

December 7, 2006

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

December 7, 2006 (3:16pm)

In the Matter of )  
)  
Entergy Nuclear Vermont Yankee, LLC )  
and Entergy Nuclear Operations, Inc. )  
)  
(Vermont Yankee Nuclear Power Station) )

Docket No. 50-271-LR  
ASLBP No. 06-849-03-LR

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**JOINT SUBMITTAL OF PROPOSED PROTECTIVE ORDER AND  
CONFIDENTIALITY AGREEMENT REGARDING PROPRIETARY DOCUMENTS**

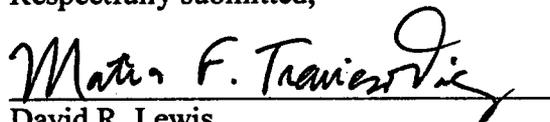
Pursuant to Section II.3 of the Initial Scheduling Order issued on November 17, 2006 by the Atomic Safety and Licensing Board ("Board") in this proceeding, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively Entergy), the Vermont Department of Public Service (the DPS), the New England Coalition (NEC), the State of New Hampshire (NH) and the Nuclear Regulatory Commission Staff (NRC Staff) submit their unanimously agreed proposed protective order and confidentiality agreement covering disclosure of proprietary documents in this proceeding, enclosed as Exhibit 1 hereto.

The enclosed proposed protective order and confidentiality agreement are slightly modified versions of the protective order and confidentiality agreement issued by the Atomic Safety and Licensing Board in the Vermont Yankee extended power uprate (EPU) proceeding. See Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA, Order (Protective Order Governing Non-Disclosure of Proprietary Information), dated March 1, 2005. Apart from minor clarifying changes, the only differences between the enclosed protective order and the one issued by the Board in the EPU proceeding

are: (1) an undertaking by Entergy, specified in footnote 3, to allow representatives of the Staff and NH to review copies of proprietary documents at the offices of Entergy's counsel or at the Vermont Yankee plant in the event either the Staff or NH are unable to have such representatives sign confidentiality agreements, and (2) an undertaking, set forth in paragraph 10.e of the proposed order, that any party filing a pleading, testimony, exhibit and/or correspondence that contains proprietary information will accompany such filing with a redacted version of the pleading, testimony, exhibit and/or correspondence with the proprietary information deleted if the filing party in good faith determines that preparing such a redacted version can be accomplished without undue burden or expense.

The undersigned respectfully request that the Board issue the attached protective order and confidentiality agreement as a suitable mechanism to be used in this proceeding to govern access to and disclosure of information constituting trade secrets and confidential commercial or financial information of Entergy and its vendors and contractors.

Respectfully submitted,



David R. Lewis

Matias F. Travieso-Diaz

PILLSBURY WINTHROP SHAW PITTMAN LLP

2300 N Street, N.W.

Washington, DC 20037-1128

Tel. (202) 663-8474

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

**Sarah Hofmann**

**Special Counsel  
Department of Public Service  
112 State Street - Drawer 20  
Montpelier, VT 05602-2601**

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

**Counsel for the Vermont Department  
of Public Service**

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

**Counsel for the New England Coalition**

**Jennifer J. Patterson  
Senior Assistant Attorney General  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301**

**Counsel for the State of New Hampshire**

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

**Counsel for the NRC Staff**

**Dated: December 7, 2006**

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Entergy Nuclear Vermont Yankee, LLC	)	Docket No. 50-271-LR
and Entergy Nuclear Operations, Inc.	)	ASLBP No. 06-849-03-LR
	)	
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Joint Submittal of Proposed Protective Order and Confidentiality Agreement Regarding Proprietary Documents" dated December 7, 2006, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, or with respect to Judge Elleman by overnight mail, and where indicated by an asterisk by electronic mail, this 7th day December, 2006.

\*Administrative Judge  
Alex S. Karlin, Esq., Chairman  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
ask2@nrc.gov

\*Administrative Judge  
Dr. Thomas S. Elleman  
Atomic Safety and Licensing Board  
5207 Creedmoor Road, #101,  
Raleigh, NC 27612.  
tse@nrc.gov; elleman@eos.ncsu.edu;

Office of Commission Appellate Adjudication  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

\*Administrative Judge  
Dr. Richard E. Wardwell  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
rew@nrc.gov

\*Secretary  
Att'n: Rulemakings and Adjudications Staff  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
secy@nrc.gov; hearingdocket@nrc.gov

Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

\*Mitzi A. Young, Esq.  
\*Steven C. Hamrick, Esq.  
Office of the General Counsel  
Mail Stop O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
may@nrc.gov; sch1@nrc.gov

\*Anthony Z. Roisman, Esq.  
National Legal Scholars Law Firm  
84 East Thetford Road  
Lyme, NH 03768  
aroisman@nationallegalscholars.com

