

June 18, 2007 (12:22pm)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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.)	ASLB No. 06-849-03-LR
)	
(Vermont Yankee Nuclear Power Station))	

**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)**

Pursuant to 10 C.F.R. §§ 2.307, 2.323, and 2.332(b), and the Board's Initial Scheduling Order ¶ 9, New England Coalition, Inc. (NEC) moves to extend the deadline for its opposition to Entergy's Motion for Summary Disposition of New England Coalition's Contention 4 (Flow Accelerated Corrosion) to Monday, July 16, 2007.¹ Entergy filed this motion on June 5, 2007, and NEC's opposition is due on June 25, 2007. 10 C.F.R. § 1205(b). NEC is unable to meaningfully evaluate the alleged technical grounds for Entergy's Motion for Summary Disposition of NEC's Contention 4 by June 25, 2007 because 1) NEC's consultants need additional time to review materials relevant to NEC's Contention 4 that Entergy produced to NEC as part of its Seventh Supplemental Disclosure, on June 7, 2007; and 2) NEC's consultant's are hindered by difficulties locating information among the large volume of documents Entergy has produced to NEC as non-text-searchable electronic image files. *See*, Exhibit 1, Declaration of Ulrich Witte ("Witte Declaration").

¹ NEC proposes an extension to July 16th in part because both NEC's counsel (Karen Tyler) and NEC's consultant (Ulrich Witte) will be away on vacation from July 4-8.

More than ninety percent (90%) of the approximately 4 gigabytes of documents Entergy has produced to NEC in this proceeding are electronic image files that are not text-searchable, and locating relevant information among these documents is therefore difficult and time consuming. Witte Declaration ¶¶ 3-5. One of NEC's consultants has attempted to convert documents to a text-searchable format, but this has been only partially successful. *Id.*

In support of its Motion for Summary Disposition, Entergy has filed a four-page memorandum, which Entergy had not previously disclosed to NEC, in which its consultant, Mr. Jeffrey S. Horowitz, very briefly summarizes his opinion of the Flow Accelerated Corrosion (FAC) Program at Vermont Yankee, and lists fourteen documents and categories of documents (such as "Program Health Reports, various dates") he reviewed in developing his opinion. *See*, Entergy's Motion for Summary Disposition of New England Coalition's Contention 4 (Flow Accelerated Corrosion), Attachment 3. NEC's consultants are unable to meaningfully evaluate Mr. Horowitz's opinions without at a minimum reviewing the materials he references. Entergy has not filed these materials as part of its Motion for Summary Disposition, and has declined to facilitate NEC's review by identifying them to NEC by production number, or even indicating whether they are among the documents Entergy has produced. E-mail correspondence between counsel to NEC and counsel to Entergy is attached hereto as Exhibit 2. To date, one of the consultants NEC has retained to review Entergy's documents, Mr. Ulrich Witte, is unable to locate these materials. Witte Declaration ¶¶ 4-5.

In addition, Entergy's Seventh Supplemental Disclosure, produced on June 7, 2007, included numerous documents relevant to NEC's Contention 4. Witte Declaration

¶ 6. Most of them are not new; some are dated January, 2006, and some are even older. *Id.* Some of the Contention 4-related documents produced on June 7, 2007 reference other calculations or evaluations, which NEC's consultant needs to review. *Id.* Due to his inability to text-search Entergy's documents, NEC's consultant has been unable to quickly locate referenced materials or determine whether Entergy has produced them. *Id.*

The extension NEC requests is appropriate under 10 C.F.R. § 2.332(b). NEC's Contention 4 raises complex and fact-intensive issues concerning modeling of flow accelerated corrosion, and the validity of Entergy's program to manage aging of components subject to this phenomenon. NEC has three Contentions admitted in this proceeding. At the same time that NEC's consultants are evaluating Entergy's Contention 4 Motion for Summary Disposition, they are simultaneously reviewing Entergy's preliminary reanalysis of environmentally-assisted metal fatigue, produced to NEC on June 7, 2007, on which basis Entergy has informed NEC and the Board that it plans to move to dismiss NEC's Contention 2 as moot. Entergy's reanalysis is complex, and was probably developed over several months time. NEC's evaluation of this reanalysis will be involved and time consuming. NEC's proposed extension of the deadline for its opposition to Entergy's Contention 4 Motion for Summary Disposition should not interfere with the overall schedule for this proceeding. Entergy's Motion for Summary Disposition will be fully briefed before the NRC Staff currently anticipates issuance of the FSER and FEIS, in early August. Finally, NEC cannot complete a full review of Entergy's filing in the time currently permitted due to both the complexity of the issues, the need for more time to evaluate very recently disclosed information, and the unwieldy format of Entergy's electronic document production. The NRC's interest in

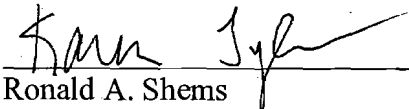
providing a fair resolution of Contention 4 is therefore served by the grant of NEC's requested extension.

