfully submits that the Board should take two actions:

¹We observe, additionally, that NECNP did not submit the additional statement that the Board expressly requested, if not ordered, be filed in its Order of April 21, 1989.

A. First, the Board should determine that the testimonial submission of NECNP is categorically not relevant to the contention as admitted by the Board in LBP-88-28, and that submission should be stricken.

B. Second, the Board should determine from the responses and non-responses of the parties to the Board's Order of April 21, 1989, that the invalidity of Environmental Contention 3, as admitted by the Board in LBP-88-26, stands uncontested, and the contention should be dismissed.

By its attorneys,



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