\*Jennifer J. Patterson  
Senior Assistant Attorney General  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301  
jennifer.patterson@doj.nh.gov

\*Sarah Hofmann, Esq.  
Director of Public Advocacy  
Department of Public Service  
112 State Street – Drawer 20  
Montpelier, VT 05620-2601  
Sarah.hofmann@state.vt.us

\*Ronald A. Shems, Esq.  
\*Karen Tyler, Esq.  
Shems, Dunkiel, Kassel & Saunders, PLLC  
9 College Street  
Burlington, VT 05401  
rshems@sdkslaw.com  
ktyler@sdkslaw.com

  
Matias F. Travieso-Diaz

EXHIBIT 1

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

ENERGY NUCLEAR VERMONT YANKEE  
L.L.C.  
and  
ENERGY NUCLEAR OPERATIONS, INC.

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-LR

ASLBP No. 06-849-03-LR

xxxxxxx xx, 200x

ORDER

(Protective Order Governing Non-Disclosure of Proprietary Information)

This protective order governs the disclosure and use in this proceeding of certain documents that applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, Entergy) claim contain proprietary trade secrets and commercial and financial information of Entergy or its vendors and contractors.<sup>1</sup> Pursuant to this protective order, counsel, witnesses, employees, consultants, and others representing the Department of Public Service of the State of Vermont (State), the New England Coalition (NEC), the State of

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<sup>1</sup> The provisions of this Protective Order do not restrict use by NRC counsel, witnesses employees, consultants and others representing the NRC Staff of documents containing protected material that the NRC is entitled to receive apart from its role as a litigant in this proceeding (e.g., documents containing information required to be submitted to the NRC by statute, regulation, or license condition or information submitted to, or acquired by the NRC in support of a requested licensing action or in fulfillment of its regulatory responsibilities). Rather, NRC's use of such documents is governed by 10 C.F.R. §§ 2.390, 2.709, 9.17, and 9.25. The provisions of this Protective Order apply to NRC counsel, witnesses, employees, consultants and others representing the NRC Staff with respect to documents containing protected material that NRC receives solely pursuant to 10 C.F.R. § 2.336 and this Protective Order.

New Hampshire (NH), and the NRC Staff (Staff) shall be permitted access to such documents upon the conditions set forth herein.

### I. Procedural Posture

Each party to this proceeding is required to disclose and provide all documents relevant to the admitted contentions, except those documents for which a claim of privilege or protected status is being made. 10 C.F.R. § 2.336(a)(2). In the latter case, the party must list such documents on a privilege log. 10 C.F.R. § 2.336(a)(3).

On November 17, 2006, the Board issued its Initial Scheduling Order, in which it directed the parties to confer with one another, on or before December 8, 2006, for the purpose of discussing and developing a joint proposed protective order and nondisclosure agreement dealing with the handling (and redaction) of documents that are claimed to contain privileged, proprietary or otherwise protected information. Initial Scheduling Order at 5. The parties did confer and developed a unanimously agreed proposed protective order and nondisclosure agreement, which they jointly submitted to the Board on December 7, 2006.

The Board has reviewed and accepts the proposed Protective Order and Confidentiality Agreement submitted by the parties.

### II. Terms and Conditions of Protective Order

1. If counsel for Entergy in good faith believes that a document contains information that qualifies under 10 C.F.R. § 2.390(a)(4) and (b)(4)(i)-(v) as a trade secret and commercial or financial information of Entergy or its vendors and contractors that is privileged and confidential, then he or she may designate it as such and it shall be protected in accordance with the terms and conditions of this order. Such documents shall hereinafter be referred to as "Proprietary Documents." Entergy shall (a) prominently mark each Proprietary Document on the first page with a conspicuous "Proprietary" label, (b) list each Proprietary Document on a

proprietary privilege log placed in the public files of this proceeding, and (c) within 30 days of the date of this order, disclose and produce the Proprietary Document to the appropriate party. The privilege log shall briefly identify the basis for the belief that the document or redacted portion of the document is entitled to be treated as proprietary.

2. Proprietary Documents shall be deemed to contain proprietary trade secrets and commercial and financial information required to be held in confidence pursuant to the policy reflected in 10 C.F.R. § 2.390(a)(4). The intervenors, and, if they choose to access or accept Proprietary Documents, the Staff and/or NH, shall hold such documents in confidence and in compliance with the terms and conditions of this order.<sup>2</sup>

3. The Board will resolve any disputes arising under this protective order. Prior to presenting any such dispute to the Board, the parties to the dispute shall consult and use their best efforts, including the use of redaction, to resolve it. Any party that objects to the designation of a document as proprietary shall notify Entergy in writing. Except for good cause shown, such written objection must be delivered to Entergy within sixty (60) days of the date that Entergy provided the Proprietary Document to the party or, if Entergy and the objecting party are engaged in good faith efforts to resolve the objection, within sixty (60) days of the date when the parties mutually agree that their disagreement cannot be resolved, whichever date is later.