NEC has consulted with all the parties concerning this motion. Entergy is opposed. NRC Staff could not take a position before reviewing NEC's filing. The States of Vermont and New Hampshire are unopposed.

WHEREFORE, NEC respectfully requests that the Board extend the deadline for its opposition to Entergy's Motion for Summary Disposition of NEC's Contention 4 (Flow Accelerated Corrosion) to July 16, 2007.

June 18, 2007

New England Coalition, Inc.

by: 

Ronald A. Shems

Karen Tyler

SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

Attorneys for NEC

EXHIBIT 1

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

DECLARATION OF ULRICH WITTE

1. My name is Ulrich Witte. The New England Coalition (NEC) has retained me as a consultant with respect to the above-captioned proceeding. I am a mechanical engineer with over twenty-six years professional experience in engineering, licensing, and regulatory compliance of commercial nuclear facilities.

2. I am currently assisting NEC in reviewing the documents Entergy has disclosed to NEC in this proceeding, and in evaluating Entergy’s Statement of Material Facts Regarding NEC Contention 4 On Which No Genuine Dispute Exists, and the supporting Joint Declaration of Jeffrey S. Horowitz and James C. Fitzpatrick and memorandum titled “Summary of Observations During VY Site Visit.”

3. My review of documents and work on NEC’s Contention 4 is hindered by the time-consuming necessity of converting Entergy’s documents to text-searchable format. Entergy produced the vast majority of documents (more than 90%) as electronic image files that are not text-searchable. I have fairly successfully converted some “pdf” format files, but many of the “pdf” files are password protected or corrupted and cannot be

converted to a text-searchable format. The overall volume of documents is very large – approximately 4 gigabytes.

4. I cannot meaningfully respond to the “Summary of Observations During VY Site Visit” – a four-page document in which Jeffrey S. Horowitz very briefly summarizes the results of an assessment of the VY Flow-Accelerated Corrosion Program that he performed in early April, 2007 – without at a minimum reviewing the materials Mr. Horowitz reviewed in developing his opinion of the VY program.

5. The “Summary of Observations During VY Site Visit” was first disclosed to NEC when Entergy filed its Motion for Summary Disposition on June 5, 2007. It includes a list of fourteen (14) documents or categories of documents (such as “Program Health Reports, various dates”) that Mr. Horowitz reviewed. Entergy has not filed the referenced documents as part of its Motion for Summary Disposition of New England Coalition’s Contention 4 (Flow Accelerated Corrosion), and I have not been informed of Entergy’s production numbers for these documents, or even whether Entergy has in fact produced them to NEC. Thus far, I have not located any of these documents among those Entergy has produced to NEC.

6. I received an additional CD of documents from counsel to NEC, constituting Entergy’s Seventh Supplemental Disclosure to NEC (“Supplement 7”) approximately one week ago. Supplement 7 includes numerous documents relevant to NEC’s Contention 4. Most of them are not new. Some are dated January 2006 and many are even older. Some Supplement 7 documents reference other calculations or evaluations, which I need to review. Due to my limited ability to text search the 4 gigabytes of documents Entergy has produced, I cannot quickly locate the referenced materials or determine whether

Entergy has in fact produced them. I am reasonably certain that Entergy has not supplied these calculations or evaluations.

7. I am unable to meaningfully evaluate the technical grounds for Entergy's Motion for Summary Disposition of NEC's Contention 4 by June 25, 2007, due to both my need to review the Supplement 7 documents, which I received approximately one week ago, and my above-described difficulties in working with Entergy's documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of June, 2007 at Westville, Connecticut.



Ulrich Witte

EXHIBIT 2

ktyler@sdkslaw.com

From: Travieso-Diaz, Matias F. [matias.travieso-diaz@pillsburylaw.com]
Sent: Wednesday, June 06, 2007 9:49 AM
To: ktyler@sdkslaw.com; may@nrc.gov; mcb1@nrc.gov; Sarah.hofmann@state.vt.us; Anthony Roisman; rshems@sdkslaw.com
Cc: Lewis, David R.; Jennifer.Patterson@doj.nh.gov; Raymond Shadis; araubvogel@sdkslaw.com
Subject: RE: Statement of Facts not in Dispute re NEC Contention 4 in VY License Renewal Proceeding

Karen: We would have been more than happy to wait to receive your response to our statement of facts not in dispute on NEC Contention 4 had you given us any indication that one was forthcoming. I am sorry the exchange did not take place; however, we waited over five days since your message of Thursday and received no word that you were planning to provide such a response. Also, your message of Thursday did not suggest you were planning on providing a response to our statement without talking to our witnesses. Based on prior experience (we waited in vain for two weeks for your statement on NEC Contention 3) we saw no reason to wait any longer.

