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November 10, 2004

DOCKETED
USNRC

November 12, 2004 (7:40am)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE:

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

Docket No. 50-271-OLA

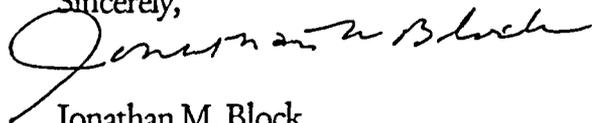
ASLBP No. 04-832-02-OLA

Dear Rulemakings and Adjudications Staff:

Enclosed for filing in the above referenced matter please find the original and two copies of New England Coalition's letter to the Atomic Safety and Licensing Board panel re ENVY and NRC Staff Production of Documents. The same documents were filed electronically with your office on this date.

Thank you for your cooperation.

Sincerely,



Jonathan M. Block
Attorney for New England Coalition

cc: Service List

Template = SECY-043

SECY-02

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Administrative Judge Alex S. Karlin, Chairman
Administrative Judge Anthony J. Baratta
Administrative Judge Lester S. Rubenstein
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC 20555-0001

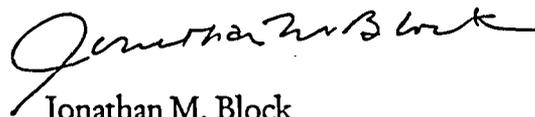
In the Matter of Entergy Nuclear Vermont Yankee LLC [ENVY] and Entergy Nuclear Operations, Inc.
(Vermont Yankee Nuclear Power Station) -- Docket No. 50-271-OLA

Dear Chairman Karlin and Judges Baratta and Rubenstein:

This is to advise the Board that New England Coalition has received the letter from Mr. Silberg on behalf of ENVY in which his client agrees to provide Mr. Shadis and me with copies of docketed information regarding EPU (EPU Supplements 15 through 20 covering September 23, 2004, to the present) to which NEC has not currently had access due to the ADAMS access restrictions.

As our attached letter to Mr. Silberg (and similar letter to Brook Poole also attached hereto) explains, this commitment to provide *some* of the necessary documents, while laudable, is in no way adequate. New England Coalition hopes Mr. Silberg's client (and the NRC Staff--which has yet to make *any* such commitment) will reconsider and elect to provide New England Coalition with the requisite access to documents necessary to meet our prosecutorial burden under 10 CFR Part 2.

Sincerely,



Jonathan M. Block
Attorney for New England Coalition

Enclosures

cc: Service List (with enclosures)

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November 10, 2004

Mr. Jay Silberg, Esq.
Shaw Pittman LLP
2300 N' St., N.W.
Washington, D.C. 20037

RE: Your letter to the ASLBP and your client's letter to Mr. Shadis and me on this date concerning the provision of some of the unavailable documents in Vermont Yankee Nuclear Power Station EPU case

Dear Mr. Silberg:

New England Coalition [NEC] has just received your letter to the ASLBP. NEC appreciates your client's cooperation, but what ENVY agreed to provide is wholly inadequate. You, yourself, would object to any contention relying entirely on the proffered documents as being without adequate *basis*. Surely you must appreciate NEC's problem with the limited material your client has agreed to provide.

NEC's participation as a full party is frustrated by the obligation, on the one hand, to review all relevant documents in the public record to develop a basis for contentions and, on the other, the absolute inaccessibility of the sole public source of such documents due to the blanket closure of ADAMS. New England Coalition is considering certain documents posted to ADAMS on or after September 25, 2004 to inform potential late filed contentions. There is, unfortunately, no way to identify or search and analyze potential supporting information. For example, by letters dated October 13 and 15, 2004, NRC staff has indicated that it has had, and continues to have, meetings and teleconferences with your client to discuss certain technical reliability and safety concerns, and that your client is at work to address those concerns. There must be documentation both of and underlying all those communications--but it is not available to NEC at this time. Moreover, NEC is now in receipt of preliminary findings from an NRC team design-basis and engineering inspection at Vermont Yankee, but, likewise, has no access to your client's and NRC's attendant documentation of this NRC 700-person-hour effort.

Your clients must realize that a moving (and hidden) target presents greater challenges to NEC's meager resources than one fixed and in plain sight. While ADAMS remains unavailable to NEC,

failure to provide the necessary information to NEC on a timely basis practically guarantees time-consuming and costly attempts to collect and sort out that information later for use in contentions (after whatever motion practice may be necessary to obtain the information).

