

RAS 12331

September 21, 2006

DOCKETED  
USNRC

Alex S. Karlin, Chairman, Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

October 2, 2006 (3:35pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dr. Anthony J. Baratta, Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Lester S. Rubenstein, Administrative Judge  
Atomic Safety and Licensing Board Panel  
4760 East Country Villa Drive  
Tucson, AZ 85718

**In the Matter of  
Entergy Nuclear Vermont Yankee, LLC, *et al.*  
(Vermont Yankee Nuclear Power Station)  
Docket No. 50-271-OLA (Extended Power Uprate)**

Dear Administrative Judges:

This letter is intended to bring to the attention of the Panel an issue arising from the recently conducted evidentiary hearings at Newfane, Vermont (September 13, 14, 2006) in the above captioned matter.

On September 13<sup>th</sup>, on hearing Entergy Nuclear Vermont Yankee, LLC, *et al* ("Entergy") present its exhibits<sup>1</sup>, New England Coalition (*also herein*, "the Coalition") complained to the Board that the Coalition was laboring under some confusion as to Entergy's exhibit designations, as the Coalition had never received a consolidated list of Entergy's Exhibits in the format being presented for hearing. Judge Karlin took responses from NRC Staff and Entergy, then dismissed

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<sup>1</sup> Entergy's counsel presented these exhibits in heavily accented, rapid, soft, and somewhat run together speech that was extremely difficult for New England Coalition to fully apprehend or understand.

New England Coalition's concern; commenting that the Coalition had, in fact, received the (final) exhibit lists when they were produced in June of 2006.

This has proven to be untrue, at least insofar as having received the lists as they were presented at hearing.

Further, New England Coalition's lack of timely access to Entergy's final list of exhibits proved to adversely affect the quality of New England Coalition's witness presentation during the evidentiary hearings.

On September 13<sup>th</sup>, following New England Coalition's complaint, NRC Staff then provided a paper copy of its final exhibit list, NRC Staff's Exhibit List, dated, September 6, 2006. NRC Staff provided an exhibits list identical to that filed by NRC Staff in June, with the exception that Exhibits duplicative of the applicant's exhibits were re-designated as Entergy Exhibits and two proposed new exhibits, NRC Staff 31 and 32, were list as "Pending". Further, NRC Staff then provided paper copies of all of its admitted exhibits to New England Coalition.

Entergy's exhibit list was quite another matter.

Only on September 14<sup>th</sup>, at the beginning of the second day's hearing, did Entergy provide New England Coalition with its final list of exhibits, Applicant's Exhibit List, dated September 6<sup>th</sup>. However, Entergy's consolidated list and exhibit designations were new to the Coalition. Entergy did not provided paper copies of its exhibits<sup>2</sup>. New England Coalition's lack of time and opportunity to familiarize its self and its witness with Entergy's new and modified document designations, or to go through its witness's hearing notes in order to find references to exhibits and to reconcile them with the new exhibit list was to have telling effect.

On September 14<sup>th</sup>, later in the day, Dr. Joram Hopenfeld testified on behalf of New England Coalition. Dr. Hopenfeld had spent countless hours preparing for his testimony and referenced the only lists of Entergy exhibits (documents) that had been provided to the Coalition prior to the second day of the hearing. Thus, he began his response to a question from the panel

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<sup>2</sup> Entergy's exhibits and most filings have, in fact, only been provided to New England Coalition in a scanned-in, non-extractable form of portable document file (pdf) that does not permit electronically extracting notes or highlighting. When accessed through NRC's ADAMS, however, these same documents appear in a pdf format that is extractable and may be highlighted or annotated.

by referencing a table in “Item 2” from Entergy’s Supplement To Direct Testimony<sup>3</sup> and confusion reigned until it could be ascertained that “Item 2” was now designated, Applicant’s Exhibit # “Entergy 27”.

