

RAS 12351

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 10/11/06

SERVED 10/11/06

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Richard E. Wardwell
Dr. Thomas S. Elleman

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-LR

ASLBP No. 06-849-03-LR

October 11, 2006

ORDER

(Scheduling Prehearing Conference Call)

This is to notify Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy), the Department of Public Service of the State of Vermont (DPS), the New England Coalition (NEC), and the NRC Staff that, in accordance with 10 C.F.R. §§ 2.329 and 2.332, the Board will hold a prehearing conference call on November 1, 2006, at 10:00 AM EST for the purpose of developing a scheduling order to govern the conduct of this proceeding.

Prior to the conference call, the parties should familiarize themselves with all relevant procedural rules of 10 C.F.R. Part 2, including but not limited to 10 C.F.R. §§ 2.309(c) and (f), 2.310, 2.323, 2.329, 2.332, 2.333, 2.334, 2.338, all of Subpart L, and the model milestones set

forth in Appendix B to Part 2. The parties should also consider, as examples from a similar proceeding, the orders issued on February 1, 2005 (Initial Scheduling Order), March 1, 2005 (Protective Order), and April 13, 2006 (Revised Scheduling Order) in 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.

Pursuant to 10 C.F.R. § 2.332(d), the Board is to consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. Accordingly, on October 25, 2006, the NRC Staff shall submit to the Board, with copies to all parties, a written estimate of its projected schedule for completion of such safety and environmental evaluations, including but not limited to its best estimate of the dates for issuance of the draft and final safety evaluation reports, the draft and final environmental assessments or environmental impact statements, and if applicable, the draft and final no significant hazards consideration determinations.

The parties should be prepared to address the following matters at the prehearing conference call:

1. Whether hearings on the safety contentions should be commenced before publication of the NRC Staff's safety evaluation as permitted under 10 C.F.R. § 2.332(d);
2. Suggestions for modifying the time limits set in 10 C.F.R. § 2.1205(a) to prevent motions for summary disposition from conflicting with the Board's responsibility to prepare for the Subpart L proceedings;
3. Establishment of time limits for filing "timely" motions for leave to file new or amended contentions under 10 C.F.R. § 2.309(f)(2)(iii) and defining "nontimely" filings under 10 C.F.R. § 2.309(c);¹

¹ See Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571-75 (2006).

4. Specification of pleading rules for motions for leave to file new or amended contentions that reconcile 10 C.F.R. §§ 2.309(c), 2.309(f)(2), and 2.323 (motions and answers to motions) with 10 C.F.R. § 2.309(h) (answers and replies to contentions);

5. Establishment of time limits for adoption of any newly admitted contentions under 10 C.F.R. § 2.309(f)(3);

6. Establishment of time limits for updating of mandatory disclosures under 10 C.F.R. § 2.336(d) and for updating of hearing file under 10 C.F.R. § 2.1203(c);

7. Establishment of time limit for filing of the final list of potential witnesses for each contention pursuant to 10 C.F.R. § 2.336(a)(1);

8. Establishment of time limits for any motion for the use of Subpart G hearing procedures for a particular contention based upon challenges to the credibility of a newly disclosed eyewitness pursuant 10 C.F.R. § 2.310(d);²

9. Whether, pursuant to 10 C.F.R. § 2.310(h), the parties are currently willing to consent to handling of any specific contention under Part 2 Subpart N and, if not at this time, whether to establish a time limit for any such unanimous request.

10. Opportunities for the clarification, simplification, or specification of the issues in accordance with 10 C.F.R. § 2.329(c)(1);

11. The necessity or desirability of amending the pleadings in accordance with 10 C.F.R. § 2.329(c)(2);

12. Opportunities to develop stipulations or admissions of fact in accordance with 10 C.F.R. § 2.329(c)(3);

² See Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 703 (2004).

13. Opportunities for the settlement of issues or contentions, including the utility of appointing a settlement judge pursuant to 10 C.F.R. § 2.338;

14. Whether the party intends to assert a privilege or protected status for any information or documents otherwise required to be disclosed herein and, if so, proposals for the submission of privilege logs under 10 C.F.R. §§ 2.336(a)(3) and (b)(5), procedures and time limits for challenges to such assertions, and the development of a protective order and non-disclosure agreement;³

15. Whether a site visit would be appropriate and helpful to the Board in the resolution of the contentions;

16. Whether the parties should be required to file their initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1) simultaneously or sequentially, and if sequentially, which party should file first;

17. Establishment of time limits for the filing of motions for cross-examination under 10 C.F.R. § 2.1204;⁴ and

18. Any other procedural or scheduling matters that the Board may deem appropriate.

On or before October 27, 2006, the parties shall confer with one another for the purpose of discussing the foregoing procedural matters and, where possible, developing joint positions or proposals. If appropriate, the Board will call for the submission of briefs or joint proposals on relevant issues after the prehearing conference call.

³ See Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828 (2005).

⁴ See Citizens Awareness Network v. United States, 391 F.3d 338, 353-54 (1st Cir. 2004); Vermont Yankee, LBP-04-31, 60 NRC at 710-11.

On or before October 27, 2006, counsel for each of the parties should contact Karen S. Valloch at 301-415-7405 to obtain the telephone number and pass code for the November 1, 2006, prehearing conference call.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 11, 2005

⁵ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) licensees Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.; (2) intervenors Vermont Department of Public Service and New England Coalition; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SCHEDULING PREHEARING CONFERENCE CALL) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas S. Elleman
Atomic Safety and Licensing Board Panel
5207 Creedmoor Rd., #101
Raleigh, NC 27612

Mitzi A. Young, Esq.
Steven C. Hamrick, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Ronald A. Shems, Esq.
Karen Tyler, Esq.
Shems Dunkiel Kassel & Saunders, PLLC
91 College Street
Burlington, VT 05401

Docket No. 50-271-LR
LB ORDER (SCHEDULING PREHEARING CONFERENCE CALL)

Sarah Hofmann, Esq.
Director for Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601

Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768

Matthew Brock, Esq.
Assistant Attorney General
Office of the Massachusetts Attorney General
Environmental Protection Division
One Ashburton Place, Room 1813
Boston, MA 02108-1598

Diane Curran, Esq.
Harmon, Curran, Spielberg,
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Callie B. Newton, Chair
Gail MacArthur
Lucy Gratwick
Town of Marlboro
SelectBoard
P.O. Box 518
Marlboro, VT 05344

Dan MacArthur, Director
Town of Marlboro
Emergency Management
P.O. Box 30
Marlboro, VT 05344

David R. Lewis, Esq.
Matias F. Travieso-Diaz, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of October 2006