In any case, the exchange of positions on statements of material fact is not an opportunity for discovery, particularly discovery that is not allowed by the NRC regulations. NEC and its experts should be sufficiently familiar with your own contention that you could, for example, address what the license renewal application commits VY to do regarding FAC without needing to interview our witnesses. It is also to be assumed that you have been diligently reviewing the materials provided in discovery, which by definition are relevant to your contentions, to determine which contain relevant facts. That is work that NEC must do and we are not required to do it for you.

From: ktyler@sdkslaw.com [mailto:ktyler@sdkslaw.com]
Sent: Tuesday, June 05, 2007 5:10 PM
To: Travieso-Diaz, Matias F.; may@nrc.gov; mcb1@nrc.gov; Sarah.hofmann@state.vt.us; 'Anthony Roisman'; rshems@sdkslaw.com
Cc: Lewis, David R.; Jennifer.Patterson@doj.nh.gov; 'Raymond Shadis'; araubvogel@sdkslaw.com
Subject: RE: Statement of Facts not in Dispute re NEC Contention 4 in VY License Renewal Proceeding

Matias,

I have just concluded a conference call with NEC's consultants and have prepared a response to your statement of facts not in dispute. However, I see no point in attaching this statement as I see that you have already filed your motion for summary judgment. You requested NEC's response to your statement by "early this week," and it is now Tuesday afternoon.

I believe that the purpose of this exchange, now prematurely curtailed, was to fulfill both the letter and spirit of 10 CFR 2.323(b), which directs all parties to make "a *sincere* effort to contact other parties in the proceeding and resolve the issue(s)." The 22 paragraphs of the proposed statement of material facts, with a few exceptions, are not factual statements. Rather, most of the statements are either opinions of undisclosed "experts" or reference undisclosed and/or inadequately identified documents in Entergy's possession.

If Entergy was "sincerely" attempting to reach an accommodation with NEC regarding the statement of material facts, it should have been anxious to provide NEC with a copy of the documents upon which the statements were

based or at least identify where they can be found among the thousands of pages of documents disclosed to the parties. Similarly, if Entergy was "sincere" in requesting that NEC agree to opinion statements, such as those contained in many of the paragraphs of the proposal, it should have been willing to identify the source(s) of those opinions and allow us to speak with those persons so we could better understand the basis for their opinions. We would of course have provided Entergy with the same opportunity with regard to our witnesses. These meetings would not have been depositions, but would have facilitated an exchange between experts that could in fact narrow the issues prior to filing of any motion. It is apparent that Entergy has no interest in such a potentially fruitful exchange among experts, and that is unfortunate.

Finally, please do respond to my requests regarding document disclosure, as this is one of the issues on the agenda for the June 12 prehearing conference. Our paralegal has let me know that 14 of the 22 CDs of documents disclosed do appear to be indexed. Rather than await your response regarding the other 8 disks, we are preparing our own index. I reiterate my request that, on a forward going basis, Entergy provide an index to all documents disclosed, and disclose documents in a searchable format.

Karen

From: Travieso-Diaz, Matias F. [mailto:matias.travieso-diaz@pillsburylaw.com]
Sent: Thursday, May 31, 2007 6:04 PM
To: ktyler@sdkslaw.com; may@nrc.gov; mcb1@nrc.gov; Sarah.hofmann@state.vt.us; Anthony Roisman; rshems@sdkslaw.com
Cc: Lewis, David R.; Jennifer.Patterson@doj.nh.gov
Subject: RE: Statement of Facts not in Dispute re NEC Contention 4 in VY License Renewal Proceeding

Karen: We appear to have a different understanding of the purpose of our providing to NEC a statement of material facts we believe not to be in dispute in advance of filing a motion for summary disposition. As the Board made clear in its Initial Scheduling Order of November 17, 2006, the purpose of our providing such a statement to NEC and the other parties is to inform "the opposing party or parties, prior to filing the motion, of the material facts about which the movant believes there is no genuine dispute. Likewise, the opposing party must be prepared to respond very promptly, advising whether it agrees that there is no genuine dispute concerning those facts." Initial Scheduling Order at 9, para. 8. Our understanding of the objective of this exchange is to see if there is a possibility of narrowing the issues in advance of filing a motion, or perhaps -- if the parties manage to sufficiently close the gap in their respective positions -- to avoid altogether the need for such a motion.

