

RAS 13116

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 02/28/07

SERVED 02/28/07

Before Administrative Judges:

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

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

February 28, 2007

ORDER

(Staying Further Discovery Disputes Concerning NEC Contention 1)

On February 12, 2007, the New England Coalition (NEC), an intervenor herein, filed its second motion to compel, seeking the clarification of certain portions of the third supplemental privilege logs filed by Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy) and the production of four of Entergy's documents.¹ Specifically, NEC asked the Board (1) to "require Entergy to clarify whether the attachments [to three emails] contain modeling results/data, and to produce any such results/data," and (2) to "require Entergy to state the actual purpose for which [a 2005 email] was prepared and to produce it." NEC Second Motion at 1. NEC also noted that Entergy's third supplemental privilege logs appear identical to Entergy's second supplemental privilege logs, and thus NEC moved to compel production of certain documents for the same reasons stated in NEC's first

¹ New England Coalition, Inc.'s Second Motion to Compel (Feb. 12, 2007) (NEC Second Motion).

motion to compel. NEC Second Motion at 1-2.

On February 15, 2007, Entergy filed its answer.² First, Entergy asserted that NEC's two emails, one late on a Friday afternoon³ and the other at 12:53 PM on the following Monday February 12, 2007 (the day the motion was filed),⁴ failed to comply with the consultation requirements of 10 C.F.R. § 2.323(b). Entergy Answer at 1. Second, Entergy argued that the NEC's motion is barred by the Board's January 27, 2007, order which stayed NEC's first motion to compel until the Commission rules on the admissibility of NEC Contention 1. Entergy Answer at 2.

Our response is twofold. First, NEC is reminded of our instruction that "In accordance with 10 C.F.R. § 2.323(b), motions (including requests of any kind) will be rejected if they do not include a certification by the attorney . . . [that] he or she has made a 'sincere effort to contact other parties in the proceeding and resolve the issue(s) raise in the motion' or request." Section II. 8 of Initial Scheduling Order (Nov. 17, 2006)(unpublished) at 8. NEC failed to include the quoted language, which comes straight from the regulation, in its motion. In addition, it does not appear that NEC met the spirit of the regulation. Instead, we got a clarification squabble that could and should have been resolved by consultation between the parties.

Second, given that the documents that are the subject of NEC's second motion all deal

² Entergy's Answer to New England Coalition's Second Motion to Compel (Feb. 15, 2007) (Entergy Answer).

³ Entergy represents that the Friday afternoon email stated "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; email from R. Buckley to L. DeWald (11/3/05)." Entergy Answer at 1.

⁴ Entergy represents that the Monday email stated "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." Entergy Answer at 1-2.

solely with the subject matter of NEC Contention 1 (“NPDES” permitting and “hydrothermal modeling”), we believe these disputes should also be held in abeyance until the Commission rules on Entergy’s appeal.

Accordingly, we hereby expand our January 23, 2007, stay to cover all discovery disputes relating to privilege claims for documents that deal solely with the subject matter of NEC Contention 1. Mandatory disclosure of such documents and privilege logs is still required. However, motions to challenge privilege claims or to compel the production of such documents shall be filed after, but within 10 days of, the filing of the Commission ruling on the admission of NEC Contention 1. In addition, we advise counsel for NEC to make a timely telephone call to opposing counsel and to make a sincere attempt to resolve the issue before filing the next motion. See Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) LBP-06-5, 63 NRC 116, 128 (2006).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 28, 2007

⁵ 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.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (STAYING FURTHER DISCOVERY DISPUTES CONCERNING NEC CONTENTION 1) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas S. Elleman
Atomic Safety and Licensing Board Panel
5207 Creedmoor Rd., #101
Raleigh, NC 27612

Mitzi A. Young, Esq.
Steven C. Hamrick, Esq.
David E. Roth, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Docket No. 50-271-LR
LB ORDER (STAYING FURTHER DISCOVERY DISPUTES
CONCERNING NEC CONTENTION 1)

Sarah Hofmann, Esq.
Director for Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601

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

Matthew Brock, Esq.
Assistant Attorney General
Office of the Massachusetts Attorney General
Environmental Protection Division
One Ashburton Place, Room 1813
Boston, MA 02108-1598

Diane Curran, Esq.
Harmon, Curran, Spielberg,
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Callie B. Newton, Chair
Gail MacArthur
Lucy Gratwick
Town of Marlboro
SelectBoard
P.O. Box 518
Marlboro, VT 05344

Dan MacArthur, Director
Town of Marlboro
Emergency Management
P.O. Box 30
Marlboro, VT 05344

David R. Lewis, Esq.
Matias F. Travieso-Diaz, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128

Jennifer J. Patterson, Esq.
Office of the New Hampshire
Attorney General
33 Capitol Street
Concord, NH 03301

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of February 2007