

August 23, 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 MOTION
FOR LEAVE TO INTRODUCE
TWO ADDITIONAL HEARING EXHIBITS

Pursuant to 10 C.F.R. §§ 2.323(a) and 2.1204, the NRC Staff ("Staff") hereby requests leave of the Atomic Safety and Licensing Board to introduce two exhibits into evidence at the evidentiary hearings scheduled to be held on September 13-15, 2006, which the Staff has not previously identified as proposed exhibits. For the reasons set forth below, the Staff submits that its request is supported by good cause, that it would not result in harm to any other party and would not cause any delay in the proceeding, and that it is otherwise in the public interest.¹

INTRODUCTION

By Order dated April 13, 2006, the Licensing Board directed the parties to file initial written statements of position and written testimony by May 17, 2006, and to file written responses and any rebuttal testimony by June 14, 2006.² In accordance with the Licensing Board's Order, on May 17, 2006, the Staff timely filed its initial statement of position and written

¹ The instant Motion is supported by the Affidavit of Richard B. Ennis, attached hereto.

² "Revised Scheduling Order," dated April 13, 2006, at 3.

testimony on NEC Contention 3,³ and on June 14, 2006, the Staff timely filed a response to the initial statements of position filed by other parties in the proceeding, including the New England Coalition (“NEC”).⁴ Other parties similarly filed written testimony and statements of position on NEC Contention 3 in accordance with the schedule set forth in the Licensing Board’s Order.

On May 23, 2006, the Licensing Board held a telephone conference call with the parties, in which the Board observed that the testimony submitted by Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (collectively, “Entergy” or “Applicant”) referred to certain documents which had not been submitted to the Licensing Board (Tr. 970-71). The Licensing Board directed the Applicant to supplement its testimony by submitting copies of all reports and documents that were referred to in its testimony or relied upon to substantiate its position (Tr. 971-75); and the Licensing Board stated that it would provide further instructions as to the documents to be submitted (Tr. 975-76).

On June 5, 2006, the Licensing Board issued a supplemental Order, confirming and clarifying its instructions for the supplementation of testimony.⁵ Therein, the Licensing Board directed the Applicant to submit, on or before June 19, 2006, three documents which it had cited in its testimony, as well as “documentation supporting its testimony on the ODYN code.” Supp. Order at 2. Further, the Licensing Board directed all parties to supplement their direct testimony by submitting, on or before June 19, 2006, “all reports and documents that are relied

³ See “NRC Staff’s Initial Statement of Position Concerning NEC Contention 3,” dated May 17, 2006; “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 (“Staff Testimony”).

⁴ See “NRC Staff’s Response to the Initial Statements of Position Filed by Other Parties,” dated June 14, 2006.

⁵ “Order (Regarding Submission of Supplemental Documents),” dated June 5, 2006 (hereinafter referred to as “Supp. Order”).

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." *Id.* at 3.⁶

In accordance with the Licensing Board's instructions, on June 19, 2006, the Applicant and Staff submitted copies of the documents requested by the Board, including documents that were relied upon or referenced by and material to support the testimony of their witnesses on NEC Contention 3.⁷ These included numerous documents pertaining to the "ODYN" Code, which the Applicant has used to analyze potential transients at the Vermont Yankee Nuclear Power Station. In particular, as pertinent here, the Staff and Applicant both produced the Staff's initial and supplemental Safety Evaluations approving the use of ODYN for Boiling Water Reactor ("BWR") transient analyses, dated June 1980 and January 1981, respectively (App. Supp. Doc. 2; Staff Supp. Docs. 15-16).⁸

During the week of August 14, 2006, while preparing for hearings in this matter, Richard Ennis, the Staff's Senior Project Manager and one of its proposed witnesses herein, conducted a document search in the NRC's Agencywide Documents Access & Management System ("ADAMS"). Upon doing so, he found two historical documents – each approximately 25 years old – which directly relate to the acceptability of ODYN for use in BWR transient analyses:

⁶ On June 21, 2006, the Licensing Board issued a further Order, in which it established a schedule for filing and responding to any motions *in limine* concerning the documents filed pursuant to the Board's Supplemental Order. See "Order (Regarding Motions in Limine Relating to Supplemental Documents)," dated June 21, 2006.

⁷ See "Entergy's Supplement to Direct Testimony on NEC Contentions 3 and 4," dated June 19, 2006; "NRC Staff's Supplement to Its Initial Testimony Concerning NEC Contentions 3 and 4," dated June 19, 2006; and letter from Sherwin E. Turk to the Licensing Board, dated June 20, 2006.

