

RAS 8749

October 26, 2004 (4:15PM)

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**ATOMIC SAFETY AND LICENSING BOARD**

Before Administrative Judges:

Alex S. Karlin, Chairman  
Dr. Anthony J. Baratta  
Lester S. Rubenstein

*In the Matter of*  
ENERGY NUCLEAR VERMONT YANKEE L.L.C.  
and  
ENERGY NUCLEAR OPERATIONS, INC.  
(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-OLA

ASLBP No. 04-832-02-OLA

October 26, 2004

**NEW ENGLAND COALITION'S**  
**MOTION AND MEMORANDUM FOR PROCEDURAL PROTECTIONS**  
**AND PROPOSED ORDER**

**I. MOTION FOR PROCEDURAL PROTECTIONS**

New England Coalition, by and through its attorney, Jonathan M. Block, hereby moves the Atomic Safety and Licensing Board in the above captioned matter to impose procedural protections that safeguard New England Coalition's participation in this case. Petitioner, New England Coalition, contends that NRC Staff's suspension of access to the Public Document Room (i.e., Agencywide Documents Access and Management System (ADAMS)) completely prejudices New England Coalition's meaningful participation in the instant proceeding by depriving New England Coalition of access to application and supplements at issue before this Board. This Board has the authority under 10

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CFR 2.319 to issue an order that will protect New England Coalition's interests and its statutory and regulatory rights under 42 U.S.C. 2239 and 10 CFR Part 2 to participate in this case, by directing the applicant and NRC Staff to directly provide necessary information to New England Coalition and setting a reasonable period of time, i.e. thirty (30) days, following the reopening of the ADAMS system in which New England Coalition will be permitted to search for any material relevant to the case that was not provided by applicant and NRC Staff pursuant to the proposed order attached hereto. In support of this motion, New England Coalition sets forth facts and legal argument below.

## **II. MEMORANDUM OF FACTS<sup>1</sup> AND LAW**

On October 25, 2004 the NRC Staff closed down access to ADAMS, i.e., access to NRC Public documents. Later that day, NRC Staff attorney in the instant case, Brooke D. Poole, Esq., sent a letter to the Judges and participants describing the NRC Staff action in closing ADAMS. The letter does not provide any information as to when ADAMS will again be available to participants in this proceeding.

As this Board knows from argument on October 21 and 22, the applicant contends that New England Coalition must be held to an extremely high standard concerning the inspection of the application at issue, an alleged obligation to

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<sup>1</sup> The facts alleged herein are supported by the declaration of New England Coalition's attorney attached hereto as Exhibit 'A'.

review all of the available information in this case. Given the size and continuous evolution of the application in this case through supplements, such a standard was impossibly difficult before the Public Document Room was closed. Now that standard is impossible to meet. Moreover, while a few more of the missing supplements were allegedly posted to the NRC's website, as of this afternoon, attempts to download these supplements gives a missing page message. This means that even if the Public Document Room Staff could obtain and send copies of documents when provided with an ADAMS accession number, that cannot be done now as there is no way to obtain the accession numbers or even research the database for available application documents.

## **B. Legal Argument**

There cannot be any meaningful participation in this case without access to the application at issue. The ability to obtain such participation is guaranteed by 42 U.S.C. 2239 and 10 CFR Part 2, as well as the Administrative Procedure Act, as applied to all NRC proceedings, 42 U.S.C. 2231, and, in particular, those portions dealing with access to information and the nature of proceedings, 5 U.S.C. §§554 et seq. New England Coalition incorporates by reference herein the cases and legal argument in the Motion to Dismiss filed in this case. The Notice in this proceeding is now more corrupt and defective, as access to the application at issue upon which the requisite notice is predicated is no longer possible for the interested affected

members of the public, per §189a of the Atomic Energy Act. New England Coalition has a right to add late filed contentions to this proceeding and to make timely supplementation to its filed contentions when information becomes available that is relevant to the issues in this case. 10 CFR §2.309(f). Without access to ADAMS exercise of that right is impossible.

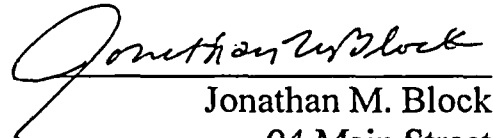
### CONCLUSION

WHEREFORE, New England Coalition requests this Board to issue the proposed Order attached hereto or such similar order as will achieve identical purposes, i.e. (1) ENVY/ENTERGY, applicant in this case, shall forthwith copy to NEC all correspondence with NRC related to all aspects of the EPU application; (2) NRC Staff shall forthwith copy to NEC all correspondence with ENVY/ENTERGY related to all aspects of the EPU at Vermont Yankee, including the Engineering Inspection; (3) ENVY/ENTERGY shall forthwith provide four complete sets of all non-confidential EPU application documents, supplements and any other EPU related matter to NEC as following: one set to NEC Technical Advisor Raymond Shadis, one set to NEC attorney Jonathan M. Block, and two set to the NEC office (for use by NEC's experts); (4) NRC Staff shall forthwith copy to NEC any and all generic correspondence, reports, or announcements related to EPU's issues at all nuclear reactors; (5) that all filing deadlines in the case will be extended by thirty (30) days from the date ADAMS is placed back on line to allow

for researching it to be sure that all application related material has been provided to NEC and allow time for requesting any material that was not provided under the other terms of this order.

