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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/28/05

ATOMIC SAFETY AND LICENSING BOARD

SERVED 12/28/05

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

December 28, 2005

ORDER

(Denying Entergy's Motion to Set Schedule)

Before the Board is a motion by Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc. (collectively, Entergy) requesting that we change the deadline for filing motions for summary disposition in this matter to allow Entergy to file such a motion concerning recently admitted New England Coalition (NEC) Modified Contention 4.¹ See Entergy's Motion to Set Schedule (Dec. 7, 2005) [Entergy Motion]. In essence, Entergy requests that the deadline be extended from December 2, 2005, to at least March 16, 2006.²

Entergy's motion is denied. Extending the deadline for filing of motions for summary

¹ Our Initial Scheduling Order required that motions for summary disposition be filed no later than thirty days after the issuance of the Draft Safety Evaluation Report (SER). See Licensing Board Initial Scheduling Order (Feb. 1, 2005) at 3 (unpublished). The Draft SER was issued on November 2, 2005, therefore the deadline for motions for summary disposition was December 2, 2005. On that same date, we admitted NEC Modified Contention 4. See LBP-05-32, 62 NRC (Dec. 2, 2005). Notwithstanding Entergy's suggestion to the contrary, Entergy Motion at 1, this deadline, unless extended, applies to all motions for summary disposition.

² Entergy asks that the deadline be extended until "20 days after the issuance of the Final Safety Evaluation Report." Entergy Motion at 2. The Staff estimates that it will issue the FSER on February 24, 2006. Thus, Entergy's motion would be due March 16, 2006.

disposition would tend to delay and to complicate this proceeding by distracting the parties and the Board from the tasks involved in conducting the upcoming evidentiary hearing. If Entergy's request were granted, the motion would be filed, briefed, and ruled on (in March, April and May, 2006, respectively) during the same time frame that our Initial Scheduling Order mandates that the parties file their lists of witnesses, initial written statements, rebuttal testimony, and proposed cross examination plans (March - May, 2006). This confluence is made more acute by the fact that this is a proceeding under new Subpart L, where, during the weeks preceding the oral hearing, the Board has primary responsibility to master these materials and prepare for and conduct all questioning of the witnesses at the hearing. We discussed this problem during our initial scheduling conference, Tr. at 578-79, and the admission of a new contention does not change the importance of avoiding such delays and distractions immediately preceding the hearing.

In addition, the nature of the hearing and of the contention at issue support our discretionary denial of this motion. The Subpart L hearing on this contention will be a paper exercise (unless the Board chooses to ask or allow questions) and we do not see how the essentially simultaneous submission of similar briefs and declarations supporting a motion for summary disposition will significantly assist or expedite the proceeding. Also, given the nature of NEC Contention 4, which alleges, inter alia, that Entergy's seismic and structural analyses are not "adequate, accurate, and complete in all material respects," it appears that it will involve the weighing of countervailing expert opinions on technical and factual matters (i.e., genuine issues of material fact), which are generally not amenable to resolution via summary disposition. Under these circumstances, we see no value in extending the deadline for the filing of motions for summary disposition and thus diverting resources and attention away from the efficient conduct of the impending hearing.

As the Commission has stated: "[t]here may be times in the proceeding where [motions

for summary disposition] should not be entertained because consideration of the motions would unduly delay or complicate proceedings by distracting responding parties from addressing other pending issues or distracting other parties and the presiding officer from their preparation for a scheduled hearing.” 69 Fed. Reg. 2182, 2186 (Jan. 14, 2004). Additionally, the Commission noted that the Licensing Board “is in a good position to determine when the use of summary disposition would be appropriate and would not delay the ultimate resolution of issues and the Commission will provide presiding officers the flexibility to make that determination in most proceedings.” Id. These principles are applicable here.

Accordingly, pursuant to 10 C.F.R. §§ 2.319(k) and 2.710(d)(1), Entergy’s motion is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Alex S. Karlin, Chairman
Administrative Judge

Rockville, Maryland

December 28, 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 Department and New England Coalition of Brattleboro; and (3) the NRC staff.

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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 ORDER (DENYING ENTERGY'S MOTION TO SET SCHEDULE) 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 28th day of December 2005