⁸ The Applicant produced the Staff's safety evaluations as enclosures in the General Electric Licensing Topical Report, "Qualification of the One-Dimensional Core Transient Model for Boiling Water Reactors, Volume 1," NEDO-24154-A, dated August 1986 (App. Supp. Doc. 2). The Applicant also produced copies or summaries of other portions of the Topical Report (see App. Docs. 2-4, 27-28); a compilation of "ODYN Studies Report Summaries" (App. Doc. 7); and other documents relating to the benchmarking of ODYN or comparisons of transient results with ODYN predictions (App. Docs. 29-33). The Staff produced its initial and supplemental Safety Evaluations (Staff Docs. 15-16), and other documents relating to the use or benchmarking of ODYN (Staff Docs. 17-21).

(a) Generic Letter 80-91, dated November 4, 1980; and (b) Generic Letter 81-08, dated January 29, 1981 (copies provided in Attachment 1 hereto).⁹

Following Mr. Ennis' discovery of the two Generic Letters, the Staff promptly identified the documents in an update to the hearing file submitted on August 21, 2006. Therein, the Staff provided a clear description of each document, their dates, and their respective ADAMS accession numbers (ML062330216 and ML031210181).¹⁰ On August 22, 2006, during a scheduled telephone conference call with the Licensing Board, NEC's representative objected to the possible introduction of the two Generic Letters into evidence at the upcoming hearings. The Staff thereupon committed to file the instant Motion by August 23, 2006, if it decided to seek the documents' introduction into evidence, in order to afford as much time as possible for the resolution of this issue.

DISCUSSION

Generic Letters 80-91 and 81-08 directly relate to the issues that were raised by NEC in its Contention 3, and warrant consideration by the Licensing Board and the Commission in their resolution of this contention. These documents were written over 25 years ago – soon after the Staff issued its initial and/or supplemental Safety Evaluations approving use of the ODYN code for BWR transient analyses. The Generic Letters notified all holders of construction permits and operating licenses for boiling water reactors that the Staff had issued its initial and supplemental Safety Evaluations approving the use of ODYN for BWR transient analyses. The Generic Letters, however, go further: They “require” the use of ODYN by BWR licensees in

⁹ Mr. Ennis found GL 80-91 in the ADAMS Legacy Library (Accession No. 8012220358), which is accessible to the public via Citrix-based, rather than Web-based ADAMS software. The Staff has added that document to the ADAMS Main Library, which is accessible through Web-based ADAMS software.

¹⁰ See Letter from Steven C. Hamrick, Esq., to the Licensing Board, dated August 21, 2006, and Enclosure 1 thereto.

performing transient analyses after January 1982, in order to secure the Staff's approval of those analyses.¹¹

In particular, Generic Letter 80-91, dated November 4, 1980, states as follows:

TO ALL HOLDERS OF CONSTRUCTION PERMITS AND
OPERATING LICENSES FOR BOILING WATER REACTORS

The use of the ODYN code to calculate pressurization transients has been reviewed extensively by the staff and discussed with the General Electric Company. We have found that ODYN provides acceptable best estimate calculation predictions of the core responses to pressurization transients. A safety evaluation describing the basis for this conclusion will be mailed to you in the very near future. This letter is for the purpose of advising you as early as possible of our requirements for implementation of ODYN for licensing basis calculations performed by the General Electric Company. These requirements are applicable to license applications and all proposed license amendments, including core reloads for which analyses are provided by General Electric. . . . Transient analyses performed by General Electric supporting reload submittals received after February 1, 1981, must contain appropriate ODYN analyses in place of those previously performed with REDY for the limiting transients. Generally, these will include generator load rejection/turbine trip without bypass (whichever is limiting), feedwater controller failure - maximum demand, and main steamline isolation valve closure (to satisfy ASME code pressure requirements). After January 1982, all operating BWRs with General Electric analyses must have the limiting transients recalculated with the ODYN code, even if no reload submittal has been received. The transients analyzed with ODYN must be justified to be the limiting transients. . . .

GL 80-91 (emphasis added). Generic Letter 80-91 thus "required" BWR licensees and license amendment applicants, such as Vermont Yankee, to use the ODYN Code in performing their analyses of the two transients that are specifically at issue in this proceeding – generator load reject and MSIV closure.