If the Board is disinclined to issue the requested order, New England Coalition requests an opportunity to supplement this motion and memorandum with a brief on the issue and an opportunity to make oral argument on this matter as soon as practicable.

Respectfully submitted:



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<mailto:jonb@sover.net>

cc: Service List

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

Before Administrative Judges:

Alex S. Karlin, Chairman  
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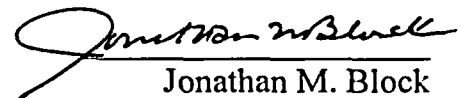
October 26, 2004

**DECLARATION OF JONATHAN M. BLOCK**

I, Jonathan M. Block, declare as follows:

1. My name is Jonathan M. Block. I am counsel for New England Coalition in the above captioned matter.
2. I have reviewed the facts set forth in New England Coalition's Memorandum of Facts and Law supporting its motion and declare those facts to be true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 26, 2004.

  
Jonathan M. Block

New England Coalition Memorandum  
Exhibit 'A'

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

Before Administrative Judges:

Alex S. Karlin, Chairman  
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<p><i>In the Matter of</i> ENTERGY NUCLEAR VERMONT YANKEE L.L.C. and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station)</p>
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Docket No. 50-271-OLA

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**(PROPOSED) ORDER**

Whereas on Monday, October 25, 2004 the Nuclear Regulatory Commission [NRC] Staff closed the NRC Document Room by closing off access to the Agency Document Access and Management System (ADAMS) until further notice;

Whereas New England Coalition, an intervenor in the above captioned case, is now unable to obtain any of the documents in this matter;

Whereas similar constrains apply to all parties and the Judges in this proceeding,

Therefore, it is hereby ordered and adjudged that:

(1) ENVY/ENTERGY, applicant in this case, shall forthwith copy to NEC all correspondence with NRC related to all aspects of the EPU application;

(2) NRC Staff shall forthwith copy to NEC all correspondence with ENVY/ENTERGY related to all aspects of the EPU at Vermont Yankee, including the Engineering Inspection;

(3) ENVY/ENTERGY shall forthwith provide four complete sets of all non-confidential EPU application documents, supplements and any other EPU related matter to NEC as following: one set to NEC Technical Advisor Raymond Shadis, one set to NEC attorney Jonathan M. Block, and two set to the NEC office (for use by NEC's experts);

(4) NRC Staff shall forthwith copy to NEC any and all generic correspondence, reports, or announcements related to EPU's issues at all nuclear reactors;

(5) All filing deadlines in the case will be extended by thirty (30) days from the date ADAMS is placed back on line to allow for researching it to be sure that all application related material has been provided to NEC and allow time for requesting any material that was not provided under the other terms of this order.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004:

\_\_\_\_\_  
Alex S. Karlin, Chairman

\_\_\_\_\_  
Dr. Anthony J. Baratta

\_\_\_\_\_  
Lester S. Rubenstein



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

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October 26, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that paper copies of the within Motion and Memorandum for Procedural Protections and Proposed Order will be served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, the 27<sup>th</sup> Day of October, 2004. In addition to the NRC Hearing Docket, persons served by electronic mail on this day are indicated below by an asterisk:

\* Administrative Judge  
Alex S. Karlin, Chair  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
[ask2@nrc.gov](mailto:ask2@nrc.gov)

\* Administrative Judge  
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Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
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\* Administrative Judge  
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U.S. Nuclear Regulatory Commission  
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\*Secretary  
Att'n: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
[hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

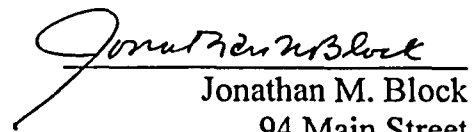
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October 26, 2004

Secretary  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATT: Rulemakings and Adjudications Staff

RE:

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ENERGY NUCLEAR VERMONT YANKEE L.L.C.  
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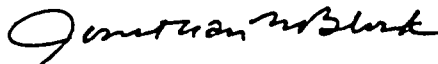
October 20, 2004

Dear Rulemakings and Adjudications Staff:

Enclosed for filing electronically please find New England Coalition's Motion and Memorandum for Procedural Protection and (Proposed) Order with supporting Declaration. The original and two copies will be mailed to your office within 24 hours.

Thank you for your cooperation in this matter.

Sincerely,

  
Jonathan M. Block  
Attorney for New England Coalition

cc: Service List (electronically)