The Coalition’s witness was observably upset and confused by the discrepancy, which appeared to reflect negatively on the quality of his testimony. Further, Dr. Hopenfled, a dispassionate and dedicated scientist; not a polemicist, and not a practiced courtroom habitué, was clear thrown off his stride by the commotion following his fractured attempt to reference an exhibit in the form in which it had been provided. Dr. Hopenfled then attempted to continue his answer by offering to compare the table to yet another table in a separate document. The Board did not allow Dr. Hopenfled to continue to offer his reasoned conclusions and complete answer. New England Coalition’s *pro se* representative erred in not asking for a recess to allow time for the Coalition’s witness to regain his composure. The Board the completed its remaining questions in short order, but New England Coalition believes with Dr. Hopenfled’s ability to answer their queries was now handicapped not only by the insult to Dr. Hopenfled but also by an apparent insult to the Board’s patience<sup>4</sup>.

Following the hearings New England Coalition examined its files and records of electronic correspondence June 19, 2006 and found no record of Entergy having provided a complete and final list of exhibits in advance of the hearing.

On September 15, 2006, the Coalition sent E-mail to Entergy inquiring if Entergy’s records showed that it had provided a complete exhibit list to New England Coalition prior to hearing. Entergy responded that it had not provided a final list. The Coalition’s E-mail and Entergy’s response are attached.

New England Coalition believes that based on the foregoing its case was prejudiced and its witness’s response to examination by the Board was damaged by Entergy’s omission, however at this juncture the Coalition is at loss as to what remedy may be had. Therefore, at this

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<sup>3</sup> Attached.

<sup>4</sup> The transcript will show, New England Coalition believes, that the Board, from the point of confusion regarding the exhibit, forward tended to cut Dr. Hopenfled off whenever he attempted, in response to the Board’s questions, offer any substantive discussion of the transient modeling and thermal-hydraulic issues involved. New England Coalition cannot, at this time, cite specific portions of the transcript, as, due to lack of funds, the Coalition must wait its publication as public document in order to access it.

time New England Coalition respectfully requests only that the Board review the facts and circumstances surrounding Dr. Joram Hopenfeld's testimony and make a determination as to the degree of adverse impact.

Should the Board conclude that New England Coalition should have been served a complete Applicant's Exhibits List in accordance with standard filing procedure and service requirements, and should the Board upon consideration conclude that Dr. Hopenfeld's oral testimony suffered, thus prejudicing New England Coalition's case as a direct and indirect result of this omission, then New England Coalition would respectfully request that the Board grant the Coalition an opportunity through filing or conference call to propose a remedy or to work with the Board and with the Parties toward developing an appropriate remedy.

Thank you for your kind attention,



Raymond Shadis  
*Pro Se* Representative  
New England Coalition  
Post Office Box 98,  
Edgecomb, Maine 04556

cc w/out Encl.: Service List

**ATTACHMENT ONE  
 ENTERGY SUPPLEMENTAL FILING  
 FIRST TWO PAGES ONLY**

June 19, 2006

**UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**ENTERGY'S SUPPLEMENT TO DIRECT TESTIMONY  
ON NEC CONTENTIONS 3 AND 4**

As directed in the Atomic Safety and Licensing Board ("Board")'s June 5, 2006 Order (Regarding Submission of Supplemental Documents) ("Order"), Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") supplement their testimony on New England Coalition ("NEC") Contentions 3 and 4 by submitting the following documents:

Index of Documents Provided in Response to Board Order

Item	Contention	Document Title	Testimony Where Document is Cited or Referenced
01	NEC-3	CLTR for Constant Pressure Power Uprate Safety Analysis: NEDC-33004-A Rev. 4, July 2003 (non-proprietary version)	Testimony of Craig J. Nichols and Jose L. Casillas (May 17, 2006) at A13
02	NEC-3	NEDO 24154-A, vol. 1	Id. at A30
03	NEC-3	NEDO 24154-A, vol. 2	Id.

