

November 14, 2006 (7:48am)

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of
ENERGY NUCLEAR VERMONT YANKEE, LLC
and ENERGENCY NUCLEAR OPERATIONS, INC.
(Vermont Yankee Nuclear Power Station)

November 13, 2006
Docket No. 50-271

ASLBP No. 04-832-02-OLA

**NEW ENGLAND COALITION'S ANSWER
TO ENERGENCY AND NRC STAFF OBJECTIONS
TO NEW ENGLAND COALITION'S PROPOSED CORRECTIONS TO THE
TRANSCRIPT FOR EVIDENTIARY HEARINGS OF SEPTEMBER 13, 14, 2006**

I. INTRODUCTION

On October 30, 2006, in accordance with the Atomic Safety and Licensing Board's ("Board") Order of October 12, 2006, New England Coalition filed proposed corrections to the transcript of September 14, 2006.

On November 3, 2006, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc ("Entergy") filed Objections to New England Coalition's Proposed Corrections.

On November 9, 2006, NRC Staff filed Objections to New England Coalition's Proposed Corrections¹.

¹ NRC Staff had not received New England Coalition's October 30, 2006 electronic filing Proposed Corrections to the Transcript and was unaware of the filing until Entergy filed its objections on November 4, 2006.. NRC Staff then notified New England Coalition that NRC Staff had not received the filing. Subsequently, Marcia Carpentier, Esq., clerk to the Atomic Safety and Licensing Board notified New England Coalition that the Board had also not received the electronic filing. New England Coalition then retrieved a copy of the transmission of its October filing, which indicated that it had been sent to the entire docket service list. Uncertain, which parties had actually received a copy and which had not received a copy, New England Coalition resent the electronic filing to the entire list. In any case, NRC Staff's Objections were filed within ten days of the original October 30, 2006 filing.

II. DISCUSSION

Both Entergy and NRC Staff objected to certain of New England Coalition's proposed corrections to the transcript on the basis that the proposed corrections were, in the opinion of Entergy and NRC Staff, proposed changes to the substantive and material content of the record.

Entergy and NRC Staff both proposed that they were applying standards implicit in regulation and in the Board's Order (from the Bench) of September 14, 2006.

These very serious charges prompted New England Coalition to:

1. compare the individual corrections to which Entergy and NRC Staff objected, and
2. search the Entergy and NRC Staff Proposals for Corrections to the Transcript, as filed on October 5, 2006 and October 4, 2006: respectively.

New England Coalition's intent in this essay was to gain some insight as to the standard that Entergy and NRC Staff were proposing the Board should apply; both in the case of their filings and that of New England Coalition's Proposed Corrections.

This exploration was not very fruitful in terms of understanding what Entergy and NRC Staff might agree to be a universally applicable standard for determining if proposed corrections cross the line, as it were, from proposed corrections to the transcription and proposed changes to the record of the this proceeding for the following reasons.

First, a comparison of Entergy and NRC Staff Objections shows that Entergy and NRC Staff did not select and object to the same New England Coalition proposed corrections, which can only mean that the two parties read the proposed corrections, recall the record, read the transcript, and/or view the applicable standards differently.

Thus, where one disagrees with New England Coalition's application of the standards, the other agrees.

Secondly, and moreover, Entergy and NRC Staff both filed Proposed Corrections that contained substantive and material changes to the text which plainly altered meaning of the transcribed testimony in ways and to extremes that New England Coalition's few proposed corrections did not.

For example, For example, on Transcript page 1300, Line 21, Entergy proposed changing "initial" to "dimensional" and on Transcript page 1472, Line 20-21, NRC Staff proposed changing "When your EPU goes out" to "When your EPU goes up" and on page 1434, Line 5, NRC Staff proposed changing "if it experience at flux scram" to "It experienced MSIV scram"

Clearly, if the above examples were weighed by the same standard with which Entergy and NRC Staff objections appear to weigh New England Coalition's proposed corrections, then the above-proposed corrections would not be allowed.

