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DOCKETED 02/01/05
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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

February 1, 2005

INITIAL SCHEDULING ORDER

This proceeding concerns the Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc. (collectively, Entergy) application for an extended power uprate (EPU) for the Vermont Yankee Nuclear Power Station in Windham County, Vermont. This initial scheduling order, issued pursuant to 10 C.F.R. § 2.332(a), sets forth limits for filing of motions and testimony, and time frames for certain other activities in this proceeding.

I. Background

On September 10, 2003, Entergy submitted an application for an EPU to Facility Operating License No. DPR-28 for operation of the Vermont Yankee Nuclear Power Station in Windham County, Vermont. Specifically, Entergy seeks a license amendment authorizing it to increase the maximum power level of the plant from 1593 megawatts thermal (MWt) to 1912 MWt and to modify associated technical specifications of the license. The Commission published a notice of opportunity for hearing, 69 Fed. Reg. 39,976 (July 1, 2004), and the

Department of Public Service of the State of Vermont (State) and the New England Coalition (NEC) filed petitions to intervene. On November 22, 2004, this Board granted the petitioners' hearing requests and admitted four of the proposed contentions. LBP-04-28, 60 NRC ___ (Nov. 22, 2004). Subsequently the Board ruled, based on the information available at the contention admission stage, that the 10 C.F.R. Part 2, Subpart L procedures were appropriate for each of the contentions. LBP-04-31, 60 NRC ___ (Dec. 16, 2004). Subsequently, the Board admitted a newly filed contention by the State. Licensing Board Memorandum and Order (Admitting Intervenor's New Contention) (Jan. 11, 2005) (unpublished).

On January 21, 2005, this Board held a pre-hearing conference call with the parties to hear their positions with regard to the scheduling of the evidentiary hearing in this matter. In particular, the parties stated their views about scheduling as it relates to the Staff completion of the draft and final Safety Evaluation Report (SER) and Environmental Assessment (EA), and as it relates to any review by the Advisory Committee on Reactor Safeguards (ACRS). Tr. at 573-77.

II. Schedule

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, we hereby establish the following schedule for this matter.

1. February 7, 2005: Parties shall submit to the Board a revised proposed protective order dealing with the handling of documents that may contain privileged or confidential trade secrets and commercial or financial information.¹

¹ 10 C.F.R. § 2.366(a)(3) obliges each party to provide a privilege log covering all documents for which a claim of privilege or protected status is being made. The parties have agreed to waive the requirement to provide privilege logs for documents claimed to be covered by the attorney-client communication privilege or the attorney work product privilege and the Board accepts this position. Tr. at 626. Privilege logs are required for documents for which any other claim of privilege or protected status is being made, including any documents that may be covered by the proposed protective order.

2. Any request, pursuant to 10 C.F.R. § 2.310(d), that is based on a challenge to the credibility of an eyewitness, that a contention or contested matter be handled pursuant to Subpart G procedures, shall be filed as follows:
 - a. For witnesses previously listed or identified by a party pursuant to 10 C.F.R. § 2.336, within 30 days of the issuance of this order; and
 - b. For additional witnesses subsequently listed or identified by a party, within 20 days of such listing or within 10 days after service of the final witness list specified in paragraph 5 below, whichever is earlier.
3. March 15, 2005: Staff shall submit a short report estimating the date when draft and final version of the SER, EA, and ACRS report letter will be issued. The Staff shall update this estimate, even if only to reflect no change, on a monthly basis as a part of its supplementary disclosures pursuant to 10 C.F.R. § 2.336(d).
4. 30 days after issuance of the draft SER: Deadline for filing motions for summary disposition pursuant to 10 C.F.R. § 2.1205. Any answer or opposing motion shall be filed within 20 days after service of the motion.²
5. 10 days after issuance of the final SER: Deadline for filing the final list of witnesses.
6. 60 days after issuance of final SER: File initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and

² If it appears from the affidavits of a party opposing the motion for summary disposition that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Board may refuse the application for summary disposition or may order a continuance as may be necessary or just. See Rule 56(f) of the Federal Rules of Civil Procedure.

evidence (i.e., stating with particularity how the witness or evidence supports a factual or legal position). The written testimony shall be under oath or supported by an affidavit.

7. 20 days after service of the materials submitted under paragraph 6 above: File written responses and rebuttal testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. The rebuttal testimony shall be under oath or supported by an affidavit. Being in the nature of rebuttal, the response and rebuttal testimony are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously-filed initial written statement.
8. 15 days after service of the materials submitted under paragraph 7 above: File proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). In preparing the proposed direct or rebuttal questions, each party should be mindful that the examination plan is not a trial tool to assist the party; rather its purpose is to assist the Board in ensuring the development of an adequate record. Accordingly, the plan should contain a brief description of the issue or issues which the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective.
9. 15 days after service of the materials submitted under paragraph 7 above: File any requests to permit a party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b).

10. 15 days after service of the materials submitted under paragraph 9 above: Deadline for filing motions in limine.
11. Date to be determined: Board conducts oral hearing on contentions pursuant to 10 C.F.R. §§ 2.1206 and 2.1207. Oral limited appearance statements will be heard by the Board at this time. Unless the Board expressly provided otherwise, each party (including the Staff) will, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony shall personally attend and be available to testify at the oral evidentiary hearing.
12. 30 days after close of oral hearing: File proposed findings of fact and conclusions of law on contentions.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 1, 2005

³ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) licensees Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc.; (2) intervenors Vermont Department of Public Service and New England Coalition of Brattleboro, Vermont; and (3) the Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR VERMONT YANKEE L.L.C.) Docket No. 50-271-OLA
and ENTERGY NUCLEAR OPERATIONS, INC.)
)
Vermont Yankee Nuclear Power Station))
)
(Operating License Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB INITIAL SCHEDULING ORDER have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of February 2005