

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 07/01/08
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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Richard E. Wardwell
Dr. William H. Reed

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

July 1, 2008

ORDER

(Evidentiary Hearing Administrative Matters)

On March 25, 2008, the Board issued an order scheduling the evidentiary hearing in this proceeding for July 21 - 25, 2008, in the Windham County Courthouse in Newfane, Vermont.¹ The hearing is to begin at 1:00 p.m. on Monday, July 21, 2008.² The purpose of this order is to instruct the parties as to certain administrative matters concerning the upcoming evidentiary hearing on the three contentions currently before us.

Pursuant to 10 C.F.R. § 2.1207 and our initial scheduling order (ISO), the Intervenor filed its direct written testimony and associated exhibits on April 28, 2008, and the Applicant and the NRC Staff filed their direct written testimony on May 13, 2008.³ All parties filed their rebuttal

¹ Licensing Board Order (Setting Date for Evidentiary Hearing) (Mar. 25, 2008) (unpublished).

² However, parties should arrive at the courthouse by 10:00 a.m. on that day for the preliminary session described in section C.1 below.

³ Licensing Board Order (Initial Scheduling Order) (Nov. 17, 2006) (unpublished).

written testimony June 2, 2008. On June 23, 2008, each party provided the Board with proposed questions for the various witness panels.

The Board and the parties must now turn, inter alia, to the administrative procedures and details for introducing and admitting such testimony and documents into the evidentiary record. Accordingly, the parties are instructed to comply with the following:

A. Opening Statements. The Board will afford one counsel for each party up to ten minutes to present an opening statement summarizing that party's position and the evidence and proof relative to the contentions. The State of Vermont (as the adopter of NEC's contentions) and each of the Interested States will also be afforded up to ten minutes. The order of the opening statements will be as follows: NEC, the State of Vermont, Entergy, the NRC Staff, the State of New Hampshire, and the Commonwealth of Massachusetts.

B. Testimony and Witness Panels.

1. Order. The Board intends to proceed with the contentions in numerical order and to empanel all witnesses (whether from the Intervenor, Applicant, or NRC Staff) for a given contention at the same time. Although Entergy is the party with the burden of proof under 10 C.F.R. § 2.325, the Board will not necessarily question its witnesses first. We will proceed with questioning of the various witnesses in the sequence we deem best designed to elicit the necessary information.

2. Foundation Questions. Each witness will be duly sworn in and the sponsoring party will ask the basic questions needed to lay the foundation for the proffer of that witness's prefiled direct and rebuttal testimony. The prefiled testimony is to be bound into the transcript and record as if read, in accordance with 10 C.F.R. § 2.711(b).⁴

⁴ The publicly available version of the transcript of the October 25, 2005, hearing in the matter of Louisiana Energy Services, L.P. (National Enrichment Facility), Docket No. 70-3103- (continued...)

3. Submission of Testimony. A party should submit three single-sided hard copy versions of both the direct and rebuttal testimony for a particular witness or witness panel to the Court Reporter/Clerk at the time the witness/panel is presented.⁵ This testimony shall be the same as the party's prefiled direct and rebuttal testimony, except for minor corrections.⁶ If a party needs to make corrections to the direct or rebuttal testimony previously filed herein, then at the evidentiary hearing, the party shall (1) submit three hard copies of such corrected testimony to the Court Reporter/Clerk, (2) provide four copies of such corrected testimony to the Board, and (3) provide at least one copy to the counsel or representative for each of the other parties. Any such corrected testimony shall summarize all such corrections on an errata sheet attached thereto and, in the text where the correction occurs, shall prominently highlight any such deletions, additions, or other corrections.

Note that direct and rebuttal testimony should not be marked as exhibits, and that the procedures in Section C.3 do not apply. This is a procedural change from our previous order regarding the record in this proceeding, and we call attention to it for that reason.⁷ Exhibit numbers that were assigned to testimony previously should be retired and not reassigned to other documents.

⁴(...continued)

ML, ASLBP No. 04-826-01-ML, Tr. at 2102-05, ADAMS Accession No. ML053610045, provides an example of establishing the foundation for the adoption of such written testimony.

⁵ Unless corrections have been made to the written testimony, Board members and opposing counsel will rely on the copy of the prefiled testimony they have already received and need not be given an additional copy at the time the testimony is presented at the hearing.

⁶ The opportunity to make corrections at the outset of the evidentiary hearing only applies to minor errata and is not an opportunity for the witness to update, improve, or change his or her testimony.

⁷ Licensing Board Order (Regarding the Record for the Evidentiary Hearing) (Apr. 3, 2008) at 2 (unpublished).

4. Witness Availability. Each party (including the Staff) shall, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony personally attends the oral evidentiary hearing and is available to testify and respond to the Board's questions. ISO § II.10.H. Because the Board intends to hear testimony on the contentions in numerical order, beginning with Contention 2 on Monday, July 21, 2008, witnesses for Contentions 3 and 4 need not attend the hearing on that day. While we cannot determine how long the testimony on Contention 2 will take, the Board commits that testimony on Contention 3 will begin no earlier than 8:30 a.m. on Tuesday, July 22, 2008. Testimony on Contention 4 will begin no earlier than 8:30 a.m. on Wednesday, July 23, 2008. Witnesses for those contentions therefore need to be present at least by those dates and times.

5. Brief Presentation. The Board requests that Dr. Jeffrey S. Horowitz, one of Entergy's witnesses with regard to NEC Contention 4, be prepared to provide the Board with a fifteen minute presentation on the CHECWORKS Model. As part of an overview of how the model works, please review its required input parameters, the general mathematical analogues used in its calculations, the types of output data, and its calibration process.