New England Coalition (or any other affected citizenry) may have had, as you recount it, “an ironclad obligation” to review information available prior to October 25, 2004, such an ‘obligation’ reasonably applies only to ushering in a basis for the initial Request for Hearing, Initial Contentions, and New England Coalition’s Reply to Answers—all of which were filed *before* oral argument on the Contentions. NEC is now completely stymied in its efforts to conduct a proper review of public record information needed to pursue its case. I know that you have far too much experience in this field to actually mean to suggest that New England Coalition had “an ironclad obligation” to *archive in advance* in its files *all* public record information for use during the NRC’s self-initiated dark ages.¹

Be that as it may, NEC’s problem is that it cannot adequately prosecute its case in the manner required by 10 CFR Part 2 when ENVY and NRC staff communication and cooperative EPU-related endeavors continue both on and off an *inaccessible* ‘public’ record. (There is an inescapable irony in having to refer to the documents as ‘public’ and in the public domain when they are, in fact, not available to the public.) ENVY’s responses to NEC’s motion appear to confuse New England Coalition’s requests in this regard with the discovery process. Such confusion is regrettable and perhaps led your client to agree to provide just a portion of the requisite documents. Let us be clear: NEC is requesting that your client provide all EPU-related information that would be normally be available as public records in the public document collection were it not for the closing of ADAMS. In other words, NEC is seeking access through your client to what would otherwise be the publicly available information necessary to participate in this NRC proceeding under 10 CFR 2.309. Although your client’s agreement to provide the missing supplements is laudable, it falls quite a bit short of the standard you aver Part 2 requires NEC must meet to prepare and support contentions.

At the risk of further complicating ENVY’s understanding, NEC also requests ENVY to provide all documentation of EPU related applications for fuel changes and alternate source term, all requests for exemptions, technical specification changes, exceptions, notices under §50.59, and all other correspondence or documents provided to NRC that are in any way related to or support of the proposed Extended Power Uprate. These, too, are necessary preparatory materials that would otherwise be available to NEC from ADAMS.

¹ ENVY, in its answer to NEC’s Motion for Procedural Protection, optimistically predicted this information flat-lining would continue only “a few weeks”. New England Coalition has already provided the ASLB with a letter from John Cordis, Solicitor General of the NRC, characterizing the night as at least “several weeks” from November 5th.

Similarly, NEC plans to request the NRC staff to provide all correspondence, documentation, requests for additional information, and any other related and relevant material that would reasonably attach to any of the topics in the preceding paragraphs that originate with NRC staff or NRC contractors--and which would ordinarily be available to the public through the public records accessible via ADAMS. Again, such requests should not be confused with discovery as they, too, are intended to remedy the absence of access to the materials that would normally be in the 'public document room' and, hence, available to NEC via ADAMS in order to conduct an efficient proceeding in this case.

Please let me know if your client is willing to cooperate in providing the requisite documents described above so that we may take the necessary steps to move the case along. In that spirit, NEC hopes that your client will agree to stipulate to providing the requested information forthwith and on a continuing basis until such time as public access to ADAMS is fully restored.

Sincerely,



Jonathan M. Block
Attorney for New England Coalition

cc: Service List

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November 10, 2004

Ms. Brooke Poole, Esq.
Office of General Counsel
United States Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Jay Silberg's letter to the ASLBP and ENVY's letter to Mr. Shadis and me on this date
concerning the provision of some of the unavailable documents in
Vermont Yankee Nuclear Power Station EPU case

Dear Ms. Poole:

New England Coalition [NEC] has just received Mr. Silberg's letter to the ASLBP. NEC appreciates his client's cooperation, but what ENVY agreed to provide is wholly inadequate. Like Mr. Silberg, you and your clients would, no doubt, object to any contention relying entirely on the proffered documents as being without adequate *basis*. The NRC Staff must appreciate NEC's problem with the limited material ENVY agreed to provide. Naturally, our problem with the lack of material from the NRC Staff is also at issue.

NEC's participation as a full party is frustrated by the obligation, on the one hand, to review all relevant documents in the public record to develop a basis for contentions and, on the other, the absolute inaccessibility of the sole public source of such documents due to the blanket closure of ADAMS. New England Coalition is considering certain documents posted to ADAMS on or after September 25, 2004 to inform potential late filed contentions. There is, unfortunately, no way to identify or search and analyze potential supporting information. For example, by letters dated October 13 and 15, 2004, NRC staff has indicated that it has had, and continues to have, meetings and teleconferences with the licensee to discuss certain technical reliability and safety concerns, and that the licensee is at work to address those concerns. In addition to all of those communications, there must also be documentation underlying all of those communications--but none is available to NEC at this time. Moreover, NEC is now in receipt of preliminary findings from an NRC team design-basis and engineering inspection at Vermont Yankee, but, likewise, has no access to the attendant licensee and NRC documentation of this NRC 700-person-hour effort.

