November 2, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

# NRC STAFF'S RESPONSE TO NEW ENGLAND COALITION'S MOTION TO REOPEN THE RECORD

## INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the New England Coalition's ("NEC") "Motion to Reopen the Record for the Purpose of Re-examining Dr. Joram Hopenfeld," ("Motion") filed on October 26, 2006.[1] Essentially, NEC asks the Board to allow its witness, Dr. Joram Hopenfeld a second chance to respond to the Board's questions, or to otherwise supplement his testimony. Motion at 9. For the reasons set forth below, the Motion should be denied.

## DISCUSSION

Criteria for motions to reopen the record are found in 10 C.F.R. § 2.326. NEC's Motion fails to cite or apply these criteria in its argument. *See generally* Motion. Under this rule, such a motion must be timely, address a significant safety or environmental issue, demonstrate that a materially different result would be likely had newly proffered evidence been considered initially, and be accompanied by an affidavit addressing these criteria. 10 C.F.R. § 2.326. NEC's Motion fails to meet any of these requirements. First, it is not timely; it relies upon the

[1] The Motion was dated October 24, 2006, but was not served electronically until October 26, 2006.

same allegations raised in a letter sent by NEC's representative on September 21, 2006. Letter from Raymond Shadis to Administrative Judges (Sept. 21, 2006). The Motion fails to explain why NEC waited over a month to present its concerns in the form of a motion, or why its concerns could not have been raised before the record closed, notwithstanding the lack of a hearing transcript at that time. Second, the Motion does not identify a significant safety issue, instead it simply seeks to supplement or clarify the witness' testimony. Third, the Motion does not assert that reopening the record would likely lead to a materially different result, but merely states NEC's desire to "fully and openly inform the Board and build a record." Motion at 8. Finally, the Motion is not supported by affidavit. For each of these reasons, the Motion should be denied.

NEC's desire to "build a record" at this juncture is not persuasive. Any significant issue should have been adequately addressed in NEC's direct testimony, or in responses to the Board's questions when asked; a party should not rely on Board examination to create an adequate record of its position, nor should the record be reopened merely because a witness wishes to supplement his testimony. Further, in a subpart L proceeding, the Board controls live questioning of witnesses. It is the Board that ultimately decides whether such questioning is necessary and, if so, whether its examination of a particular witness has been sufficient. *See* 10 C.F.R. § 2.1207(b)(6). No party has the right to have its witnesses examined in a manner or to a degree of its own choosing; that decision is within the discretion of the Board. *See id.*

Moreover, following the conclusion of the Board's witness examination, NEC was given an opportunity to propose followup questions for any witness. Tr. 1553-54. NEC took advantage of that opportunity and requested, *inter alia*, that the Board reexamine Dr. Hopenfeld regarding the ability of ODYN to accurately predict various aspects of a full transient. Tr. 1568-69. The Board considered NEC's request, but declined to recall Dr. Hopenfeld, indicating that the Board was content that its prior examination of the witness covered all

necessary issues to enable it to reach a proper decision in the proceeding. *See* Tr. at 1570.

For the foregoing reasons, NEC has failed to show that the record should be reopened.

## CONCLUSION

For the reasons set forth above, the Staff submits that NEC's Motion to Reopen the Record should be denied.

Respectfully submitted,

***/RA/***

Steven C. Hamrick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 2nd day of November, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO NEW ENGLAND COALITION'S MOTION TO REOPEN THE RECORD," 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 2nd day of November, 2006.

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