Item	Contention	Document Title	Testimony Where Document is Cited or Referenced
04	NEC-3	NEDO 24154-A, vol. 1-4 summary; ODYN benchmark summaries	Id. at A30 and A36
05	NEC-3	Supplemental Reload Licensing Report (SRLR) EPU Cycle 25	Id. at A40
06	NEC-3	SRLR EPU Cycle 25 Supplemental Data	Id.
07	NEC-3	ODYN Studies Report Summaries	Id. at A18
08	NEC-4	ASTM Std. D245	Testimony of George S. Thomas, Paul D. Baughman, Norman A. Roux, Robert D. Fulkerson and Philip L. Westover on Restated Contention 4 (May 17, 2006) at A58
09	NEC-4	American Wood Preservers' Assn. Std. C1-03	Id. at A61
10	NEC-4	American Wood Preservers' Assn. Std. C2-02	Id.
11	NEC-4	American Wood Preservers' Assn. Std. C9-03	Id.
12	NEC-4	American Wood Preservers' Assn. Std. C30-01	Id.
13	NEC-4	American Wood Preservers' Assn. Std. U1-05	Id.
14	NEC-4	National Design Specification for Wood Construction, Chapter 1	Id. at A37 and A58

**ATTACHMENT TWO - E-MAIL EXCHANGE**

**NEW ENGLAND COALITION AND ENTERGY – SEPTEMBER 15 and 19, 2006**

X-Original-To: shadis@prexar.com  
Delivered-To: shadis@prexar.com  
X-ASG-Debug-ID: 1158352958-5566-659-0  
X-Barracuda-URL: <http://65.99.5.29:8000/cgi-bin/mark.cgi>  
X-Server-Uid: 5EE9A8D1-2BDD-4451-B52B-48FC1E750612  
X-ASG-Orig-Subj: RE: Entergy's Supplement to Direct Testimony re Contentions 3 and 4  
Subject: RE: Entergy's Supplement to Direct Testimony re Contentions 3 and 4  
Date: Fri, 15 Sep 2006 16:40:06 -0400  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: Entergy's Supplement to Direct Testimony re Contentions 3 and 4  
Thread-Index: AcbY3GiJq8dcQe7FQ9yYQhqC+poSrWAKrgmj  
From: "Travieso-Diaz, Matias F." <matias.travieso-diaz@pillsburylaw.com>  
To: "Raymond Shadis" <shadis@prexar.com>  
Cc: "Silberg, Jay E." <jay.silberg@pillsburylaw.com>, "Vance, Scott A." <scott.vance@pillsburylaw.com>  
X-OriginalArrivalTime: 15 Sep 2006 20:42:27.0791 (UTC) FILETIME=[75052DF0:01C6D907]  
X-WSS-ID: 6915CFB91JS3366124-01-01  
X-Barracuda-Bayes: INNOCENT GLOBAL 0.0003 1.0000 -2.0194  
X-Virus-Scanned: by Barracuda Spam Firewall at prexar.com  
X-Barracuda-Spam-Score: -0.97  
X-Barracuda-Spam-Status: No, SCORE=-0.97 using global scores of TAG\_LEVEL=2.5 QUARANTINE\_LEVEL=3.5 KILL\_LEVEL=3.5 tests=IP\_LINK\_PLUS  
X-Barracuda-Spam-Report: Code version 3.02, rules version 3.0.18086  
Rule breakdown below pts rule name description

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1.05 IP\_LINK\_PLUS      URI: Dotted-decimal IP address followed by CGI

Dear Mr. Shadis: On reviewing our records I established that we did not provide you a final list of Entergy's exhibits because the Board's Order of August 24, 2006 only required that such a list be sent to the Board's clerk, Marcia Carpentier. As the Order reads: "f. Exhibit List. On or before September 6, 2006, each party shall provide the Board's law clerk, Marcia Carpentier, Esq. (e-mail address: [mxc7@nrc.gov](mailto:mxc7@nrc.gov)), an electronic copy of a list of all of its prefiled exhibits. The parties should use the exhibit list template included as Attachment A hereto as the format for the list, and should complete the party exhibit number, witness/panel, and description fields, including a designation in bold type for any proprietary/protected status." (Order at 6). We provided such a list to Ms. Carpentier on August 29, 2006.

