

May 22, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

May 22, 2006 (4:56pm)

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	)	

**ENTERGY'S ANSWER TO NEW ENGLAND  
COALITION'S REQUEST FOR EXTENSION OF TIME  
REGARDING COALITION TESTIMONY ON NEC CONTENTION 4**

In its May 17, 2006, Statement of Position, the New England Coalition ("Coalition") "begs the Board's indulgence of two weeks (or until May 31, 2006) to sort out Dr. [Ross] Landsman's availability for refilled [sic] testimony [on Coalition Contention 4] and/or find another expert if Dr. Landsman is unable to continue." Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") strongly oppose the Coalition's untimely request to unilaterally delay its schedule obligations with regard to the filing of its testimony on Contention 4.

In its Revised Scheduling Order, dated April 13, 2006, the Atomic Safety and Licensing Board ("Board") set May 17, 2006 as the date for the parties to file written testimony with supporting affidavits. That date reflected a 12-day delay which the parties requested from the schedule set in accordance with the Board's Initial Scheduling Order, dated February 1, 2005 (i.e., 60 days after issuance of the final Safety Evaluation Report). See Joint Motion of All Parties to Modify Scheduling Orders, dated March 17, 2006.

The Coalition's request for a two-week "indulgence" is the latest instance of the Coalition's "repeated and cavalier disregard for the schedule." Order (Granting Motion for Enlargement of Time Related to NEC Contention 4 and Granting Enlargement of Time, Subject to Sanction, Related to NEC Contention), dated March 23, 2006, at 2. Since the request was neither "filed and in our hands by 2:00 P.M. on the day before the deadline in question" nor justified by "very extraordinary circumstances submitted to us via some declaration or affidavit," the Coalition's request should be automatically denied. Id. at 3.

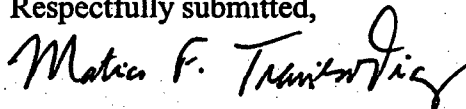
In addition, the Coalition failed to meet its obligation to include in the motion "a certification by the...representative of the moving party that the movant has made a sincere attempt to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful." 10 C.F.R. §2.323(b). Indeed, the Coalition never advised Entergy of its intention not to file testimony on the date due and instead seek an extension of time. And the Coalition failed to file its extension request until long after it should have been aware that its ability to meet the May 17 deadline was in question. See Coalition Statement of Position at 6 ("upon New England Coalition Pro Se Representative's return from an international environmental conference in Kiev, Ukraine (April 21-26)" the Coalition learned that Dr. Landsman had been required "to assume the role of full-time caregiver.") Even if Dr. Landsman had assured the Coalition that "he would do his best to provide prefiled written testimony by May 17<sup>th</sup>," certainly the Coalition would have known some time prior to May 17 that the testimony was not forthcoming that day.

Aside from the Coalition's failure to justify its extension in this case and the Coalition's continued "pattern of conduct," granting the Coalition's requested "indulgence" would also place Entergy (and the NRC Staff) at a significant disadvantage. The Board's schedule called for simul-

taneous filing of written testimony on May 17 followed by simultaneous filing of rebuttal testimony on June 14. If granted, the Coalition's request would in essence cut in half the time that the other parties would have to prepare their responses to Dr. Landsman's late testimony.<sup>1</sup>

In addition to declining to grant the Coalition's late-filed request, we would also ask that the Board not permit the Coalition to file what should have been its initial written testimony disguised as its rebuttal testimony.<sup>2</sup> If the Coalition chooses to file no direct testimony and then submits "rebuttal testimony" it will have unfairly manipulated the system to the detriment of the other parties. Such a tactic would totally deprive Entergy and the NRC Staff of their opportunity to reply to the Coalition's affirmative case and would make a mockery of the obligations that the Board's schedule has imposed on the parties. We urge that the Board make it clear that such a tactic will not be permitted.

Respectfully submitted,



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Dated: May 22, 2006

<sup>1</sup> In fact, the Coalition seems to suggest that it could use its extra two weeks to "find another expert if Dr. Landsman is unable to continue." The Coalition fails to address the schedule implications of this possibility.

<sup>2</sup> Entergy and the NRC Staff complied with the Board's Scheduling Order and filed on May 17, 2006 Initial Statements of Position and expert testimony on NEC Contention 4. See Entergy's Initial Statement of Position on New England Coalition Restated Contention 4; "Testimony of George S. Thomas, Paul D. Baughman, Norman A. Roux, Robert D. Fulkerson and Philip T. Westover on Restated NEC Contention 4"; NRC Staff's Initial Statement of Position Concerning NEC Contention 4"; "NRC Staff Testimony of David C. Jeng, Steven R. Jones and Richard B. Ennis Concerning NEC Contention 4." NEC has these materials available now and can examine them at its leisure in order to prepare a rebuttal to them in its "direct testimony".

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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)
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of "Entergy's Answer to New England Coalition's Request for Extension of Time Regarding Coalition Testimony on NEC Contention 4" 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 22nd day of May, 2006.

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