

February 7, 2005

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USNRC

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

February 7, 2005 (4:38pm)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT)	Docket No. 50-271
YANKEE, LLC and ENTERGY)	
NUCLEAR OPERATIONS, INC.)	ASLBP No. 04-832-02-OLA
(Vermont Yankee Nuclear Power Station))	(Operating License Amendment)
)	

**ENTERGY'S FURTHER AMENDED MOTION FOR PROTECTIVE ORDER
GOVERNING ACCESS TO AND DISCLOSURE OF TRADE SECRETS AND
CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION**

On January 12, 2005, Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") filed a motion pursuant to 10 C.F.R. §2.323 seeking that the Atomic Safety and Licensing Board ("Board") issue a Protective Order governing access to and disclosure of certain information constituting trade secrets and confidential commercial or financial information of Entergy and its vendors and contractors ("Entergy's Protective Order Motion.") In its motion, Entergy requested that the Board adopt a draft Protective Order and a Confidentiality and Non-Disclosure Agreement attached to the draft Protective Order. On January 18, 2005, Entergy filed an Amended Motion for Protective Order ("Entergy's Amended Protective Order Motion") that modified the terms of the proposed protective order to incorporate certain changes agreed upon by the parties.

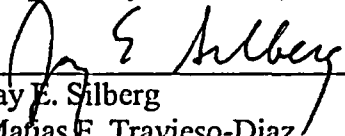
Entergy's Amended Protective Order Motion was discussed at the telephone prehearing conference held by the Board and the parties on January 21, 2005. Tr. 631-658. The Board raised concerns about the proposed protective order that had been submitted with Entergy's

Amended Protective Order Motion and directed Entergy to submit a modified protective order, after consultation with the other parties, that addressed the Board's concerns.¹ Tr. 658.

Since the telephone prehearing conference, Entergy has undertaken to modify the proposed protective order to address the concerns expressed by the Board, and has consulted with counsel for the Vermont Department of Public Service ("DPS"), the New England Coalition ("NEC") and the NRC Staff, with respect to modified proposed protective order. All parties have agreed to a modified Protective Order of the form attached hereto,² although the Staff remains of the view, as it expressed in the telephone prehearing conference, that it should not be subject to the provisions of the modified Protective Order.

Accordingly, Entergy's Amended Protective Order Motion is hereby withdrawn. For the reasons stated in that motion and herein, Entergy requests that the Board issue a modified Protective Order in the form attached.

Respectfully submitted,



Jay E. Silberg
Mafias F. Travieso-Diaz
Douglas J. Rosinski
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037-1128
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Counsel for Entergy Nuclear Vermont Yankee,
LCC and Entergy Nuclear Operations, Inc.

Dated: February 7, 2005

¹ The concerns raised by the Board included the need to include in the protective order a requirement that the proprietary documents be marked as such (Tr. 633-34); a directive that the period for raising objections to the asserted proprietary nature of a document not be linked to the starting date of the hearing (Tr. 634-35, 655-56); and the need for the protective order to deal explicitly with the treatment of proprietary documents included in pleadings and otherwise used at a hearing (Tr. 656-57).

² The modified Protective Order enclosed with this Further Amended Motion shows in redline the changes from the Protective Order submitted with Energy's Amended Protective Order Motion.

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)	
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ENTERGY NUCLEAR VERMONT)	Docket No. 50-271
YANKEE, LLC and ENTERGY)	
NUCLEAR OPERATIONS, INC.)	ASLBP No. 04-832-02-OLA
(Vermont Yankee Nuclear Power Station))	(Operating License Amendment)
)	

MEMORANDUM AND ORDER
(Protective Order)

This Protective Order governs the disclosure and use in this proceeding of certain documentation containing proprietary trade secrets and commercial and financial information of Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") and Entergy's vendors and contractors. Pursuant to this Protective Order, counsel, employees, consultants and others representing the Vermont Department of Public Service, ("DPS") the New England Coalition ("NEC"), and the NRC Staff ("Staff") shall be permitted access to documentation containing proprietary trade secrets and commercial and financial information of Entergy and Entergy's vendors and contractors upon the following conditions:

1. Entergy shall identify those documents for which it seeks protection as proprietary by marking the first page of each such document with a conspicuous "Proprietary" label.