In contrast to the heavy revisionist approach to the transcript employed by Entergy and NRC Staff, New England Coalition has proposed corrections that are entirely consistent with 10CFR 2.327(d) and implicit in the Board's Order (from the Bench) of September 14, 2006.

The clear intent of the changes made by the NEC to the transcript was to correct spelling and grammatical errors, clarify sentences where a word or more were missing, and correct words that the court reporter did not record properly.

Nowhere there was an attempt to make changes to the original testimony of Dr. Hopenfeld².

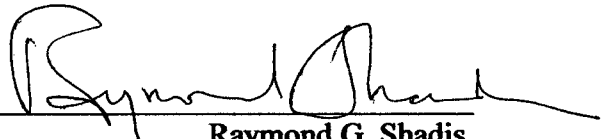
III. CONCLUSION

In consideration of the forgoing and the attached Affidavit of Dr. Joram Hopenfeld, New England Coalition respectfully requests the Board now dismiss the objections of Entergy and NRC Staff and, instead, admit New England Coalition's proposed corrections to the transcript into the record.

In the alternative, New England Coalition respectfully requests that the Board determine and articulate a definitive standard for proposed transcript corrections and examine the proposed corrections of all parties against a fair and equal application of the standard.

Respectfully submitted:

NEW ENGLAND COALITION

BY: 
Raymond G. Shadis,
pro se representative
P.O. Box 98
Edgecomb, ME 05446
(207) 882-7801
shadis@prexar.com

² Please see the attached, Affidavit of Dr. Joram Hopenfeld in Support of New England Coalition's Answer....

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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

Docket No. 50-271OLA

ASLBP No. 04-832-02-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of **New England Coalition's Answer to Entergy and NRC Staff Objections to New England Coalition's Proposed Corrections to the Transcript for Evidentiary Hearings of September 13, 14, 2006 and Affidavit of Dr. Joram Hopenfeld in Support of New England Coalition's Answer**, in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or by e-mail as indicated by a double asterisk (**), this 13th day of November, 2006.

<p>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</p>	<p>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</p>
<p>Lester S. Rubenstein** Administrative Judge Atomic Safety and Licensing Board Panel 4760 East Country Villa Drive Tucson, AZ 85718 E-mail: lesrrr@comcast.net</p>	<p>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</p>
<p>Office of Commission Appellate Adjudication* Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p>	<p>John M. Fulton, Esq. Assistant General Counsel Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601</p>

<p>Jay E. Silberg, Esq.** Matias Travieso-Diaz, Esq.** Pillsbury Winthrop Shaw Pittman, LLP 2300 N St., NW Washington, DC 20037-1128 E-mail: jay.silberg@pillsburylaw.com matias.travieso-diaz@pillsburylaw.com</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: jmr3@nrc.gov)</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 (E-mail: MXC7@nrc.gov)</p>	<p>Sherwin E. Turk, Esq.** Richard Ennis, NRR, US NRC Office of the General Counsel Mail Stop O-15 D21 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 set@nrc.gov, jcz@nrc.gov</p>



Raymond Shadis
Pro Se Representative
New England Coalition

**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)

November 13, 2006
Docket No. 50-271
ASLBP No. 04-832-02-OLA

**AFFIDAVIT OF DR. JORAM HOPENFELD
IN SUPPORT OF NEW ENGLAND COALITION'S ANSWER
TO ENERGENCY AND NRC STAFF OBJECTIONS
TO NEW ENGLAND COALITION'S PROPOSED CORRECTIONS TO THE
TRANSCRIPT FOR EVIDENTIARY HEARINGS OF SEPTEMBER 13, 14, 2006**

I, Dr. Joram Hopenfeld, declare as follows:

