

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

March 17, 2006 (3:39pm)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of )

ENTERGY NUCLEAR VERMONT )  
YANKEE, LLC and ENTERGY )  
NUCLEAR OPERATIONS, INC. )  
(Vermont Yankee Nuclear Power Station) )

Docket No. 50-271

ASLBP No. 04-832-02-OLA  
(Operating License Amendment)

JOINT MOTION OF ALL PARTIES  
TO MODIFY SCHEDULING ORDER

Pursuant to 10 CFR §2.332(b), the Vermont Department of Public Service (DPS), Entergy Nuclear Vermont Yankee LLC (Entergy), the Nuclear Regulatory Commission Staff (NRC Staff) and the New England Coalition (NEC) request some modifications of the February 1, 2005 Scheduling Order to allow a modest amount of additional time for filing direct testimony, rebuttal testimony and proposed hearing questions.<sup>1</sup> Attachment A contains the current schedule and the proposed modified schedule.<sup>2</sup> The parties believe approval of these changes in the schedule will not affect the ultimate date on which hearings will be concluded and thus will not adversely affect the interests of any party or the expeditious adjudication of this

<sup>1</sup> This motion is filed on March 17, 2006 instead of March 16, 2006 (as provided for in the Licensing Board's March 14, 2006 Order) pursuant to a one-day extension granted orally to the parties by the Licensing Board's Chairman on March 16, 2006.

<sup>2</sup> The proposed modified schedule only applies to the litigation of admitted contentions. If any new contentions are filed and admitted, a separate schedule will need to be developed for those contentions. Any new contentions filed regarding the Staff's Final Safety Evaluation Report would be due by April 5, 2006, with responses due 25 days later, i.e., May 1, 2006.

matter.

## **I. THE TESTS FOR MODIFICATION ARE MET**

### **A. The Parties Have Exercised Due Diligence**

For the most part, the parties have diligently complied with the deadlines set by the Licensing Board in the Initial Scheduling Order and have deviated from those deadlines only when allowed and for good cause shown.

### **B. Unavoidable Circumstances**

The issues raised by the contentions are complex and in some cases have changed as the contentions have been modified over time, such as occurred with NEC Contention 4. These unanticipated complexities will require additional time to prepare direct and rebuttal testimony and proposed questions for the Licensing Board.

### **C. Party Assent And Case Impact**

After consultation and compromise, all the parties request that the Licensing Board approve the proposed changes in schedule shown in Attachment A.

The proposed schedule changes impact certain filing deadlines but, we believe, will not adversely impact the conduct of the case. The proposed schedule will still assure that all testimony is filed prior to the date for limited appearances. The Licensing Board has now reserved for hearings the weeks of September 10, 2006 and October 15, 2006. Order (Supplemental Schedule) March 14, 2006. The proposed schedule modifications will not impact those dates but will assure that adequate time is available for the parties to fully develop testimony and proposed questions and for the Licensing Board to review those materials prior to the hearing.

The license amendment for the Vermont Yankee uprate has now been issued. The parties are not requesting any postponement of the hearing dates. Taking more time to fully address the issues in direct and rebuttal testimony will not affect the status of plant operations while the Licensing Board is addressing the issues under consideration in this proceeding, nor will this result in a prolongation of the hearing process.

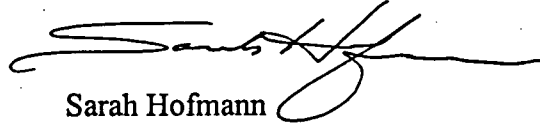
## **II. GOOD CAUSE EXISTS FOR THE PROPOSED MODIFICATION**

The additional time proposed for filing of direct and rebuttal testimony and for filing proposed questions will enable the parties to fully develop their positions and the bases for them, to the potential benefit of the Licensing Board in its examination of the issues. In addition, by lengthening the time for filing direct and rebuttal testimony, parties who choose to file motions *in limine* will have additional time to prepare such motions and have them considered by the Licensing Board in advance of the hearing. In addition, the parties' proposed modifications incorporate time for the filing of responses to those motions, and afford time for the Licensing Board to review the motions and responses prior to ruling thereon.

Providing additional time within which to prepare and submit proposed cross-examination can likewise be useful in allowing the parties to identify for the Licensing Board where they believe conflicts in testimony exist and to articulate the issues they believe need to be examined to resolve those conflicts, thus potentially shortening the hearing time.

For the reasons stated, we request that the Licensing Board grant the proposed modifications of certain dates in the Initial Scheduling Order, as set forth in the attached schedule.

Respectfully submitted,



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Dated this 17<sup>th</sup> day of March 2006.

**Attachment A**

**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

**In the Matter of**

**ENTERGY NUCLEAR VERMONT  
YANKEE LLC AND ENTERGY NUCLEAR  
OPERATIONS, INC.  
(Vermont Yankee Nuclear Power Station))**

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**Docket No. 50-271**

**ASLBP No. 04-832-02-OLA**

**Schedule Modifications Proposed Jointly by All Parties**

**Current Schedule  
As Per Order of 2/1/05**

**New Date Proposed  
by the Parties**

**Event**

**March 6, 2006**

**Final SER issued (SER issued on March 2, 2006 but didn't reach NEC until March 6, 2006)**

**March 16, 2006**

**Motions to Modify Schedule due**

**May 5, 2006**

**May 17, 2006**

**Final written statements of position and written testimony with supporting affidavits due. "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 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."**

May 25, 2006

June 22, 2006

File written responses and rebuttal testimony with supporting affidavits pursuant to 10 CFR § 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. Rebuttal testimony shall be under oath or supported by 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."

Week of June 25, 2006

No change

Limited appearance statement session

June 9, 2006

July 19, 2006

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."

June 9, 2006

July 19, 2006

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).

June 26, 2006	August 1, 2006	Deadline for filing motions in limine.
	August 11, 2006	Deadline for filing oppositions to motions in limine
Week of Sept. 10, 2006	No change	Evidentiary Hearings
Week of Oct. 15, 2006	No change	Evidentiary Hearings
30 days after close of oral hearing:	File proposed findings of fact and conclusions of law on contentions.	

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YANKEE LLC AND ENTERGY NUCLEAR  
OPERATIONS, INC.  
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)  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Motion of All Parties to Modify Scheduling Order in the above captioned proceeding has been served on the following by electronic mail where indicated by an asterisk on this 17<sup>th</sup> day of March, 2006, and will be mailed by deposit in the United States Mail, first class, postage prepaid, on the 17th day of March, 2006.

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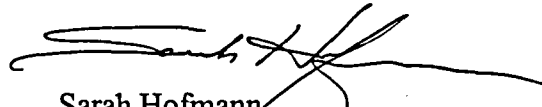
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Sincerely,



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