

RAS 11711

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION **DOCKETED 06/05/06**

ATOMIC SAFETY AND LICENSING BOARD **SERVED 06/05/06**

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

June 5, 2006

ORDER

(Regarding Submission of Supplemental Documents)

On May 23, 2006, this Board held a prehearing conference call with the parties to discuss, inter alia, the initial testimony submitted by the parties on May 17, 2006, and certain documents discussed therein. During that conference, the Board observed that there are a number of instances in the testimony of Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (collectively, Entergy) where its experts rely on reports or documents that were not submitted to the Board. Tr. at 970-71. Given that Entergy has the ultimate burden of proof in this proceeding,¹ the Board instructed Entergy to supplement its testimony on the admitted contentions by submitting all reports and documents that are referred to in Entergy's testimony or relied upon to substantiate its position. Tr. at 970-77. During the conference, Entergy requested that the Board provide it with more specific instructions so that it would not be "shooting in the dark" in anticipating which documents were of interest to the

¹ See 10 C.F.R. § 2.325; Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2213 (Jan. 14, 2004).

Board. Tr. at 972. The NRC Staff also raised questions regarding the production of documents, Tr. at 974, and the production of an unredacted version of the Final Safety Evaluation Report. Tr. at 977-78. After taking these questions and concerns under advisement, we reiterate and clarify our May 23, 2006 instructions as follows:

- I. On or before June 19, 2006, Entergy shall supplement its testimony on New England Coalition (NEC) Contention 3 by submitting the following documents:
 - A. General Electric Company Licensing Topical Report for Constant Pressure Power Uprate Safety Analysis, NEDC-33004P-A Rev. 4, July 2003 (cited in the Testimony of Craig J. Nichols and Jose L. Casillas on NEC Contention 3 – Large Transient Testing (May 17, 2006) at 5 [hereinafter Nichols/Casillas Testimony]).
 - B. Qualification of the One-Dimensional Core Transient Model for Boiling Water Reactors, NEDO-24154-A, August 1986 (cited in the Nichols/Casillas Testimony at 12).
 - C. General Electric, Supplemental Reload Licensing Report, December 2005 (cited in the Nichols/Casillas Testimony at 16 and summarized in Exhibit 8).
- II. On or before June 19, 2006, Entergy shall submit documentation supporting its testimony on the ODYN code. For example, Entergy’s testimony makes several undocumented statements regarding the ODYN code, including that “GE has qualified the ODYN code against all significant plant transients and the NRC has accepted that the ODYN code is a dependable best estimate code”; that “the ODYN code has been benchmarked against all significant plant transients”; that the “turbine trip data were obtained from the Peach Bottom and KKM plants”; and that “the MSIV closure data were obtained from the Hatch plant.” Nichols/Casillas Testimony at 14. Similarly, Entergy’s testimony fails to provide any documentation regarding the KKL (Leibstadt) plant power uprate and whether the ODYN code was properly used and applied in that case and whether that plant is sufficiently analogous to the Vermont Yankee

plant to make such a comparison relevant. See Nichols/Casillas Testimony at 20-21.

III. On or before June 19, 2006, the parties shall supplement their respective direct testimony on both admitted contentions by submitting all reports and documents that are relied upon to prove or substantiate that party's position, or that are referenced by, and are material to support, the testimony of one of its witnesses.

IV. The parties shall submit both proprietary and non-proprietary documents pursuant hereto. Unredacted versions of the proprietary documents shall be produced to the Board and to all parties herein who have duly executed the confidentiality and non-disclosure agreement in accordance with the Board's March 1, 2005 Protective Order.² Redacted versions shall be produced to the Board and to the parties who have not executed the confidentiality and non-disclosure agreement.

V. The parties shall follow the foregoing principles in submitting their written responses, rebuttal testimony and associated documents and exhibits on June 14, 2006.

VI. The Board is aware that the submission of these additional exhibits and documents as part of the direct testimony (no additional direct testimony is authorized hereunder) may warrant the

² At the May 23, 2006 conference, the representative from NEC agreed that he and NEC's expert witnesses would sign and submit the confidentiality and non-disclosure agreement that is part of the of the Board's March 1, 2005 Protective Order governing the non-disclosure of proprietary information by June 5, 2006. Tr. at 977-80. However, NEC has since indicated that its representative and expert witnesses have declined to sign the agreement. See Letter from Raymond Shadis, Pro se Representative, NEC, to Administrative Judges (June 1, 2006). Therefore, unredacted versions of the proprietary documents shall not be produced to NEC.

filing of supplemental rebuttal testimony. The parties should be prepared to address this issue at our June 20, 2006 prehearing conference call.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Alex S. Karlin, Chairman
Administrative Judge

Rockville, Maryland

June 5, 2006

³ Copies of this order were sent this date by Internet e-mail transmission to representatives for (1) licensees Entergy Nuclear Vermont Yankee, L.L.C.; (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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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REGARDING SUBMISSION OF SUPPLEMENTAL DOCUMENTS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-271-OLA
LB ORDER (REGARDING SUBMISSION OF
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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of June 2006