

June 20, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT)	Docket No. 50-271-LR
YANKEE, LLC, and ENTERGY)	
NUCLEAR OPERATIONS, INC.)	ASLBP No. 06-849-03-LR
)	
(Vermont Yankee Nuclear Power Station))	

NRC STAFF ANSWER TO NEW ENGLAND COALITION'S REQUEST
FOR MORE TIME TO REPLY TO MOTION FOR
SUMMARY DISPOSITION OF NEW ENGLAND COALITION CONTENTION 4

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff ("Staff") herein answers "New England Coalition, Inc.'s (NEC) Motion to Extend Time for NEC's Opposition to Entergy's Motion for Summary Disposition of New England Coalition's Contention 4 (Flow Accelerated Corrosion)," dated June 18, 2007 ("Motion"). For the reasons stated below, the Staff opposes the requested extension.

DISCUSSION

As grounds for the instant motion, NEC asserts an extension to July 16, 2007, is needed to respond to the summary disposition motion filed by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") on June 5, 2007,¹ because NEC cannot meaningfully evaluate the technical grounds for the motion by June 25 deadline. Specifically, NEC states that (1) additional time is needed for NEC's consultants to review relevant materials produced as part of Entergy disclosures, dated June 7, 2007, and (2) NEC's consultant is "hindered by difficulties locating information among the large volume of documents

¹ See "Entergy's Motion for Summary Disposition of New England Coalition's Contention 4 (Flow Accelerated Corrosion)" (June 5, 2007) ("SD Motion").

. . . produced in non-text-searchable electronic image files,” and (3) the requested time period covers the vacations of one NEC counsel and NEC’s expert from July 4-July 8. Motion at 1 & n.1. NEC further states that it needs to review documents and document categories listed by Entergy’s expert, that such documents were not appended to Entergy’s motion and that Entergy has not identified such documents by production number or informed NEC that the documents are among materials produced. See Motion at 2 (citing SD Motion, Attachment 3, at 4). In addition, NEC claims its request is consistent with 10 C.F.R. § 2.332(b) in that (1) NEC cannot timely complete its review of Entergy’s filing due to the complexity of the issues and time consuming reviews of reports related to NEC Contention 2, (2) the extension should not “interfere” with the overall schedule in this proceeding, and (3) the NRC’s interest in a fair resolution of NEC Contention 4 would be served by the requested extension. Motion at 3-4.

The Board has ruled that oppositions to motions for extension of time “shall address the factors specified in 10 C.F.R. § 2.332(b).” Initial Scheduling Order, dated November 17, 2006 (unpublished), at 9. Such factors may include the number of admitted contentions, the complexity of the issues presented, relevant considerations brought to the Board’s attention, the schedule for completion of Staff safety and environmental evaluations, and a fair and expeditious resolution of the issue sought to be adjudicated in the proceeding. 10 C.F.R. § 2.332(b).

The Motion is not well grounded. Although the Staff agrees that disclosures in searchable formats can be reviewed more quickly, NEC could have anticipated that additional time would be needed to review Entergy’s disclosures and sought a Board ruling to facilitate speedier document review well in advance of the filing of Entergy’s summary disposition motion. It is also not clear that NEC needs the time period requested. The Motion is silent on whether Ms. Tyler’s co-counsel, Ronald Shems, is available to assist in culling through documents and completing the filing either prior to the current deadline or the commencement of the cited July vacation schedules.

It is also not apparent that the listed documents are relevant to the narrow admitted issue, i.e., whether the Vermont Yankee plan to monitor and manage aging of plant piping due to FAC is inadequate because it relies on CHECWORKS, an “empirical code” used to determine the scope and frequency of inspection of susceptible components, a code which “must be continuously updated with plant-specific data,” and a code that “has not been benchmarked with data” reflecting the parameter changes associated with the recent power uprate. See LBP-06-20, 64 NRC 131, 192-194 (2006). Also, NEC has not explained why its review of NEC Contention 2 documents cannot await the completion of the response to Entergy’s summary disposition motion on NEC Contention 4 or the filing of Entergy’s mootness motion on NEC Contention 2. Thus, NEC has not shown that the Motion should be granted.

On the otherhand, NEC’s assertion that the requested extension would not “interfere” with the overall schedule in the proceeding is accurate since the requested extension predates the August 2007 issuance of the Safety Evaluation and would not appear to disturb the Board’s projected February or March 2008 hearing date. See Transcript of Prehearing Conference Call (June 12, 2007) at Tr. 588-89. NEC, however, has not met its burden to demonstrate that the requested extension to July 16 is warranted, particularly since there are now only three admitted contentions in the proceeding² and the issues are relatively straightforward.

If the Board grants NEC an extension of time, the Board should preserve the filing sequence in 10 C.F.R. §2.1205(b) and similarly extend the reply date for the Staff’s filing.

² The steam dryer contention is the subject of a previous summary disposition motion and Entergy must file a motion alleging mootness of the metal fatigue contention by July 12. See Entergy’s Motion for Summary Disposition of New England Coalition’s Contention 3 (Steam Dryer) (Apr. 19, 2007); Order (Setting Deadline for any Motion to Dismiss NEC Contention 2 as Moot) (June 18, 2007) (unpublished).

CONCLUSION

For the reasons discussed above, NEC's motion for extension of time should be denied. If the Board grants the request, the Staff's response time should similarly be extended to preserve the filing sequence contemplated by 10 C.F.R. § 2.1205(b).

Respectfully submitted,

/RA/

Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of June, 2007

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.) Docket No. 50-271-LR
)
(Vermont Yankee Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO NEW ENGLAND COALITION'S REQUEST FOR MORE TIME TO REPLY TO MOTION FOR SUMMARY DISPOSITION OF NEW ENGLAND COALITION 4" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or, as indicated by an asterisk, by electronic mail, with copies by U.S. mail, first class, this 20th day of June, 2007.

Alex S. Karlin, Chair
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

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

Richard E. Wardwell
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rew@nrc.gov

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

Thomas S. Elleman*
Administrative Judge
Atomic Safety and Licensing Board
5207 Creedmoor Road, #101
Raleigh, NC 27612
E-mail: elleman@eos.ncsu.edu

Ronald A. Shems, Esq.
Karen Tyler, Esq.
Shems Dunkiel Kassel & Saunders, PLLC
91 College Street
Burlington, VT 05401
E-mail: rshems@sdkslaw.com
Ktyler@sdkslaw.com

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAmail@nrc.gov

Marcia Carpentier, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mx7@nrc.gov

Peter C. L. Roth*
Senior Assistant Attorney General
Office of the Attorney General
33 Capitol Street
Concord, New Hampshire 03301
E-mail: peter.roth@doj.nh.gov

Anthony Z. Roisman, Esq.*
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768
E-mail:
aroisman@nationallegalscholars.com

David R. Lewis, Esq.*
Matias F. Travieso-Diaz*
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
E-mail: david.lewis@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.co

/RA/

Mitzi A. Young
Counsel for the NRC Staff