

October 4, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

October 4, 2006 (9:55am)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

**ENTERGY'S RESPONSE TO LICENSING BOARD'S ORDER REGARDING
REDACTION OF TRANSCRIPT OF PROPRIETARY HEARING SESSION**

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.

(collectively "Entergy") hereby respond to the Atomic Safety and Licensing Board's ("Board") September 27, 2006 Order ("Order") directing Entergy to submit, by October 4, 2006, "a copy of the transcript of the closed session, Tr. at 1579-1607, marked with any redactions that Entergy believes are necessary to protect the information that Entergy claims to be proprietary" and "a brief, not exceeding five pages, explaining why Entergy believes the redactions to the transcript are necessary and appropriate." Order at 2. Entergy is submitting separately to the Board and the NRC Staff ("Staff") a redacted copy of the transcript. This response is intended to set forth the basis for determining that the proposed transcript redactions are "necessary and appropriate."

BACKGROUND

Shortly after discovery was initiated in this proceeding, Entergy filed a motion for a protective order seeking the establishment of procedures for the disclosure of proprietary trade secrets and commercial and financial information to the parties and the imposition of restrictions on the distribution of proprietary information to authorized persons pursuant to suitable

confidentiality and non-disclosure agreements.¹ The Board issued such a protective order on March 1, 2006. Order (Protective Order Governing Non-Disclosure of Proprietary Information) (March 1, 2005) (“Protective Order”). In it, the Board established a procedure under which, if counsel for Entergy in good faith believed that a document contained information that qualified for proprietary protection under 10 C.F.R. § 2.390(a)(4), counsel could designate the document as proprietary and it would be afforded protection from unauthorized disclosure. Protective Order at 3. Any party objecting to the designation of a document as proprietary would be required to notify Entergy in writing of its objection. *Id.* at 4. Through the discovery process that ensued in the following eighteen months, Entergy’s counsel designated a number of documents as “proprietary.” No objections were raised by any party to the designations.

On June 5, 2006, the Board issued an Order (Regarding Submission of Supplemental Documents) (“Production Order”) requiring Entergy and other parties to supplement their prefiled direct testimony on the admitted contentions by submitting “all reports and documents that are relied upon to prove or substantiate the party’s position, or that are referenced by, and are material to support, the testimony of one of its witnesses.” Production Order at 3. Pursuant to the Board’s directive, Entergy filed on June 19, 2006 its “Supplement to Direct Testimony on NEC Contentions 3 and 4,” submitting thirty-three documents, of which eight were designated as proprietary. No party objected to Entergy’s designation of those documents as proprietary.

In its Protective Order, the Board had imposed the requirement that, in order for a party to gain access to proprietary information, the representatives of the party to whom such information would be disclosed would need to execute a Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) whose terms were specified by the Board. Protective

¹ Entergy’s Motion for Protective Order Governing Access to and Disclosure of Trade Secrets and Confidential Commercial or Financial Information (January 12, 2005).

Order at 5. While the Vermont Department of Public Service and the Staff executed the required Confidentiality Agreements, the New England Coalition (“NEC”) chose not to do so. As a result, NEC did not receive proprietary documents during the course of discovery, and did not receive the proprietary documents that were included in Entergy’s June 19, 2006 submittal. Those proprietary documents were among the exhibits that were entered into evidence by Entergy at the September 13-14, 2006 evidentiary hearings.

When the Board scheduled the evidentiary hearing in this proceeding, it set aside a session to hear testimony relating to proprietary exhibits. Only parties who had executed Confidentiality Agreements would be authorized to attend that session. Order (Site Visit and Evidentiary Hearing Administrative Matters) (Aug. 24, 2006) at 6-7. NEC declined to have its representatives and witnesses execute a Confidentiality Agreement. New England Coalition’s List of Representatives and Witnesses for Evidentiary Hearing (Sept. 6, 2006); Tr. 1120, 1157. Consequently, NEC was excluded from attending the proprietary session held in the afternoon of September 14, 2006. At that session, the proprietary documents submitted by Entergy on June 19, 2006 were discussed during the Board’s examination of Entergy’s witnesses. Tr. 1579-1607.

At the conclusion of the hearing, NEC’s representative requested the production of a redacted version of the transcript for the closed session. Tr. at 1611. In response, the Board directed Entergy to submit a redacted version of the transcript and an explanation as to why Entergy believes the proposed redactions are appropriate and necessary. Order at 2.

BASIS FOR REDACTIONS

Under the NRC rules in 10 C.F.R. § 2.390(a)(4), information in a proceeding can be withheld from public disclosure if it contains “[t]rade secrets and commercial or financial

information obtained from a person and privileged or confidential.” A determination of the proprietary nature of commercial information must be based upon

- (i) Whether the information has been held in confidence by its owner;
- (ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefor;
- (iii) Whether the information was transmitted to and received by the Commission in confidence;
- (iv) Whether the information is available in public sources;
- (v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

10 C.F.R. § 2.390(b)(4).

Entergy has marked up the transcript of the proprietary hearing to identify the portions of the Board questions and the answers thereto that contain proprietary information. All of the information so identified relates to documents that have been designated as proprietary by Entergy, and whose designation has not been challenged by any party. The designated information had been previously marked as proprietary by the General Electric Company (“GE”) and treated as such by the NRC Staff. The subject information is held in confidence by GE as trade secret information and is of the type normally held in confidence by GE, as it reflects the intellectual property of the GE Nuclear Corporation related to GE Boiling Water Reactor design, operation and licensing whose disclosure would provide competitors to GE with information that could harm GE’s competitive position. Further, this information was transmitted in confidence to the Board in Entergy’s June 19, 2006 transmittal and by Entergy’s witnesses during the course of the closed, proprietary session of the hearing. It is not available in any public sources. Moreover, disclosure of this information would cause substantial harm to GE’s competitive

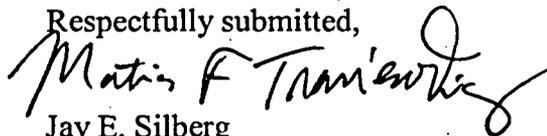
position. GE has developed this information (for example, the information relating to the development, benchmarking and use of GE's ODYN computer code) over a period of decades. (See, e.g., Tr. 1292-95, 1311-14 (Casillas)). GE has spent significant amounts of time and money in this development. The information that is marked as proprietary in the redacted version of the transcript includes, inter alia, information regarding the type and frequency of various analyses that are performed on the GE BWR design and the submittals of such analyses to the Staff, as they relate to the extended power uprate of the Vermont Yankee reactor.

For competitors to develop the identified information on their own, they would be required to run various plant operation scenarios, including some full-scale testing; analyze GE BWR design drawings, which are themselves proprietary information; perform significant analytical calculations; and develop various simulation models of the reactor core and primary and secondary plant systems. Doing so would be extremely costly and perhaps impractical.

CONCLUSION

The excerpts from the proprietary hearing redacted by Entergy meet all criteria in 10 C.F.R. § 2.390(a)(4) for withholding from public disclosure. The Board should therefore rule that the redactions proposed by Entergy are necessary and appropriate and that only a transcript redacted in the manner proposed by Entergy should be made available for public disclosure.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response to Licensing Board's Order Regarding Redaction of Transcript of Proprietary Hearing Session" 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 4th day of October, 2006.

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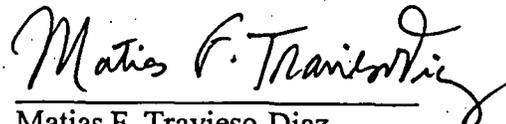
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