C. Exhibits.

1. Preliminary Session for Marking Exhibits. Beginning at 10:00 a.m. on Monday, July 21, 2008, the parties shall meet with the Board's law clerks at the Newfane courthouse in order to ensure that all exhibits are marked properly and submitted in the proper form. Pursuant to 10 C.F.R. § 2.711(h), all exhibits shall be submitted as single-sided hard copies, in triplicate (original and two copies).⁸ Exhibits shall be marked as described in section C.3 below. All proprietary exhibits shall be identified for separate handling at this session.

⁸ As with prefiled testimony, Board members will rely on the copies of exhibits already provided to the Board.

2. Submission of Exhibits at Hearing. Immediately following the adoption of written testimony, and before Board questioning of the witnesses, each party shall present to the Board for identification, and proffer as evidence, the full set of exhibits that were reviewed by the law clerks at the preliminary session described in section C.1. No new objections to such evidence and exhibits are expected, because such objections were due at an earlier date. See ISO § II.10.E.

3. Marking. The Board will provide each party with a stamp and a black ink pad to use to pre-mark the original and two copies of each prefiled direct or rebuttal exhibit it will submit during the evidentiary hearing. That stamp includes several items the party will need to have completed before providing the exhibit to the Court Reporter/Clerk, specifically case name (Entergy Nuclear Vermont Yankee L.L.C.), docket number (50-271), party name (Entergy and the NRC Staff can circle appropriate designations; NEC should fill in the blank after the designation "Intervenor"), exhibit number, and the witness/panel sponsoring the exhibit or with whom the exhibit is used. The stamp should be placed in the lower right-hand corner if possible. If this location is not possible, then any location on the first page is acceptable or, if there is no area on the first page where the stamp would fit without obscuring information, by folding over the bottom right hand corner of the first page sufficiently so the stamp can be placed on the back side of the page. Any such fold should be made to obscure as little of the first page as possible. The parties should bring the stamp and pad to the evidentiary hearing and should return them to the Court Reporter/Clerk at the conclusion of that hearing.

4. Avoidance of Duplication. Only one set (consisting of the original and two copies) of each exhibit should be offered as evidence in this proceeding. For example, if Entergy and the NRC Staff both use the same document or portion of a document as an exhibit, then the Staff should not introduce a duplicate physical set of the same document. Instead, the NRC Staff

should rely on the physical copy of the document already proffered by Entergy.⁹ To this end, the parties should consult with one another and determine whether any of the prefiled exhibits a party intends to offer into evidence would otherwise be duplicated by another party in the proceeding. Unless the parties otherwise agree, and except for documents that the NRC Staff is obliged to enter into evidence pursuant to 10 C.F.R. § 2.337, in each instance where multiple parties are using the same document as an exhibit, the primary responsibility for delivering the physical document to the Board shall lie first with the Applicant (if it is using the document as an exhibit), second with the Staff (if it is using the document as an exhibit and the Applicant is not), and third with the Intervener.

5. Exhibit Order and Numbering. To the maximum extent possible, each party should number its exhibits with the same numbers that it used when it submitted its prefiled direct and rebuttal exhibits. In addition, parties should append a “-P” to the numbers of all exhibits containing proprietary information.

6. Exhibit List. On or before July 11, 2008, each party shall provide Marcia Carpentier, Esq. (e-mail address: Marcia.Carpentier@nrc.gov), one of the Board’s law clerks, with an electronic copy of a list of all of its prefiled exhibits. The parties should use the exhibit list template included as Appendix A hereto as the format for the list, and should complete the party exhibit number, witness/panel, and description fields, including a designation in **bold** type for any proprietary/protected status. A Microsoft Word version of this template is included with electronic service of this order.

⁹ However, each party is encouraged to continue using the exhibit numbers they assigned to the document when they submitted their prefiled testimony. The Board will maintain a record of all duplications of this type.

7. Safety Evaluation Report. As discussed and agreed at the June 24, 2008, prehearing conference call, the NRC Staff shall proffer a full copy of its final safety evaluation report as evidence herein.

D. Miscellaneous Matters.

1. Copies of Transcripts. Parties other than the Staff (which is covered under the agency's existing court reporting contract) should contact the Court Reporter (Neal R. Gross & Co., 202-234-4433) well before the first day of the evidentiary session to arrange for the number of copies of the transcript they require. The Board has ordered transcripts to be produced on a three-day turnaround schedule. Parties may contact the Court Reporter to obtain faster turnaround, at their own expense.

2. Counsel/Representative Attendance During Evidentiary Hearing. On or before July 15, 2008, each party shall file a list of its counsel, authorized representatives, and witnesses who plan to attend the evidentiary hearing. Interested States shall file a list of their counsel and/or representatives who will be attending.

3. Proprietary Sessions/NonDisclosure Agreements. Pursuant to our protective order of January 12, 2007, on or before July 11, 2008, each party and Interested State shall file a copy of each nondisclosure agreement signed by the counsel, authorized representatives, or witnesses of that party or Interested State who plan to attend any proprietary portion of the

evidentiary hearing. Anyone who has not signed the nondisclosure agreement will not be admitted to the portion of the hearing involving proprietary information.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁰

/RA by R.E. Wardwell for:/

Alex S. Karlin
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 1, 2008

¹⁰ 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 and the Commonwealth of Massachusetts.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (EVIDENTIARY HEARING ADMINISTRATIVE MATTERS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB ORDER (EVIDENTIARY HEARING ADMINISTRATIVE MATTERS)

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[Original signed by Evangeline S. Ngbea]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of July 2008