

RAS 11512

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

DOCKETED 04/10/06

SERVED 04/10/06

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Lester S. Rubenstein

In the Matter of

ENERGY NUCLEAR VERMONT YANKEE
L.L.C.
and
ENERGY NUCLEAR OPERATIONS, INC.

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-OLA

ASLBP No. 04-832-02-OLA

April 10, 2006

NOTICE

(Notice of Hearing and of Opportunity to Make Oral or Written
Limited Appearance Statements Concerning Proposed Uprate)

This proceeding concerns the September 10, 2003 application of Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (collectively, Entergy), for an amendment to the operating license for the Vermont Yankee Nuclear Power Station in Windham County, Vermont. 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 (collectively referred to as an “uprate”).¹ This Atomic Safety and Licensing Board hereby gives notice of two matters. First,

¹ Commission regulations permit the NRC Staff to approve a license amendment and to authorize the licensee to implement the action (e.g., the uprate), prior to the adjudicatory hearing if the NRC Staff determines that the amendment involves no “significant hazard considerations.” See 10 C.F.R. § 2.1202(a). That is what has happened in this case. On March 2, 2006, after finding that there are no significant hazard considerations associated with the Vermont Yankee uprate, the NRC Staff approved Entergy’s request for the license amendment. See 71 Fed. Reg. 11,682 (Mar. 8, 2006). Entergy has already begun to implement the uprate. However, the NRC Staff decision shall have no effect on the responsibility and authority of this Board to rule on the validity of the objections raised by the

pursuant to 10 C.F.R. § 2.315(a), the Board will entertain oral limited appearance statements from members of the public regarding the requested uprate. The limited appearance statement sessions will be held on June 26 and 27, 2006 in Brattleboro, Vermont. Second, pursuant to 10 C.F.R. Part 2, Subpart L, the Board will convene an oral evidentiary hearing to receive evidence and to question witnesses concerning the admitted contentions. The evidentiary hearing will be held during the weeks of September 11, and October 16, 2006, at specific times and locations to be determined.

I. Background and Scope of Proceeding

On July 1, 2004, the Commission issued a notice of opportunity for a hearing on Entergy's license amendment request. 69 Fed. Reg. 39,976 (July 1, 2004). Two requests for hearing and intervention petitions were filed – one by the Department of Public Service of the State of Vermont (State) and the other by the New England Coalition (NEC). Each sought, in accordance with 10 C.F.R. § 2.309, to interpose various contentions challenging the uprate application. The petitions were referred to this Atomic Safety and Licensing Board, consisting of Dr. Anthony J. Baratta, Lester S. Rubenstein, and Alex S. Karlin, to preside over this uprate proceeding. 69 Fed. Reg. 56,797 (Sept. 22, 2004).

On October 21 and 22, 2004, the Board conducted an initial prehearing conference in Brattleboro, Vermont, and on November 22, 2004, the Board found that the State and NEC had each established the requisite standing to intervene in this proceeding and that each had submitted at least one admissible contention concerning the Entergy application. LBP-04-28, 60 NRC 548 (2004).

At the present time four admitted contentions define the scope of this uprate

intervenors herein. As the Commission recently explained, "If the Board determines after full adjudication that the license amendment should not have been granted, it may be revoked (or conditioned)." CLI-06-08, 63 NRC __, __ (slip op. at 3) (Mar. 3, 2006).

proceeding and thus the appropriate scope of any limited appearance statements. The four contentions are as follows:

State Contention 1: Entergy has claimed credit for containment overpressure in demonstrating the adequacy of ECCS pumps for plant events including a loss of coolant accident in violation of draft General Design Criteria 44 and 52 and therefore Entergy has failed to demonstrate that the proposed uprate will provide adequate protection for public health and safety as required by 10 C.F.R. § 50.57(a)(3).

State Contention 2: Because of the current level of uncertainty of the calculation which the Applicant uses to demonstrate the adequacy of ECCS pumps, the Applicant has not demonstrated that the use of containment overpressure to provide the necessary net positive suction head for ECCS pumps will provide adequate protection for the public health and safety as required by 10 C.F.R. § 50.57(a)(3).

