

February 15, 2006

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

February 15, 2007 (4:16pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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)	)	

**ENTERGY'S ANSWER TO NEW ENGLAND COALITION'S  
SECOND MOTION TO COMPEL**

Pursuant to 10 C.F.R. §2.323(e), Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy") hereby answers and opposes New England Coalition's ("NEC") "Second Motion to Compel" dated February 12, 2007 ("Motion"). The Motion asks the Atomic Safety and Licensing Board ("Board") to compel production of three categories of privileged documents listed in Entergy's Third Supplemental Disclosure privilege logs. Entergy provided those logs to NEC on February 1, 2007.

NEC's Motion should be denied because NEC failed to comply with the consultation requirements of 10 C.F.R. § 2.323(b). In the late afternoon of Friday, February 9, 2007, counsel for NEC sent the following e-mail message to Entergy's counsel with respect to item No. 3 of its Motion: "Please confirm that the privilege logs you served with Entergy's Third Supplemental Disclosure are duplicates of logs served with Entergy's Second Supplemental Disclosure, with the exception of the log listing only one document: e-mail from R. Buckley to L. DeWald (11/3/05)." The following Monday, February 12, 2007, at 12:53 PM, counsel for NEC sent the following e-mail message to Entergy's counsel: "For the same reasons stated in NEC's prior motion to compel, NEC will file a motion to compel production of documents newly identified

as privileged in Entergy's third supplemental privilege logs." NEC did not provide reasonable time for Entergy to respond to its inquiry (given the intervening weekend) and did not attempt to consult with Entergy before filing the Motion but merely informed Entergy of its intention to do so. NEC also never inquired, or sought to consult with Entergy, with respect to the first two items whose production NEC seeks. Since NEC failed to comply with the consultation requirements of 10 C.F.R. § 2.323(b), its Motion should be denied.<sup>1</sup>

In addition, all the privileged documents listed in NEC's Motion pertain to NEC Contention 1, whose admission in this proceeding is currently under *sua sponte* review by the Commission. The Board has stayed an earlier NEC Motion to Compel production of privileged documents relating to this contention pending the outcome of the Commission's review. Order (Granting Entergy Motion to Stay Further Proceedings Related to NEC Motion to Compel) dated January 27, 2006 ("Order"). As directed in the Order:

The Board grants Entergy's motion to stay further proceedings related to NEC's motion to compel, with the following provisions: As specified in the motion, the parties will continue to make all disclosures, including those related to NEC Contention 1. If the Commission ultimately upholds the admission of NEC Contention 1, then the parties shall submit answers to NEC's motion to compel no more than ten (10) days after the date of the Commission's order. If the Commission reverses the admission of NEC Contention 1, then NEC's motion to compel is moot and no further proceedings related to it are required. If the Commission remands the matter to the Board, then we will provide the parties with further instruction at that time.

Order at 2. Therefore, the documents sought in the Motion are subject to the Board's Order and any disputes as to their privileged nature is stayed in accordance with the Order's provisions.

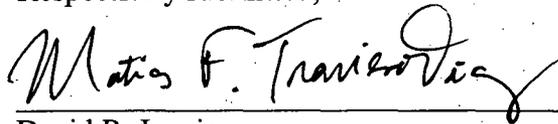
NEC's motion to compel discovery at this time is barred by the Board's Order.

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<sup>1</sup> Had NEC actually consulted with Entergy's counsel (e.g., by placing a phone call) it would have learned, with respect to Item 3, that the three-part privileged log provided with the Third Supplemental Disclosure had been updated to identify several additional documents at the end of the log. These additions were also readily identifiable by their numbering.

Therefore, the Motion should be denied.

Respectfully submitted,



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Dated: February 15, 2007

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response to New England Coalition's Second Motion To Compel" dated February 15, 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 15th day February, 2007.

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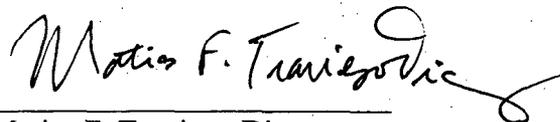
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