Documents identified by Entergy as "proprietary" shall be deemed to contain proprietary trade secrets and commercial and financial information required to be held in confidence pursuant to

the policy reflected in 10 C.F.R. §§ 2.390(a)(4) and 9.17(a)(4) (“Proprietary Information Required to Be Held in Confidence”). If any party does not agree to treat a specific document identified by Entergy as “proprietary” as requiring confidential treatment hereunder, such party may request, ~~no later than forty-five (45) days prior to the scheduled date for a hearing~~ ninety (90) days of its receipt of a such document, in this proceeding, or no later than seven (7) business days after receipt of such a document if the document is received ~~less than forty—five days~~ prior to the scheduled date of the hearing, that the Atomic Safety and Licensing Board (“Board”) rule on whether the document at issue should be held in confidence under the terms of this Protective Order. In determining the issue of whether the document should retain its “proprietary” designation, the burden shall be on the party claiming such “proprietary” status for the document. Pending a ruling by the Board, the documents in question shall continue to be held in confidence as provided herein. Should the Board rule that any documents should not be held in confidence, unrestricted use of such documents shall not take place until the later of ten business days after the Board so orders, or, if Entergy files an interlocutory appeal or requests a stay of such ruling, the date upon which such appeal or request is decided; provided, however, that such period of time may be extended in accordance with any stay ordered by the Board or a reviewing court.

2. Only individual counsel, consultants, employees and others representing DPS, NEC or the Staff may have access to documents deemed to contain Proprietary Information Required to Be Held in Confidence. Such documents shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except those engaged in the conduct of this proceeding and who, in the reasonable opinion of the party who has received such documents, need to know the information contained in the documents in order to carry out their responsibilities in this proceeding. Individuals with access to such documents may make copies of and take notes on the confidential information contained in the documents, but such copies and notes become subject to the terms of this Protective Order.

3. Any person permitted access to documents deemed to contain Proprietary Information Required to Be Held in Confidence shall execute the attached Confidentiality and Non-Disclosure Agreement.

4. Counsel, consultants, employees and others representing a party who receive documents subject to the terms of this Protective Order shall maintain the confidentiality of the information contained therein as required in the attached Confidentiality and Non-Disclosure Agreement, the terms of which are incorporated herein.

5. All pleadings, testimony, exhibits and correspondence in this proceeding that contain Proprietary Information Required to Be Held in Confidence pursuant to this Protective Order shall:

a. Be served by electronic mail (except for attachments to such pleadings which are not already in electronic format), with an additional paper copy served in a single, opaque envelope by United States first class, registered, express, or certified mail, internal NRC mail, messenger-courier, or overnight delivery service;

b. Include an attached cover sheet identifying the pleading or correspondence as containing Proprietary Information Required to Be Held in Confidence and a cover letter that describes the contents of the pleading or correspondence without reference to such information;

c. Be served only on the Board, the NRC's Office of the Secretary, and persons authorized to receive such information pursuant to this Protective Order.

6. A party intending to file or submit any pleadings, testimony, exhibits or correspondence in this proceeding that contain Proprietary Information Required to Be Held in Confidence shall notify counsel for Entergy, as soon as the party is aware of the likely use of the document and, to the fullest extent possible, no less than ten days prior to such filing or submittal of the party's intention to make such a filing or submittal and the identity of the documents that are included or used therein, so as to enable Entergy to file with the Board an affidavit establishing that the documents in question are subject to withholding from public disclosure

pursuant to 10 C.F.R. § 2.390. In the event that identification of the document is not provided at least ten days prior to its submittal, the document shall be submitted in the manner set forth in Paragraph 5, and shall be treated as proprietary by the Board and the parties until its status under 10 C.F.R. § 2.390 has been established, so long as Entergy submits, within ten days from the date on which the document is filed, an affidavit asserting the proprietary nature of the document under 10 C.F.R. § 2.390. The parties shall exercise their best efforts to ensure that the potential use of proprietary documents is identified as early as possible to facilitate expeditious resolution of any issues raised by the claim of proprietary status.