NEC Contention 3: The license amendment should not be approved unless Large Transient Testing is a condition of the Extended Power Uprate.²

NEC New Contention 4: The Entergy Vermont Yankee [ENVY] license application (including all supplements) for an extended power uprate of 20% over rated capacity is not in conformance with the plant specific original licensing basis and/or 10 CFR Part 50, Appendix S, paragraph I(a), and/or 10 CFR Part 100, Appendix A, because it does not provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that the Vermont Yankee Nuclear Power Station Alternate Cooling System [ACS] in its entirety, in its actual physical condition (or in the actual physical condition ENVY will effectuate prior to commencing operation at EPU), will be able to withstand the effects of an earthquake and other natural phenomena without loss of capability to perform its safety functions in service at the requested increased plant power level.³

II. Notice of Limited Appearance Statement Sessions

A. Date, Time, and Location of Oral Limited Appearance Statement Sessions

The oral limited appearance sessions will be on the following dates, at the specified location and times:

1. DATE: Monday, June 26, 2006

² The first three contentions are specified at LBP-04-28, 60 NRC 548, 580 (2004).

³ This contention is specified at LBP-05-32, 62 NRC 813, 827 (2005).

- TIME: 6:30 pm. to 10:30 p.m.
- LOCATION: Latchis Theatre
50 Main Street
Brattleboro, Vermont
2. DATE: Tuesday, June 27, 2006
- TIME: 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:00 p.m.
- LOCATION: Same as Session 1 above

B. Participation Guidelines for Oral Limited Appearance Statements

Any person who is not already a party will be permitted to make an oral statement setting forth his or her position on matters of concern related to this uprate proceeding.⁴ The jurisdiction of this Board and the scope of this proceeding is limited to the uprate. Limited appearance statements will be transcribed but are not under oath or affirmation and do not constitute testimony or evidence. The purpose of limited appearance statements is to allow members of the public to alert the Board and the parties to areas relating to the uprate and the admitted contentions in which evidence may need to be adduced, and to assist the Board in its consideration of these issues.⁵

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present.⁶ If all

⁴ The parties to this proceeding are Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc., the NRC Staff, the Department of Public Service of the State of Vermont, and the New England Coalition.

⁵ See 10 C.F.R. § 2.315(a); Iowa Electric Light & Power Co. (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 n.4 (1973); 10 C.F.R. Part 2, Appendix A, § III(b) (2004), deleted Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2274 (Jan. 14, 2004).

⁶ Any members of the public who plan to attend either the evidentiary hearings or the limited appearance sessions are advised that security measures may be employed at the entrance to the hearing facility, including searches of hand-carried items such as briefcases or backpacks. In addition, no signs are permitted at the evidentiary hearing. However, signs no

scheduled and unscheduled speakers present at a session have made a presentation, the Board reserves the right to terminate the session before the ending times listed above.

In order to allow all interested persons an opportunity to address the Board, the time allotted for each oral limited appearance statement normally will be no more than five minutes, and may be further limited, depending on the number of written requests to make an oral statement that are submitted in accordance with section C below and/or the number of persons present at the designated times. At the outset of each statement, the speaker should identify himself or herself and specify if they have any affiliation (such as employment, consultancy, or membership) with any of the parties.

C. Submitting a Request to Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5:00 p.m. Eastern Daylight Time on Tuesday, June 20, 2006. The request must specify the session (Monday evening, Tuesday morning, or Tuesday afternoon) during which the requester wishes to make an oral statement. Based on its review of the requests received by June 20, 2006, the Licensing Board reserves the right to cancel or shorten any of the sessions (Monday evening, Tuesday morning or Tuesday afternoon) due to a lack of adequate public interest.

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission

larger than 18" by 18" will be permitted during the limited appearance sessions, but may not be attached to sticks, held up, or moved about in the rooms. Cf. Policy Statement on Enhancing Public Participation in NRC Meetings, 67 Fed. Reg. 36,920, 36,923 (May 28, 2002).

