

September 25, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

September 25, 2006 (1:42pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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)

ENTERGY'S RESPONSE TO NEW ENGLAND COALITION'S LETTER TO BOARD

INTRODUCTION

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.¹ (collectively "Entergy") hereby respond to the letter sent to the Atomic Safety and Licensing Board ("Board") on September 21, 2006 ("NEC Letter") by Mr. Raymond Shadis, representative of the New England Coalition ("NEC") in this proceeding. NEC's Letter is procedurally unsound and substantively without basis. Consequently, the Board should strike or disregard it.

DISCUSSION

NEC's Letter does not contain a motion, asks for no specific relief from the Board, and does not include a certification by NEC that it made a sincere effort to contact other parties in the proceeding and resolve the issues raised in it. It fails to comply with the requirements for filing motions in 10 C.F.R. § 2.323 and warrants being stricken pursuant to 10 C.F.R. § 2.319(d) from the record of this proceeding as irrelevant and immaterial. See, e.g., Entergy Vermont Yankee

¹ Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. are the licensees of the Vermont Yankee Nuclear Power Station ("VY").

LLC (Vermont Yankee Nuclear Power Station, Docket No. 50-271-LR) Order (Striking Entergy's Letter to the Board and Attached Materials) (August 11, 2006).

Apart from its procedural deficiencies, NEC's Letter alleges that the oral testimony given by its witness Dr. Joram Hopenfled at the evidentiary hearing held in Newfane, Vermont on September 14, 2006 was adversely affected by NEC not having received before the hearing a final list of Entergy's exhibits. NEC alleges that Dr. Hopenfled was confused when his identification of an Entergy exhibit did not match the designation of the document in Entergy's final exhibit list, and goes on to claim:

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. . . . The Board the [sic] completed its remaining questions in short order, but New England Coalition believes with [sic] 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 patience².

² 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.

NEC Letter at 3. Entergy cannot comment on the Board's reaction to Dr. Hopenfled's testimony, but finds it troubling that a party would charge the Board with discounting or disregarding a witness' testimony merely because of a momentary confusion in the identification of an exhibit. Entergy has reviewed the transcript of Dr. Hopenfled's examination and finds no appreciable difference in the tenor of the Board's questioning of Dr. Hopenfled, or in his answers to the

Board's questions, before and after the confusion over the exhibit numbers. Compare Tr. 1511-35 with Tr. 1539-53. NEC's charges appear to be just idle speculation.

In any event, if the brief confusion² over the exhibit numbers caused Dr. Hopenfeld to "be thrown off his stride" NEC is solely to blame for that result. NEC had copies of all non-proprietary Entergy exhibits for several months prior to the hearing so Dr. Hopenfeld could have adequately identified the exhibits by referring to their titles, if not their numbers. Also, as NEC acknowledges, by the time Dr. Hopenfeld took the stand Mr. Shadis had a copy of Entergy's final exhibit list and could have easily provided the correct exhibit information to his witness.³ He failed to do so.⁴

In reality, Mr. Shadis had ample time to discuss with Dr. Hopenfeld the proper numbering of the Entergy exhibits before Dr. Hopenfeld testified, since those exhibits were identified on the record and entered into evidence at the start of the preceding day's hearing. See Tr. 1149-72.⁵ NEC also had a hard copy of the Entergy exhibit list before the start of the

² The exchanges over the Entergy exhibit numbers lasted only a few minutes. See Tr. 1535-39.

³ Entergy provided a copy of its final exhibit list to NEC prior to the start of the September 14 hearing. Entergy counsel had mistakenly stated at the end of the September 13 hearing that Entergy had provided a copy of the final exhibit list to NEC at the time it sent it to the Board's clerk. See Tr. 1438. Contrary to counsel's faulty recollection (for which we apologize), Entergy had not provided a copy of its final exhibit list to NEC before the hearing because it interpreted the Board's instructions as requiring that such a list only be sent to the Board's clerk: "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), an electronic copy of a list of all of its prefiled exhibits." Order (Site Visit and Evidentiary Hearing Administrative Matters) (Aug. 24, 2006) at 6, emphasis in original. Entergy fully complied with the Board's Order, submitting its final exhibit list to the Board's clerk on August 29, 2006.

⁴ In fact, it was Entergy's counsel who finally provided the relevant information. See Tr. 1538-39.

⁵ NEC criticizes counsel's introduction of the Entergy's exhibits at the start of the hearings on September 13 as being "extremely difficult for New England Coalition to fully apprehend or understand." NEC Letter at 1. However, Mr. Shadis failed to mention any such difficulties at the time the exhibits were being introduced, and did not ask for a copy of the exhibit list until the end of the day. Tr. 1437.

September 14 hearing. Mr. Shadis had the opportunity to go over the exhibits with Mr. Hopenfeld. NEC's Letter does not explain why he failed to do so.

CONCLUSION

NEC's Letter is totally lacking in merit and should be disregarded by the Board.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response to New England Coalition's Letter to Board" 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 25th day of September, 2006.

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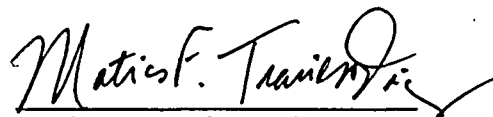
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