4. The protections of this protective order shall automatically cease to apply to a Proprietary Document ten (10) days after a written objection is served on Entergy, unless, within that time period, Entergy files a motion with the Board, with a supporting affidavit, demonstrating and specifying those portions of the document that should be protected. Entergy

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<sup>2</sup> This order, and the good faith representation and designation of documents as Proprietary Documents by counsel for Entergy, serves in lieu of the requirement for marking and for an affidavit under 10 C.F.R. § 2.390(b) and allows the Staff to receive Proprietary Documents and to protect their confidentiality under FOIA.

has the burden of showing that information in the Proprietary Document is a trade secret and commercial or financial information that is privileged and confidential and that, on balance, it warrants protection under 10 C.F.R. § 2.390(a)(4) and (b)(4)(i)-(v).

5. Pending a ruling by the Board, the Proprietary Documents in question shall continue to be held in confidence. If the Board rules that a document does not qualify for the asserted privilege, or that, on balance, the document should be disclosed without the restrictions of this protective order, then the unrestricted use of such documents may begin fifteen (15) days after the Board's decision. If, during such time, Entergy files an interlocutory appeal or request that the issue be certified to the Commission, such period of time shall be extended for an additional ten (10) days, during which time the Board or Commission may consider a request for any further stay.

6. Only individual counsel, consultants, witnesses, employees, and others representing the intervenors, NH or the Staff who have executed the attached Confidentiality and Non-Disclosure Agreement may have access to Proprietary Documents.<sup>3</sup> Such documents shall only be used as necessary for the conduct of this proceeding. Proprietary Documents shall not be disclosed in any manner to any person except the Board and its staff and those engaged in the conduct of this proceeding who have executed the Confidentiality and Non-Disclosure Agreement and who, in the reasonable opinion of the party who has received the Proprietary Documents, need to know the information contained in the Proprietary Documents in order to

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<sup>3</sup> Alternatively, Entergy may make the documents it identified as proprietary in its privilege log available to NRC counsel, witnesses, employees, consultants and others representing the NRC Staff for inspection at the offices of Entergy's counsel in lieu of such NRC representatives signing the Confidentiality and Non-Disclosure Agreement. In that event access would not include making copies unless the Staff personnel signed the Confidentiality and Non-Disclosure Agreement. Likewise, Entergy may make proprietary documents available for review at the VY plant to representatives of NH, should NH decline to sign the Confidentiality and Non-Disclosure Agreement. In that event access would not include making copies unless the NH personnel signed the Confidentiality and Non-Disclosure Agreement.

carry out their responsibilities in this proceeding. Individuals with access to Proprietary Documents may make copies of and take notes on the confidential information contained in the documents, but such copies and notes become Proprietary Documents subject to the terms of this protective order.

7. Counsel, consultants, witnesses, employees, and others representing a party who receive documents subject to the terms of this protective order shall maintain the confidentiality of the information contained therein as required in the attached Confidentiality and Non-Disclosure Agreement, the terms of which are incorporated herein.

8. Counsel shall take all reasonable precautions necessary to assure that Proprietary Documents and the information contained therein are not distributed to unauthorized persons. Counsel are responsible for ensuring that persons under their supervision or control comply with this protective order.

9. A party intending to file or submit any pleading, testimony, exhibit, or correspondence in this proceeding that contains a Proprietary Document or information derived from a Proprietary Document, shall notify counsel for Entergy in writing, as soon as the party is aware of the likely use of the Proprietary Document and, to the fullest extent possible, no less than ten (10) days prior to the date of the intended filing. Such notice shall identify the Proprietary Document(s) that the party intends to use or include. Unless Entergy submits an affidavit conforming to the requirements of 10 C.F.R. §§ 2.390(b)(1)(ii) and (iii) within ten (10) days after the filing of such pleading, testimony, exhibit, or correspondence, the protections of this protective order shall automatically cease to apply to the Proprietary Document.<sup>4</sup>

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<sup>4</sup> The submission of this affidavit does not reopen the opportunity, specified in paragraph 3 above, for a party to challenge the designation of a document as a Proprietary Document, except to the extent that a party can demonstrate by motion that new information contained in the 2.390(b) affidavit shows that proprietary protection should not be afforded to the document.