With respect to NEC Contention 4, we have provided you with a statement containing 22 numbered paragraphs that set forth facts that we believe are not in dispute. Of those paragraphs, there are many (e.g., Nos. 1, 2, 3, 5, 12, 14, 16, 17, 18, and 21) with which you should be able to agree. With others (e.g., No. 19) you may disagree. As to others (e.g., No. 10) you may not have enough information to take a position. I think you can frame a response to each paragraph without "interviewing" our witnesses (to which you are certainly not entitled in any case). I believe you are *required* to provide such a response "very promptly" under the Board's Order. *After* you have advised us of your position, we may discuss how to further narrow the issues, if possible, with respect to the items on which we disagree.

Please also be advised that, with the deadline for filing motions for summary disposition two weeks away, we need to receive your response to our statement in the very near future, and no later than the early part of next week.

Finally, your requests to be provided an index of the documents supplied to you in discovery since last year and that we provide discovery documents in searchable format are not relevant

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to your response to our statement of material facts and require no response at this time.

From: ktyler@sdkslaw.com [mailto:ktyler@sdkslaw.com]
Sent: Thursday, May 31, 2007 5:11 PM
To: Travieso-Diaz, Matias F.; may@nrc.gov; mcb1@nrc.gov; Sarah.hofmann@state.vt.us; 'Anthony Roisman'; rshems@sdkslaw.com
Cc: Lewis, David R.; Jennifer.Patterson@doj.nh.gov; 'Mr. Raymond Shadis'; araubvogel@sdkslaw.com
Subject: RE: Statement of Facts not in Dispute re NEC Contention 4 in VY License Renewal Proceeding

Matias,

I have referred the statement of facts to NEC's consultants. It would expedite NEC's review if you would produce the audit report referenced in paragraphs 10 -11, the data/ documents supporting paragraphs 16-17, and any other documents or data supporting the statement. If you have already produced these documents, please identify them by document number.

Also, it will be difficult for NEC to respond to the statement without first speaking with the "industry expert" referenced in paragraph 10 to explore the meaning of various statements of his opinion – the VY FAC Program "appropriately implements the approach recommended by NSAC-202L," the program provides "reasonable assurances" that effects of aging will be successfully managed, etc. NEC would also like to interview the Entergy witness or witnesses who will testify that piping system locations most susceptible to FAC are "generally known," that Entergy's FAC program is "comparable" to the program described in NUREG-1801, and that criteria for component selection for FAC inspection at VY are "consistent" with NSAC-202L. The meaning of these statements is unclear. Please let me know whether you will make these witnesses available.

Finally, it has been very difficult for us to work with the large volume of documents Entergy has produced without an Index, and request that you prepare an Index listing the documents by number, and stating the title of each of them. It has also been difficult to work with the documents because Entergy has produced them in a "non-searchable" format. On a forward going basis, we request that you produce the documents in a searchable format.

- Karen Tyler

From: Travieso-Diaz, Matias F. [mailto:matias.travieso-diaz@pillsburylaw.com]
Sent: Tuesday, May 29, 2007 3:48 PM
To: may@nrc.gov; mcb1@nrc.gov; Sarah.hofmann@state.vt.us; Anthony Roisman; rshems@sdkslaw.com; ktyler@sdkslaw.com
Cc: Lewis, David R.; Jennifer.Patterson@doj.nh.gov
Subject: Statement of Facts not in Dispute re NEC Contention 4 in VY License Renewal Proceeding

Dear Counsel: We have carefully reviewed the facts relating to NEC Contention 4 (flow accelerated corrosion) in the VY license renewal proceeding and have come to the conclusion that summary disposition of that contention is appropriate because there are no material facts in dispute and Entergy is entitled to having the contention dismissed as a matter of law. Before filing a motion seeking summary disposition of the contention, we would like to elicit your views

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as to whether the factual prerequisites for such a motion exist.

Attached is a Statement of Material Facts on NEC Contention 4 as to which we believe no genuine dispute exists. Please advise as to: (a) whether you agree that there is no genuine dispute as to all or some of the facts enumerated in the attached statement so that those facts can be stipulated to; (b) as to those facts as to which you believe there is a genuine dispute, what the basis for the dispute is; and (c) whether there are other material facts, not listed in the enclosed statement, as to which there is a genuine dispute exists.

Please feel free to call me if you want to discuss this matter. Thanks,

<<Statement of Material Facts re Entergy's Motion for Summary Disposition of NEC Contention 4.pdf>>

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463
2300 "N" Street, NW | Washington, DC 20037-1122

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Version: 7.5.472 / Virus Database: 269.8.4/825 - Release Date: 5/30/2007 3:03 PM

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**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, Clara Cavitt, hereby certify that copies of the NEW ENGLAND COALITION, INC'S 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), in the above-captioned proceeding were served on the persons listed below, by U.S. Mail, first class, postage prepaid; by Fed Ex overnight to Judge Elleman; and, where indicated by an e-mail address below, by electronic mail, on the 18th day of June, 2007

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for the firm
Attorneys for New England Coalition, Inc.