As NEC told Mr. Silberg, a moving (and hidden) target presents greater challenges to NEC's meager resources than one fixed and in plain sight. While ADAMS remains unavailable to NEC, failure to provide the necessary information to NEC on a timely basis practically guarantees time-consuming and costly attempts to collect and sort out that information later for use in contentions after whatever motion practice is necessary to obtain the information.

New England Coalition (or any other affected citizenry) may have had, as Mr. Silberg recounts it, "an ironclad obligation" to review information available prior to October 25, 2004, such an 'obligation' reasonably applies only to ushering in a basis for the initial Request for Hearing, Initial Contentions, and New England Coalition's Reply to Answers--all of which were filed *before* oral argument on the Contentions. NEC is now completely stymied in its efforts to conduct a proper review of public record information needed to continue to pursue its case. Mr. Silberg has far too much experience in this field to actually mean to suggest that New England Coalition had "an ironclad obligation" to *archive in advance* in its files *all* public record information for use during the NRC's self-initiated dark ages.¹

Be that as it may, NEC's problem is that it cannot adequately prosecute its case when ENVY and NRC staff communication and cooperative EPU-related endeavors continue both on and off an *inaccessible* 'public' record. (There is an inescapable irony in having to refer to the documents as 'public' and in the public domain when they are, in fact, *not* available to the public.) ENVY's responses to NEC's motion appear to confuse New England Coalition's requests in this regard with the discovery process. Such confusion is regrettable and perhaps led them to provide less than the requisite documents. Let us be clear: NEC is requesting that ENVY provide all EPU-related information that would be normally be available as public records in the public document collection were it not for the closing of ADAMS. In other words, NEC is seeking access to what would otherwise be the publicly available information necessary to participate in this NRC proceeding under the requirements set forth in 10 CFR 2.309 *et seq.* ENVY's agreement to provide missing supplements, while laudable, falls short of the standard Mr. Silberg has described as the requisite standard for supporting contentions under 10 CFR 2.309.

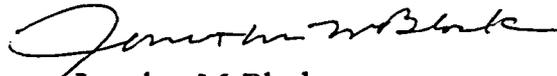
NEC is also requesting ENVY to provide all documentation of EPU related applications for fuel changes and alternate source term, all requests for exemptions, technical specification changes, exceptions, notices under §50.59, and all other correspondence or documents provided to NRC that are in any way related to or support of the proposed Extended Power Uprate. These, too, are necessary preparatory materials that would otherwise be available to NEC from ADAMS.

¹ ENVY, in its answer to NEC's Motion for Procedural Protection, optimistically predicted this information flat-lining would continue only "a few weeks". New England Coalition has already provided the ASLB with a letter from John Cordis, Solicitor General of the NRC, characterizing the night as at least "several weeks" from November 5th.

As for your clients, NEC requests the NRC staff to provide all correspondence, documentation, requests for additional information, and any other related and relevant material that would reasonably attach to any of the topics in the preceding paragraphs that originate with NRC staff or NRC contractors--and which would ordinarily be available to the public through the public records accessible via ADAMS. These requests should not be confused with discovery as they, too, are intended to remedy the absence of access to the materials that would normally be in the 'public document room' and, hence, available to NEC via ADAMS in order to conduct an efficient proceeding in this case.

Please let me know if the NRC Staff is willing to cooperate in providing the requisite documents described above so that we may take the necessary steps to move the case along. In that spirit, NEC hopes that the NRC Staff will agree to stipulate to providing the requested information forthwith and on a continuing basis until such time as public access to ADAMS is fully restored.

Sincerely,


Jonathan M. Block
Attorney for New England Coalition

Enclosures (Letter to Board with Silberg letter)

cc: Service List

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

Before Administrative Judges:
Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Lester S. Rubenstein

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

Docket No. 50-271-OLA
ASLBP No. 04-832-02-OLA
November 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that paper copies of the within Letter to the ASLBP re ENVY and NRC Staff Production of Document to NRC were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, the 10th Day of November, 2004. In addition to the NRC Hearing Docket, persons served by electronic mail on this day are indicated below by an asterisk:

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*Administrative Judge
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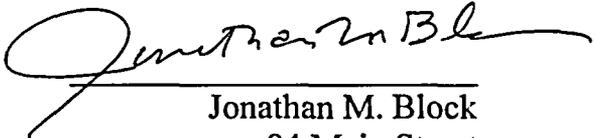
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