

**RAS 11539**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 04/13/06**

ATOMIC SAFETY AND LICENSING BOARD

**SERVED 04/13/06**

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

April 13, 2006

REVISED SCHEDULING ORDER

On February 1, 2005, pursuant to 10 C.F.R. § 2.332(a)(2005), the Board issued an Initial Scheduling Order (ISO) setting forth time limits for the filing of motions, testimony, and other submissions related to the evidentiary hearing in this proceeding.<sup>1</sup> On March 6, 2006, the Staff served the Final Safety Evaluation Report (FSER) on the parties, triggering various requirements under the ISO.<sup>2</sup> On March 10, 2006, we held a prehearing conference call with parties and discussed potential modifications to that schedule, and on March 17, 2006, all parties filed a joint motion requesting that we modify the ISO to give the parties additional time to prepare direct and rebuttal testimony and proposed questions for the Board. The Board agrees that the initial schedule should be somewhat modified and adjusted in light of

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<sup>1</sup> The April 20, 2005 amendments to 10 C.F.R. § 2.332, do not apply to this case because they only apply to proceedings commenced on or after May 20, 2005. See Model Milestones for NRC Adjudicatory Proceedings, 70 Fed. Reg. 20,457, 20,457-58 (Apr. 20, 2005).

<sup>2</sup> See Tr. at 761-763, 823-24; Memorandum and Order (Denying Motion for Summary Disposition of New England Coalition Contention 3)(Jan. 31, 2006) at 8 n.12 (unpublished).

intervening events and the need to conduct this proceeding fairly and efficiently. Accordingly, the joint motion is granted in part and denied in part.

I. Good Cause Determination

Under 10 C.F.R. § 2.332(b) (2005), a schedule may only be modified upon a showing of good cause. Section 2.332(b) lists three factors that a presiding officer should consider in making such a good cause determination. Those factors are:

1. Whether the requesting party has exercised due diligence to adhere to the schedule;
2. Whether the requested change is the result of unavoidable circumstances; and
3. Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

10 C.F.R. § 2.332(b) (2005).

The parties have demonstrated good cause for the requested modification. First, in general the parties have been diligent in complying with the deadlines set forth in the ISO. Second, the requested change is the result of unanticipated complexities that require additional preparation time. Third, all parties have agreed to the joint motion and, although we do not grant all of the relief requested, we accept, in principle, the general agreement that more time is both available and needed for certain prehearing activities. Fourth, and most importantly, the modifications established by this order allow the parties significant additional time to prepare and submit their case, and allow the Board reasonable time to prepare for and conduct this Subpart L proceeding, and yet entail no delay in the earliest possible evidentiary hearing dates<sup>3</sup>

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<sup>3</sup> After probing each of the parties at some length, we determined that the earliest realistic dates for the evidentiary hearings are the weeks of September 11, and October 16, 2006. Tr. at 856-879. We directed the parties to hold those weeks open. Tr. at 879; Order (Supplemental Schedule)(Mar. 14, 2006) at 2 (unpublished).

or in the date for issuance of the Board's initial decision.<sup>4</sup>

## II. Revised Schedule

Accordingly, the Board adjusts and revises the Initial Scheduling Order and the remainder of the schedule for this proceeding as follows:

1. April 20, 2006: Prehearing conference call (11 a.m. EDT).
2. May 17, 2006: 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 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.<sup>5</sup>
3. May 23, 2006: Prehearing conference call (11 a.m. EDT).
4. June 14, 2006: 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

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<sup>4</sup> In light of the original uncertainty in the NRC Staff's schedule, it was not possible to set a specific date for the evidentiary hearing or initial decision in the ISO. Accordingly, 10 C.F.R. § 2.334(b), which specifies that the presiding officer shall notify the Commission when it appears that the issuance of the initial decision will be delayed more than 60 days beyond the time specified in the schedule, is not applicable here.

<sup>5</sup> The written testimony, affidavits and proposed exhibits, both initial and rebuttal, for each contention shall be submitted and presented separately, in a contention-by-contention manner.

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.

5. June 20, 2006: Prehearing conference call (11 a.m. EDT).
6. June 26, 2006: Deadline for filing motions in limine relating to items 2 and 4 above.<sup>6</sup>
7. June 26 and 27, 2006: Oral limited appearance statement sessions to be held in Brattleboro, Vermont.
8. July 7, 2006: Deadline for answers to motions in limine relating to items 2 and 4 above.
9. July 18, 2006: Prehearing conference call (11 a.m. EDT).
10. August 4, 2006:
  - a. 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 that 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.
  - b. File any requests to permit a party to conduct cross-examination on a specified

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<sup>6</sup> This provision relaxes the normal rule, which would require that motions in limine related to item 2 (the initial written statements of position and written testimony) be filed within 10 days, 10 C.F.R. § 2.323(a), and instead allows such motions to be filed as late as June 26, 2006. If a motion in limine related to item 2 is filed before June 26, then (a) the answer is not due until July 7, 2006, (b) the Board does not contemplate ruling on the motion until after July 7, 2006, and (c) written responses and rebuttal testimony submitted under item 4 will still be due on June 14, 2006, and should not assume that the motion in limine concerning item 2 will be granted. See Tr. at 800.

issue or of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b).

11. August 22, 2006: Prehearing conference call (11 a.m. EDT).
12. September 11 - 14, 2006: Board conducts oral hearing on contentions pursuant to 10 C.F.R. §§ 2.1206 and 2.1207.
13. October 16 - 20, 2006: Board continues oral hearing on contentions pursuant to 10 C.F.R. §§ 2.1206 and 2.1207.
14. 30 days after close of oral hearing: Parties file proposed findings of fact and conclusions of law on contentions.

### III. General Rules

1. Nothing in this revised scheduling order modifies or extends any of the obligations or deadlines established in our March 1, 2005 Protective Order,<sup>7</sup> including, but not limited to, the duty to file written objections to the designation of a document as “proprietary” within 60 days of the date that Entergy provides the document to a party or within 60 days after issuance of the Final Safety Evaluation Report, whichever is earlier, and the duty to notify Entergy at least 10 days in advance of submitting any pleading, testimony, exhibit, or correspondence that contains proprietary information. Protective Order at 4 and 6, respectively.
2. Any motion (opposed or unopposed) for an extension or enlargement of time should be filed at the earliest opportunity, as soon as the movant knows or should have known of the facts, circumstances, or grounds for the motion. Absent very extraordinary circumstances submitted to us via sworn declaration or affidavit, any motion (opposed or

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<sup>7</sup> Order (Protective Order Governing Non-Disclosure of Proprietary Information) (Mar. 1, 2005) (unpublished) [Protective Order].

unopposed) for an extension or enlargement of time that is not filed and in our hands by at least 2:00 p.m. on the day before the deadline in question, shall be automatically denied.

3. Failure to meet the deadlines and schedules specified herein may result in sanctions, including but not limited to default, under 10 C.F.R. § 2.320.<sup>8</sup>
4. Part II of this order only applies to the litigation of the contentions admitted as of this date.
5. Each party (including the Staff) will, at its own expense and effort, assure that each person for whom it submits written direct or rebuttal testimony shall attend the scheduled oral evidentiary hearings in person, and be available to testify and answer questions.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>9</sup>

[Original signed by:]

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 13, 2006

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<sup>8</sup> See Order (Granting Motion for Enlargement of Time Related to NEC Contention 4 and Granting Enlargement of Time, Subject to Sanction, Related to NEC Contention 3)(Mar. 23, 2006) at 3-4 (unpublished).

<sup>9</sup> 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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB REVISED 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]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 13<sup>th</sup> day of April 2006