Nevertheless, when I introduced each exhibit into evidence at the hearing, I identified it in accordance with the list we had provided to the Board, and each exhibit is

fully described in the transcript of the hearing session on September 13. I also left on your desk in the hearing room a copy of the exhibit list before the start of hearings on September 14. I also assisted the Board and Dr. Hopenfeld to correlate the exhibits from which he was testifying with the numbers in our exhibit list, so I believe the subject of Dr. Hopenfeld's testimony was adequately identified on the record.

**Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP**

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Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463  
2300 "N" Street, NW | Washington, DC 20037-1122  
Email: [matias.travieso-diaz@pillsburylaw.com](mailto:matias.travieso-diaz@pillsburylaw.com)  
Bio: [www.pillsburylaw.com/Matias.travieso-diaz](http://www.pillsburylaw.com/Matias.travieso-diaz)  
[www.pillsburylaw.com](http://www.pillsburylaw.com)

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**From:** Raymond Shadis [mailto:shadis@prexar.com]  
**Sent:** Fri 9/15/2006 11:10 AM  
**To:** Matias Travieso-Diaz  
**Subject:** Fwd: Entergy's Supplement to Direct Testimony re Contentions 3 and 4

Dear Mr., Travesio-Diaz,

We believe that the attached list of documents (Entergy's Supplement to Direct Testimony) is the last list of Exhibits that we received from Entergy prior to the Evidentiary Hearings in Newfane, Vt on the 13th and 14th of September. As you can see from the formatting of Entergy's Attachment, the list of documents is provided as , "Items, 1, 2, 3, 4, etc." and much as New England Coalition's witness, Dr. Joram Hopenfeld attempted to introduce them in hearing on the 14th. Please check your outgoing electronic transmission records to determine if in fact you sent us an integrated final list of exhibits including the NEC Contention related "Items" in the attached "Supplement." If you find that you did provide us with an final integrated list, then please forward a copy of the transmission letter/ or e-mail.

Thank you,

Raymond Shadis  
New England Coalition

X-Original-To: shadis@prexar.com  
Delivered-To: shadis@prexar.com  
X-ASG-Debug-ID: 1150745573-8062-180-0  
X-Barracuda-URL: <http://65.99.5.29:8000/cgi-bin/mark.cgi>  
X-Server-Uuid: 1A951316-D90F-4735-A66F-86B35A78C130  
X-ASG-Orig-Subj: Entergy's Supplement to Direct Testimony re Contentions 3 and 4  
Subject: Entergy's Supplement to Direct Testimony re Contentions 3 and 4  
Date: Mon, 19 Jun 2006 15:32:30 -0400  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: Entergy's Supplement to Direct Testimony re Contentions 3



and 4

Thread-Index: AcaT1xpeD3JEtbrtSdyjkq8SfvCAUg==

From: "Travieso-Diaz, Matias F." <matias.travieso-diaz@pillsburylaw.com>

To: "Alex Karlin" <ASK2@nrc.gov>, lesrrr@comcast.net,  
"Anthony Baratta" <AJB5@nrc.gov>

Cc: "SECY HearingDocket" <HearingDocket@nrc.gov>, mxc7@nrc.gov,  
"Jonathan Rund" <JMR3@nrc.gov>, "Sherwin Turk" <SET@nrc.gov>,  
"NEC-Shadis 1" <shadis@prexar.com>, sch1@nrc.gov,  
"Silberg, Jay E." <jay.silberg@pillsburylaw.com>

X-OriginalArrivalTime: 19 Jun 2006 19:32:32.0536 (UTC)

FILETIME=[1C1A1180:01C693D7]