7. The treatment of documents containing Proprietary Information Required to Be Held in Confidence in connection with hearings in this proceeding shall be as follows:

a. If a party wishes to file any pleadings, testimony or exhibits that include or otherwise disclose Proprietary Information Required to Be Held in Confidence, such party shall follow the procedures described in paragraph 6 above.

b. At any hearing or conference in this proceeding in which a statement is made by a participant, or a witness is questioned, with respect to any Proprietary Information Required to Be Held in Confidence, the statement or testimony shall be given *in camera* or under other suitable conditions established by the Board, and the record of such hearing and any transcript thereof shall be withheld from distribution to the public.

8. Counsel shall take all reasonable precautions necessary to assure that Proprietary Information Required to Be Held in Confidence is not distributed to unauthorized persons. Counsel are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

79. Proprietary Information Required to Be Held in Confidence shall remain available to all parties until the later of the date that an order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding relating to such information is concluded and no longer subject to judicial review. The parties shall, within fifteen (15) days

of the later date described above, return the documents containing such information to counsel for Entergy or shall destroy that information and advise counsel for Entergy of such destruction, except that copies of filings, transcripts and exhibits in this proceeding that contain such information may be retained if they are maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. Within such time period, each party receiving Proprietary Information Required to Be Held in Confidence shall also submit to counsel for Entergy an affidavit stating that, to the best of its knowledge, all documents containing such information have been returned, have been destroyed, or will be maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. To the extent that documents that contain Proprietary Information Required to Be Held in Confidence are not returned or destroyed, they shall remain subject to the provisions of this Protective Order.

108. Counsel, consultants, employees or any other individuals representing a party who have reason to believe that Proprietary Information Required to Be Held in Confidence may have been lost or misplaced or may have otherwise become available to unauthorized persons during the pendency of this proceeding shall notify the Board and counsel for Entergy promptly of their concerns and the reasons for them.

119. Any violation of the terms of this Protective Order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this Protective Order may result in the imposition of such sanctions as the Board may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

1210. The Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February ~~January~~-xx, 2005

ATTACHMENT

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
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)	Docket No. 50-271
ENTERGY NUCLEAR VERMONT)	
YANKEE, LLC and ENTERGY)	ASLBP No. 04-832-02-OLA
NUCLEAR OPERATIONS, INC.)	(Operating License Amendment)
(Vermont Yankee Nuclear Power Station))	
)	

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify that: access to Proprietary Information Required to Be Held in Confidence is provided to me pursuant to the terms and restrictions of the Atomic Safety and Licensing Board's ("Board's") Protective Order, dated January __, 2005, in this proceeding; that I have been given a copy and have read said Protective Order; and that I agree to be bound by it. I understand that the contents of the Proprietary Information Required to Be Held in Confidence, and any notes or other memoranda, or any form of information that copies or discloses proprietary information to be held in confidence shall not be disclosed to anyone except in accordance with that Protective Order. I acknowledge that a violation of this agreement or the Protective Order, which incorporates the terms of this agreement, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of such sanctions as the Board or the Commission may deem to be appropriate.

WHEREFORE, I do solemnly agree to protect such Proprietary Information Required to Be Held in Confidence as may be disclosed to me in this NRC proceeding, in accordance with the terms of this agreement.

Name (printed): _____

Title: _____

Employed by or Representing: _____

Signature: _____

Date: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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ENTERGY NUCLEAR VERMONT)	
YANKEE, LLC and ENTERGY)	ASLBP No. 04-832-02-OLA
NUCLEAR OPERATIONS, INC.)	(Operating License Amendment)
(Vermont Yankee Nuclear Power Station))	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Further Amended Motion for Protective Order Governing Access to and Disclosure of Trade Secrets and Confidential Commercial or Financial Information" were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 7th day of February, 2005.

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

*Administrative Judge
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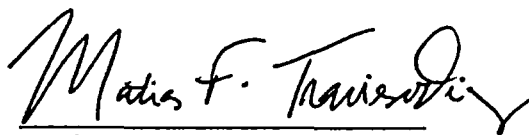
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