¹¹ While the Generic Letters utilize mandatory language such as "requirements," "must," "require," and "prerequisite," these terms should be understood to describe the Staff's emphatic recommendations for regulatory compliance – rather than binding agency requirements, which can only be imposed by regulation or Order. *See, e.g., General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-97-1, 45 NRC 7, 26 n.10 (1997); cf. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 1), DD-99-6, 49 NRC 284, 291 (1999).*

Generic Letter 81-08, dated January 29, 1981, similarly states as follows:

[TO] ALL HOLDERS OF CONSTRUCTION PERMITS AND
OPERATING LICENSES FOR BOILING WATER REACTORS

SUBJECT: ODYN CODE (GENERIC LETTER 81-08)

By letter dated November 4, 1980, we informed you of our requirements for use of the ODYN code to calculate pressurization transients, and stated that a safety evaluation describing the basis for our acceptance of this code would be mailed to you in the near future. Enclosed you will find a safety evaluation and a supplemental safety evaluation which jointly evaluate the ODYN code and provide information required for application of ODYN. As you were informed in our letter of November 4, 1980, transient analyses performed by General Electric supporting reload submittals received after February 1, 1981, must contain appropriate ODYN analyses in place of those, previously performed with REDY for the limiting transients. After January 1982, all operating BWRs with General Electric analyses must have the limiting transients recalculated with the ODYN code, even if no reload submittal has been received. Also, this requirement for the calculation of the limiting transients with the ODYN code is applicable to applicants for an operating license and is a prerequisite to obtaining an operating license.

GL 81-08 (emphasis added).

In the Staff's direct testimony, filed on May 17, 2006, the Staff stated that "ODYN has been approved by the NRC for application to transients" at BWRs, including, *inter alia*, generator load reject, turbine trip, and MSIV closure transients.¹² The Staff further stated that, "[a]s part of the NRC-approved standard reload process for BWRs, Vermont Yankee analyzed the limiting transients for each fuel cycle using ODYN." Staff Testimony at 17. The Staff's testimony is correct. The two Generic Letters, recited above, demonstrate that the use of ODYN for BWR transient analyses was "approved" by the NRC (as stated in the Staff's pre-filed written testimony) – and, in fact, that the use of ODYN in such analyses was "required" by the

¹² Staff Testimony at 17, *citing* Letter from Robert L. Tedesco (NRC) to Dr. G. G. Sherwood (General Electric Co.), dated February 4, 1981, and enclosed "Safety Evaluation for the General Electric Topical Report Qualification of the One-Dimensional Core Transient Model for Boiling Water Reactors, NEDO-24154 and NEDE-24154-P" (June 1980).

Staff in GL 80-91 and GL-81-08. This Staff “requirement” is an important consideration which should not be lightly disregarded.

The Staff’s testimony indicates, correctly, that the NRC has approved the use of ODYN for BWR transient analyses. The testimony relies, *inter alia*, upon the Staff’s safety evaluations which had approved the use of ODYN for BWR transient analyses – and the Staff therefore identified and produced those safety evaluations on June 19, 2006. The testimony does not refer to the Generic Letters and does not directly rely thereon – and the Staff’s witnesses were not familiar with the specific (mandatory) language of these Generic Letters prior to filing their testimony. For these reasons, the Staff did not identify and produce the Generic Letters when it identified and produced other documents as required by the Board’s Supplemental Order. Nonetheless, the Generic Letters are relevant and material to the Licensing Board’s consideration of the issues in NEC Contention 3, and they should therefore be admitted into evidence in this proceeding, in accordance with 10 C.F.R. § 2.337.

The NRC’s Rules of Practice require that parties comply with schedules established by the Presiding Officer or Licensing Board, and that any extensions of time are to be supported by a showing of “good cause.”¹³ Further, the Licensing Board in this proceeding has required parties to adhere to its rulings on schedule, absent a showing of “unavoidable and extreme” or “very extraordinary” circumstances.¹⁴

¹³ See 10 C.F.R. § 2.334(b) (in determining whether good cause has been shown, the Licensing Board is to take into account the following factors, among other things: (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).

¹⁴ See, e.g., “Memorandum and Order (Clarifying the Factual Scope of NEC Contention 4 and Denying Untimely Motion for Enlargement of Time to File Reply Brief)” (March 24, 2006), slip op. at 6 (“Inadvertently writing the wrong deadline in a calendar does not meet the Commission’s ‘unavoidable and extreme circumstances’ standard for granting an extension of time,” *citing* “Policy on Conduct of Adjudicatory Proceedings,” 63 Fed. Reg. 41872, 41874 (1998)); “Order (Granting Motion for Enlargement of Time Related to NEC Contention 4 and Granting Enlargement of Time, Subject to Sanction, Related to

(continued...)