1. My name is Dr. Joram Hopenfeld. I reside at 1724 Yale Place, Rockville, Maryland.
2. The New England Coalition has retained me as an expert witness in the above captioned matter.
3. On September 14, 2006, I testified before the Atomic Safety and Licensing Board Panel ("Board") in the above caption proceeding during Evidentiary Hearings held at Newfane, Vermont.
4. Following the Hearings, I reviewed the transcript of my testimony and provided a list of proposed corrections to New England Coalition.
5. New England Coalition incorporated the list that I produced into its October 30, 2006 filing, New England Coalition's Proposed Corrections to the Transcript for Evidentiary Hearings of September 13, 14, 2006 without alteration.
6. All of the proposed corrections that I produced, and which were incorporated in New England Coalition's filing of October 30, 2006, were based upon my precise recollections of my testimony

and confirmed by comparison of my recollections with those of New England Coalition's pro se representative.

7. With the sole exception of a few clarifying annotations, contained in brackets and meant to indicate such intended meanings as the nouns to which certain pronouns refer, (such as [NRC] to more precisely identify what was implied in, "we"), in no case, according to my best recollection, do any of my proposed corrections represent material or substantive changes to my actual statements as given in the September 14, 2006 hearing.

8. I have read Entergy's and NRC Staff's Objections to New England Coalition's Proposed Corrections and offer the following comments by way of clarifying examples:

- Entergy incorrectly asserts that some proposed corrections are actually proposed changes. Among the Entergy's objections, were the following proposed corrections on page 1520, line 16 and page 1523, line 17 page of the transcript,

Line 16: "it doesn't experience any flowing use vibrations, well" corrected by NEC to "it would not experience any flow induced vibrations, well"

Line 17: "knowledges" corrected by NEC to "analogies"

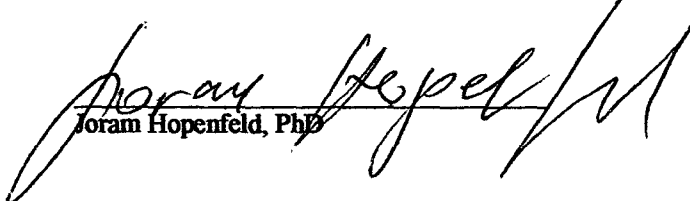
I clearly remember that I, in fact, used the words "flow induced vibrations" and "analogies." I never uttered the words "flowing use vibrations" and "knowledges."

- It must be noted that unlike Entergy, the NRC did not object to the NEC corrections on lines 1520/ 16 and 1523/ 17. On the other hand NRC Staff objected to a correction adding a subscript "o" to "C" on page 1545 line p.21. NEC added the subscript confirmed by a reference to Table 1 (Exhibit 26), under consideration and before the Board at the time, which clearly indicates that I was referring to C_o. As any competent Thermal Hydraulic engineer knows, C_o rather than C is universally used in the literature to describe void distribution, a central technical issue in this case. I wrote this

proposed correction so the transcript would more accurately reflect a professional discussion.

I declare under penalty of perjury that the foregoing statements are to my best knowledge true and correct.

Executed this day, November 13, 2006 at Rockville, Maryland.


Joram Hopfeld, PhD

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of

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

November 13, 2006

Docket No. 50-271

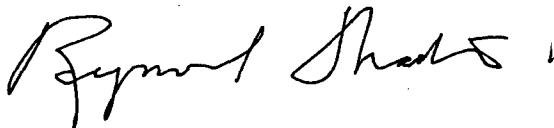
ASLBP No. 04-832-02-OLA

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 ANSWER TO ENTERGY AND NRC STAFF OBJECTIONS TO NEW ENGLAND COALITION'S PROPOSED CORRECTIONS TO THE TRANSCRIPT FOR EVIDENTIARY HEARINGS OF SEPTEMBER 13, 14, 2006 and the AFFIDAVIT OF DR. JORAM HOPENFELD IN SUPPORT OF NEW ENGLAND COALITION'S ANSWER

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
shadis@prexar.com