10. All pleadings, testimony, exhibits and correspondence in this proceeding that contain information derived from a Proprietary Document shall:

a. Be served by electronic mail (except for attachments to such pleadings which are not already in electronic format), with an additional paper copy served in a sealed envelope by United States first class, registered, express, or certified mail, internal NRC mail, messenger-courier, or overnight delivery service;

b. Include an attached cover sheet identifying the pleading, testimony, exhibit, or correspondence as containing a Proprietary Document or information derived therefrom, and a cover letter that describes the contents of the pleading or correspondence without reference to such information, and, in the subject line of the electronic filing e-mail, a statement that the electronic filing contains proprietary information;

c. Specifically designate, by highlighting, marginalia, or other appropriate markings, the portion of the pleading, testimony, exhibit or correspondence, that contains a Proprietary Document or information derived therefrom; and

d. Be served only on the Board, the NRC's Office of the Secretary, and representatives of the Staff or appropriate party authorized to receive such information pursuant to this protective order.

e. Be accompanied by a version of the pleading, testimony, exhibit and/or correspondence with the proprietary information redacted if, and to the extent that, the party filing the pleading, testimony, exhibit and/or correspondence in good faith determines that such a redacted version can be prepared without undue burden or expense.

11. At any hearing or conference in this proceeding in which a statement is made by the representative of a party, or a witness is questioned, concerning a Proprietary Document or information contained therein, the statement or testimony shall be given *in camera* or under

other suitable conditions as this Board may establish, and the record of that portion of the hearing and any transcript thereof, shall be withheld from distribution to the public. It shall be the duty of the party whose statement or testimony contains the proprietary information to be presented, to notify the Board and the parties that such testimony or statement will contain proprietary information, prior to the testimony or statement being made.

12. Proprietary Documents shall remain available to all parties until the date that an order terminating this proceeding is no longer subject to judicial review. The parties shall, within fifteen (15) days of the date described above, return the Proprietary Documents to counsel for Entergy or shall destroy that material, except that copies of filings, transcripts, and exhibits in this proceeding that contain such information and notes taken by persons reviewing proprietary material, may be retained if they are maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. Within such time period, each party receiving Proprietary Documents shall submit to counsel for Entergy an affidavit stating that, to the best of its knowledge, all Proprietary Documents have been returned or destroyed, or, if filings, transcripts, exhibits, or notes in this proceeding, will be maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. To the extent that such filings, transcripts, exhibits, and notes are not returned or destroyed, they shall remain subject to the provisions of this protective order.

13. Counsel, consultants, employees, or any other individuals representing a party who have reason to believe that Proprietary Documents may have been lost or misplaced or may have otherwise become available to unauthorized persons during the pendency of this proceeding shall notify the Board and counsel for Entergy promptly of their concerns and the reasons for them.

14. Any violation of the terms of this protective order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this order may result in the imposition of such sanctions as the Board may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

15. Each party governed by this protective order has the right to seek changes in it as appropriate from the Board or the Commission.

16. Nothing in this protective order shall be deemed to preclude any party from independently seeking, through discovery in any other administrative or judicial proceeding, any Proprietary Document or information produced in this proceeding under this protective order. In addition, if documents identified in this proceeding as proprietary or some or all of the information contained in such documents, comes into the possession of or is known by any party independently of the proprietary document produced in this proceeding, use of that document or information in this proceeding, without compliance with the terms of this Protective Order, shall not be a violation of the terms of this Protective Order. The party asserting independent knowledge of the contents of proprietary documents or independent access to such documents, shall have the burden of proving that such information was independently obtained in the event that Entergy asserts that disclosure of such information or document was a violation of this Order.

17. The Board may alter or amend this protective order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>5</sup>

[Original Signed By:]

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
xxxxxxx xx, 200x

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<sup>5</sup>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 of Brattleboro, Vermont; (3) the Staff and (4) the State of New Hampshire.

ATTACHMENT A

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify that: access to Proprietary Documents is provided to me pursuant to the terms and restrictions of the Atomic Safety and Licensing Board's ("Board's") Protective Order, dated xxxxxx xx, 200x, in this proceeding; that I have been given a copy and have read said protective order; and that I agree to be bound by it. I understand and agree that Proprietary Documents, their contents, or any notes or other memoranda summarizing or otherwise describing their contents, or any form of information that derives from the Proprietary Documents and copies or discloses the contents of the Proprietary Documents, shall be held in confidence and shall not be disclosed to anyone except in accordance with that protective order. I acknowledge that a violation of this agreement or the protective order, which incorporates the terms of this agreement, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of such sanctions as the Board or the Commission may deem to be appropriate.

WHEREFORE, I do solemnly agree to protect such Proprietary Documents, and their contents, as may be disclosed to me in this NRC proceeding, in accordance with the terms of this agreement.

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Employed by or Representing: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_