In this regard, the Staff respectfully submits that it is not, in fact, seeking an extension of time or a modification of the hearing schedule. Rather, the Staff has substantially complied with all of the Licensing Board's schedule requirements, having filed its statement of position and direct testimony, its written response to other parties' statements of position, and its supporting documentation, in accordance with the Licensing Board's established schedule. The Staff seeks only to introduce two additional documents into evidence, which just came to the Staff's attention in the past week. To be sure, the Staff identified these documents two months after the deadline for identification of supporting documentation that was set by the Board. However, their identification at this time is the result of unavoidable circumstances – *i.e.*, the Generic Letters are 25-year old historical documents which are not utilized routinely by its witnesses in this proceeding, whose language was not known or recalled by its witnesses previously, and which only came to their attention in the past week upon their discovery by one of the Staff's witnesses while preparing for hearing.

Moreover, the Staff submits that a grant of the instant request will not result in adverse impact to any party, will not require any change in the schedule of the case, and will not unduly delay the conclusion of this proceeding. To the contrary, all parties have had an opportunity to discover the two Generic Letters in ADAMS entirely on their own, independent from the Staff's search and discovery of the documents.¹⁵ In addition, all parties are now in possession of the two Generic Letters; inasmuch as evidentiary hearings are still fully three weeks away, all parties will have sufficient time to review and evaluate the significance of the Generic Letters

¹⁴(...continued)
NEC Contention 3)" (March 23, 2006), slip op. at 3 ("Hereinafter, absent very extraordinary circumstances submitted to us via sworn declaration or affidavit, any motion . . . for an extension or enlargement of time that is not filed and in our hands by 2:00 PM on the day before the deadline in question, shall be automatically denied. . . .").

¹⁵ In addition, Generic Letters are available on the NRC public website under "Generic Communications" (www.nrc.gov/reading-rm/doc-collections/gen-comm/gen-letters).

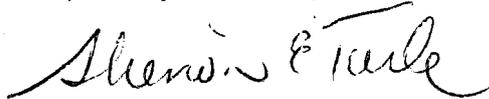
prior to presenting their testimony in the proceeding. Finally, the Generic Letters are consistent with and support the Staff's position on NEC Contention 3, and therefore do not require a revision of any party's testimony in the proceeding. On the other hand, the Staff submits that if the two Generic Letters were to be knowingly disregarded, the adjudicatory record – and the public interest – would be ill-served.

In accordance with 10 C.F.R. § 2.323(b), Counsel for the Staff has spoken with Counsel for the Applicant and attempted several times, without success, to contact NEC's representative (Mr. Shadis) concerning this request. Counsel for the Applicant does not oppose the Staff's request. NEC's representative was not available, but he has previously stated that he opposes the introduction of the two Generic Letters into evidence; and the Licensing Board has afforded NEC an opportunity to respond to the instant Motion in writing.

CONCLUSION

For the reasons set forth above, the Staff respectfully requests leave to introduce Generic Letters 80-91 and 81-08 as exhibits in the evidentiary hearings to be held in this proceeding.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 23rd day of August, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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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))	

AFFIDAVIT OF RICHARD B. ENNIS

COUNTY OF MONTGOMERY)	
)	SS:
STATE OF MARYLAND)	

Richard B. Ennis, having first been duly sworn, does hereby state as follows:

1. I am employed as a Senior Project Manager in the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, in Washington, D.C.
2. I have reviewed the statements of fact contained in the attached "NRC Staff's Motion for Leave to Introduce Two Additional Hearing Exhibits," dated August 23, 2006, and verify that they are true and correct to the best of my knowledge, information and belief.

Richard B. Ennis

 Richard B. Ennis

Sworn to before me this
23rd day of August 2006

Circe E. Martin

 Notary Public



My commission expires: March 1st 2007

CIRCE E. MARTIN
 NOTARY PUBLIC STATE OF MARYLAND
 My Commission Expires March 1, 2007



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 4, 1980

GL-80-91

TO ALL HOLDERS OF CONSTRUCTION PERMITS AND OPERATING LICENSES FOR
BOILING WATER REACTORS

The use of the ODYN code to calculate pressurization transients has been reviewed extensively by the staff and discussed with the General Electric Company. We have found that ODYN provides acceptable best estimate calculation predictions of the core responses to pressurization transients. A safety evaluation describing the basis for this conclusion will be mailed to you in the very near future. This letter is for the purpose of advising you as early as possible of our requirements for implementation of ODYN for licensing basis calculations performed by the General Electric Company. These requirements are applicable to license applications and all proposed license amendments, including core reloads for which analyses are provided by General Electric.