X-WSS-ID: 6888245F4QK212660-01-01

X-Virus-Scanned: by Barracuda Spam Firewall at prexar.com

X-Barracuda-Spam-Score: -1001.00

X-Barracuda-Spam-Status: No, SCORE=-1001.00 using global scores of TAG\_LEVEL=2.5  
QUARANTINE\_LEVEL=3.5 KILL\_LEVEL=3.5

Attached to this e-mail is the above-referenced document in the Matter of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) Docket No. 50-271, ASLBP No. 04-832-02-OLA (Operating License Amendment), which is being sent today via overnight mail to the Board and parties and via first class mail to others on the service list. The document is accompanied by one CD containing non-proprietary documents. The Board members will also receive another CD containing proprietary documents.

<<Entergy's Supplement to Direct Testimony on NEC Contentions 3 and 4.pdf>>

**Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP**

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Bio: [www.pillsburylaw.com/Matias.travieso-diaz](http://www.pillsburylaw.com/Matias.travieso-diaz)  
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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 New England Coalition's Letter to the Board of September 21, 2006 regarding issues in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class and by e-mail as indicated by a double asterisk (\*\*), this 22<sup>nd</sup> day of September, 2006.

Alex S. Karlin, Chair** Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ask2@nrc.gov	Dr. Anthony J. Baratta** Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ajb5@nrc.gov
Lester S. Rubenstein** Administrative Judge Atomic Safety and Licensing Board Panel 4760 East Country Villa Drive Tucson, AZ 85718 E-mail: lesrr@comcast.net	Office of the Secretary** ATTN: Rulemaking and Adjudications Staff Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: HEARINGDOCKET@nrc.gov
Office of Commission Appellate Adjudication Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001	John M. Fulton, Esq. Assistant General Counsel Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601

<p>Jay E. Silberg, Esq.**  Matias Travieso-Diaz, Esq.**  Pillsbury Winthrop Shaw Pittman, LLP  2300 N St., NW  Washington, DC 20037-1128  E-mail: <a href="mailto:jay.silberg@pillsburylaw.com">jay.silberg@pillsburylaw.com</a>  <a href="mailto:matias.travieso-diaz@pillsburylaw.com">matias.travieso-diaz@pillsburylaw.com</a>  <a href="mailto:douglas.rosinski@pillsburylaw.com">douglas.rosinski@pillsburylaw.com</a></p>	<p>Marcia Carpentier, Esq.**  Law Clerk  Atomic Safety and Licensing Board Panel  Mail Stop T-3F23  U.S. Nuclear Regulatory Commission  Washington, DC 20555-0001</p>
<p>Jonathan M. Rund, Esq.**  Law Clerk  Atomic Safety and Licensing Board Panel  Mail Stop: T-3F23  U.S. Nuclear Regulatory Commission  Washington, DC 20555-0001  (E-mail: <a href="mailto:jmr3@nrc.gov">jmr3@nrc.gov</a>)</p>	<p>Sherwin E. Turk, Esq.**  Richard Ennis, NRR. **  Office of the General Counsel  Mail Stop O-15 D21  U.S. Nuclear Regulatory Commission  Washington, DC 20555-0001  <a href="mailto:set@nrc.gov">set@nrc.gov</a>, <a href="mailto:jcz@nrc.gov">jcz@nrc.gov</a></p>



Raymond Shadis  
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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

*In the matter of*

ENERGY NUCLEAR VERMONT YANKEE, LLC  
and ENERGY NUCLEAR OPERATIONS, INC.  
(Vermont Yankee Nuclear Power Station)

September 22, 2006

Docket No. 50-271

ASLBP No. 04-832-02-OLA

Office of the Secretary  
ATTN: Rulemaking and Adjudications Staff  
Mail Stop: O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Rulemaking and Adjudications Staff,

Please find for filing in the above captioned matter one original and two copies of New England Coalition's Letter to the Board of September 21, 2006.

Thank you for your kind assistance in making this filing,



Raymond Shadis  
Pro se Representative  
New England Coalition  
Post Office Box 98  
Edgecomb, Maine 04556  
207-882-7801