

June 14, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT YANKEE,)	Docket No. 50-271-OLA
LLC and ENTERGY NUCLEAR)	
OPERATIONS, INC.)	ASLBP No. 04-832-02-OLA
)	
(Vermont Yankee Nuclear Power Station))	

NRC STAFF'S RESPONSE TO THE INITIAL
STATEMENTS OF POSITION FILED BY OTHER PARTIES

In the Atomic Safety and Licensing Board's "Revised Scheduling Order" ("Order") dated April 13, 2006, the Licensing Board directed the parties, *inter alia*, (a) to file, on May 17, 2006, "initial written statements of position and written testimony with supporting affidavits," and (b) to file, on June 14, 2006, "written responses and rebuttal testimony with supporting affidavits" in response to the initial statements of position and testimony that have been filed by other parties. Order at 3. The NRC Staff ("Staff") hereby submits this response in accordance with the Licensing Board's Order.

The Staff has reviewed the initial statements of position and testimony filed by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, "Applicant") and the New England Coalition ("NEC"), on May 17, 2006. The Staff has determined that no rebuttal is necessary with respect to the initial statements of position and testimony filed by the Applicant on NEC Contentions 3 and 4. Further, NEC did not file any initial testimony on NEC

Contention 4, and the Staff has determined that no rebuttal is necessary with respect to the initial statement of position filed by NEC on NEC Contention 4.¹

The Staff has previously addressed NEC's claims with respect to the need for large transient testing, presented in NEC Contention 3,² and believes that no further testimony by the Staff with respect to those claims is required. With respect to NEC's initial statement of position on NEC Contention 3, the Staff notes that NEC cites extensively from the transcript of meetings held by the Advisory Committee on Reactor Safeguards ("ACRS") Subcommittee on Thermal-Hydraulic Phenomena on January 26, 2005, and by the ACRS full Committee on February 10, 2005. See NEC's Statement of Position, at 9-12 and 12-14.³ NEC asserts that those discussions before the ACRS and ACRS Subcommittee "mirror" NEC's concerns and "provide a suggested conceptual framework for continued adjudicatory exploration of the topic before this Board." *Id.* at 9.

NEC's assertion and its reliance on the ACRS transcripts cited in its Initial statement of Position should be disregarded. First, the meetings cited by NEC pertained to the Waterford Nuclear Power Station – a large, pressurized water reactor ("PWR")⁴ – not the Vermont Yankee Nuclear Power Station. Whatever thoughts or concerns may have been expressed by any

¹ NEC did not file any initial testimony on NEC Contention 4, referring instead to the Declaration filed by its expert in support of the contention's admission. See "New England Coalition's [NEC's] Statement of Position," dated May 17, 2006, at 6; "Declaration of Dr. Ross B. Landsman Supporting [NEC's] Alternate Cooling System Contention," dated September 19, 2005. The Staff has previously addressed Dr. Landsman's Declaration in its initial testimony on this contention, and no further response to that Declaration is required at this time. See "NRC Staff Testimony of David C. Jeng, Steven R. Jones and Richard B. Ennis Concerning NEC Contention 4," dated May 17, 2006, at 10-27.

² See "NRC Staff Testimony of Richard B. Ennis, Steven R. Jones, Robert L. Pettis, Jr., George Thomas, and Zeynab Abdullahi Concerning NEC Contention 3," dated May 17, 2006.

³ The transcript of the ACRS Subcommittee meeting on Waterford, held on January 26, 2005, appears at ADAMS Accession No. ML050400613; the transcript of the ACRS full Committee meeting on Waterford, held on February 10, 2005, appears at ADAMS Accession No. ML050490332.

⁴ See generally, *Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 NRC 1550, 1572 (1982).

persons at the Waterford meetings were not presented with respect to Vermont Yankee, and it can not be known whether or to what extent those views would apply to the facility and license amendment application at issue in this proceeding. Moreover, regardless of any individual's views that may have been expressed with respect to Waterford, it is beyond dispute that the ACRS issued a letter fully recommending approval of the Vermont Yankee extended power uprate license amendment – and the ACRS specifically found that large transient testing at Vermont Yankee is not warranted.⁵ Second, the Waterford discussions cited by NEC are not subject to questioning by the Board or parties, and NEC has not proffered as witnesses any of the persons whose names appear in the transcripts of the Waterford ACRS meetings. Accordingly, it is not possible to properly understand the speaker's meaning or the context of any statements which may be of interest to NEC; lacking a proper sponsoring witness, the transcripts do not provide probative, admissible evidence in this proceeding.⁶

CONCLUSION

The Staff has previously set forth its views concerning NEC Contentions 3 and 4 in the Staff's initial statements of position and Staff testimony filed on May 17, 2006. The Staff

⁵ See Letter from Graham B. Wallis, ACRS Chairman, to NRC Chairman Nils J. Diaz, Subject: "Vermont Yankee Extended Power Uprate," dated January 4, 2006 (ADAMS Accession No. ML060090125). The ACRS concluded, in pertinent part, that "the Entergy application for the extended power uprate at the Vermont Yankee Nuclear Power Station (VY) should be approved," and that "Load rejection and main steam isolation valve closure transient tests are not warranted. The planned transient testing program adequately addresses the performance of the modified systems." *Id.* at 1. Further, the ACRS stated as follows (*Id.* at 4):

Entergy does not plan to undertake large transient tests, such as a main steam isolation valve closure that would result in a reactor trip. Such tests would not directly address confirmation of the performance of systems changed to support EPU. The ACRS concurs with the staffs assessment that the large transient tests are not warranted.

⁶ See, e.g., *Public Service Co. Of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-9 30 NRC 331, 354 n.28 (1989); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-905, 28 NRC 515, 525 (1988).

respectfully submits that NEC Contentions 3 and 4 should be resolved in favor of issuance of the requested license amendment, for the reasons described in the Staff's initial testimony and statements of position filed on May 17, 2006.

Sincerely,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of June, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO THE INITIAL STATEMENTS OF POSITION FILED BY OTHER PARTIES", in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (**), this 14th day of June, 2006.

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