Transient analyses performed by General Electric supporting reload submittals received prior to February 1, 1981, will be reviewed taking into account the results of recent generic transient analyses with ODYN. Appropriate CPR penalties will be applied on a case by case basis. Transient analyses performed by General Electric supporting reload submittals received after February 1, 1981, must contain appropriate ODYN analyses in place of those previously performed with REDY for the limiting transients. Generally, these will include generator load rejection/turbine trip without bypass (whichever is limiting), feedwater controller failure - maximum demand, and main steamline isolation valve closure (to satisfy ASME code pressure requirements). After January 1982, all operating BWRs with General Electric analyses must have the limiting transients recalculated with the ODYN code, even if no reload submittal has been received. The transients analyzed with ODYN must be justified to be the limiting transients.

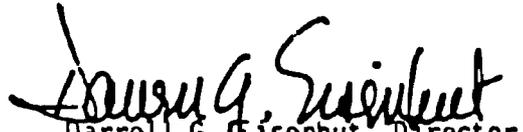
General Electric has provided an ODYN analysis for the two most limiting events for BWR 3 and BWR 4 plant types and has committed to provide analyses for a BWR 2 plant type by November 1, 1980. Any

D 241122 0358

November 4, 1980

penalties resulting from our review of the analyses for any plant type will be applied to all plants of that type until plant-specific calculations have been performed with ODYN for the two most limiting transients.

Sincerely,


Darrell G. Eisenhut, Director
Division of Licensing

cc: Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 29, 1981

ALL HOLDERS OF CONSTRUCTION PERMITS AND OPERATING LICENSES FOR
BOILING WATER REACTORS

SUBJECT: ODN CODE (GENERIC LETTER 81-08)

By letter dated November 4, 1980, we informed you of our requirements for use of the ODN code to calculate pressurization transients, and stated that a safety evaluation describing the basis for our acceptance of this code would be mailed to you in the near future.

Enclosed you will find a safety evaluation and a supplemental safety evaluation which jointly evaluate the ODN code and provide information required for application of ODN.

As you were informed in our letter of November 4, 1980, transient analyses performed by General Electric supporting reload submittals received after February 1, 1981, must contain appropriate ODN analyses in place of those previously performed with REDY for the limiting transients. After January 1982, all operating BWRs with General Electric analyses must have the limiting transients recalculated with the ODN code, even if no reload submittal has been received. Also, this requirement for the calculation of the limiting transients with the ODN code is applicable to applicants for an operating license and is a prerequisite to obtaining an operating license.

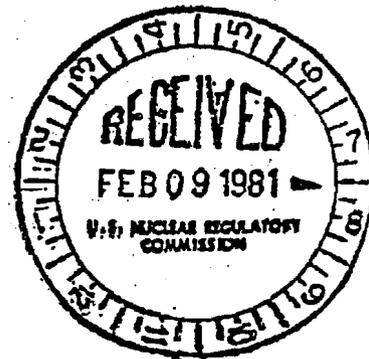
Sincerely,


Darrell G. Eisenhut, Director
Division of Licensing

Enclosures:

- 1) Safety Evaluation
- 2) Supplemental Safety Evaluation

cc: w/o enclosure
Service List



BOILING WATER REACTOR LICENSEES

CF
January 29-1981

Docket No. 50-293
Pilgrim Unit 1

Docket No. 50-245
Millstone Unit 1

Docket No. 50-325
Brunswick Unit 1

Docket No. 50-263
Monticello

Docket No. 50-324
Brunswick Unit 2

Docket No. 50-133
Humboldt Bay

Docket No. 50-10
Dresden 1

Docket No. 50-277
Peach Bottom Unit 2

Docket No. 50-237
Dresden 2

Docket No. 50-278
Peach Bottom Unit 3

Docket No. 50-249
Dresden 3

Docket No. 50-333
FitzPatrick

Docket No. 50-254
Quad-Cities Unit 1

Docket No. 50-259
Browns Ferry Unit 1

Docket No. 50-265
Quad-Cities Unit 2

Docket No. 50-260
Browns Ferry Unit 2

Docket No. 50-155
Big Rock Point

Docket No. 50-296
Browns Ferry Unit 3

Docket No. 50-409
Lacrosse

Docket No. 50-271
Vermont Yankee

Docket No. 50-321
Edwin I. Hatch Unit 1

Docket No. 50-366
Edwin I. Hatch Unit 2

Docket No. 50-331
Duane Arnold

Docket No. 50-219
Oyster Creek

Docket No. 50-220
Nine Mile Point Unit 1

Docket No. 50-298
Cooper Station



IDR-5
INFO-LTR

See to docket
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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))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION FOR LEAVE TO INTRODUCE TWO ADDITIONAL HEARING EXHIBITS" 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 23rd day of August, 2006.

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