

April 30, 2008

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)	)	

NRC STAFF MOTION FOR CLARIFICATION ON FILING SCHEDULE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(b) the NRC Staff (Staff) hereby requests clarification or extension of the time to file the Staff's Initial Statement of Position, Direct Testimony and Exhibits.<sup>1</sup>

BACKGROUND

On April 29, 2008 New England Coalition (NEC) attempted to file its initial Statement of Position, Direct testimony and Exhibits by both first class mail and e-mail. Upon review of the documents electronically sent to the parties, the Staff noticed that only the statement and testimony were attached to the electronic mailing and that the exhibits were not provided. NEC counsel subsequently contacted both the Staff and counsel for the Licensee and informed us that per the former version of 10 CFR 2.302(a), which allows filing by e-mail or first class mail, their exhibits filing was all sent by first-class mail on April 28, 2008.

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<sup>1</sup> In accordance with § 2.323(b), the Staff has consulted with the parties to this proceeding. The parties do not oppose this motion.

DISCUSSION

The certificate of service included with the NEC filing certified that electronic copies of the “exhibits” to the testimony were served electronically on counsel for the parties. That was not the case. The exhibits to the testimony of NEC’s witnesses were not included with the electronic filing. Counsel for NEC has since filed a corrected certificate of service.

Under the former 10 C.F.R. § 2.306, which applies to this proceeding (the federal register notice for this application occurred prior to October 15, 2007, the effective date of the revised § 2.306),<sup>2</sup> if a notice or document is served upon a participant by first-class mail only, five calendar days will be added to the prescribed period for all participants to the proceeding. In this case critical supporting portions of NEC's Initial Position and Testimony (i.e. the experts' reports and support exhibits) were served on the Staff by first-class mail only. Therefore, five calendar days should be added to the 10-day time period prescribed in the Board's November 2006 Scheduling order. Accordingly, the Staff's Initial Statement of Position, Direct Testimony and Exhibits should be reset to be due not later than May 13, 2008.

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<sup>2</sup> See Final Rule, Use of Electronic Submissions in Agency Hearings, 72 Fed. Reg. 49139 (Aug. 28, 2007),

CONCLUSION

Therefore, the Staff requests a clarifying order or extension setting forth May 13, 2008 as the date of the Staff's filing of its Initial Statement of Position, Direct testimony and Exhibits.

Respectfully submitted,

***/RA/***

Lloyd B. Subin  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 30th day of April, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR CLARIFICATION ON FILING SCHEDULE" 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 30th day of April, 2008.

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