Washington, D.C. 20555-0001

Fax: (301) 415-1101 (verification (301) 415-1966)

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Alex S. Karlin, Chairman
c/o: Jonathan Rund, Esq. Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop T-3 E2C
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-5599 (verification (301) 415-6094)

Email: jmr3@nrc.gov and kvs@nrc.gov

D. Written Limited Appearance Statements (In Lieu of Oral Statements)

A written limited appearance statement may be submitted to the Board regarding this proceeding at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman. A person who has already filed a written limited appearance statement in this matter⁷ is not required to resubmit it, but should notify the Board, as specified above, if he or she wishes to make an oral statement during the June sessions.

III. Notice of Evidentiary Hearing

In addition to the oral limited appearance statement sessions discussed above, the public is notified that this Board subsequently will conduct an evidentiary hearing on the four contentions admitted in this proceeding. The hearing will be governed by the "Informal Hearing Procedures" set forth in 10 C.F.R. Part, Subparts C and L, see 10 C.F.R. §§ 2.300-.390.,

⁷ See Licensing Board Memorandum and Order (Scheduling Prehearing Conference Call and Oral Argument) at 2-3 (Oct. 1, 2004) (unpublished).

2.1200--1213, and is scheduled to take place during the weeks of September 11, and October 16, 2006. Although the precise dates and locations of the evidentiary hearings are yet to be determined, it is the Commission's policy and practice to hold them in the general vicinity of the site of the nuclear facility that is the subject of the proceeding, so that members of the public may attend.⁸ See 10 C.F.R. §§ 2.328-.329, 2.331. However, it appears that some of the contentions in this proceeding involve some proprietary commercial information, which would require that those portions of the evidentiary hearing be closed to the general public, with only the authorized parties able to attend.⁹ The current plan is to hold the evidentiary hearings in Vermont, if possible, except for those portions of the proceeding that may need to be closed to the public, which may be held at NRC Headquarters in Rockville, Maryland. The Board will issue a subsequent order establishing the exact dates, times, and locations for the evidentiary hearing and copies of these rulings will be available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC web site, www.nrc.gov.

IV. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at www.nrc.gov/reading-rm/adams.html (the

⁸ See Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site), Licensing Board Memorandum and Order (Denying Motion Requesting Reconsideration of Initial Prehearing Conference Location) at 2-3 (Apr. 5, 2004) (unpublished); 10 C.F.R. Part 2, Appendix A, § 1(a) (2004), deleted Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2274 (Jan. 14, 2004).

⁹ In accordance with 10 C.F.R. § 2.390, portions of a hearing may be closed to the public if the matters at issue involve the discussion of confidential or legally protected information.

Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397-4209, (301) 415-4737, or by e-mail to pdr@nrc.gov.

V. Scheduling Information Updates

Any updated/revised scheduling information regarding the evidentiary hearing and limited appearance sessions can be found on the NRC website at www.nrc.gov/public-involve/public-meetings/index.cfm or by calling (800) 368-5642, extension 5036, or (301) 415-5036.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁰

[Original Signed by]

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 10, 2006

¹⁰ Copies of this order were sent this date by Internet e-mail transmission to the representatives 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

In the Matter of)	
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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))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE (NOTICE OF HEARING AND OF OPPORTUNITY TO MAKE ORAL OR WRITTEN LIMITED APPEARANCE STATEMENTS CONCERNING PROPOSED UPRATE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Mail Stop - T-3 F23
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Washington, DC 20555-0001

Administrative Judge
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Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
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Administrative Judge
Lester S. Rubenstein
4270 E Country Villa Drive
Tucson, AZ 85718

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Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Raymond Shadis
New England Coalition
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Edgecomb, ME 04556

Docket No. 50-271-OLA
LB NOTICE (NOTICE OF HEARING AND OF OPPORTUNITY
TO MAKE ORAL OR WRITTEN LIMITED APPEARANCE
STATEMENTS CONCERNING PROPOSED UPRATE)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of April 2006