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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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))	

**ENTERGY'S RESPONSE IN SUPPORT OF STAFF'S MOTION IN LIMINE TO
EXCLUDE WITTE REBUTTAL TESTIMONY**

Pursuant to 10 C.F.R. § 2.323(c) and paragraph 10.E of the Atomic Safety and Licensing Board ("Board")'s Initial Scheduling Order dated November 17, 2006, Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby file their response in support of the NRC Staff's "Motion in Limine to Strike Late-Filed Rebuttal Testimony and Exhibits of NEC Witness Ulrich Witte" (June 23, 2008) ("Staff Motion in Limine"). The Staff's Motion in Limine seeks to exclude the late-filed rebuttal testimony submitted by Mr. Ulrich Witte ("Witte Rebuttal") on behalf of intervenor New England Coalition, Inc. ("NEC") on the grounds that Mr. Witte lacks adequate qualifications to testify on NEC Contentions 2A, 2B and 4, which are the subject of the Witte Rebuttal. The Staff also asserts that the rebuttal testimony of Mr. Witte on Contentions 2A and 2B "is unsupported, unreliable, irrelevant, and not useful to the trier of fact" (Staff Motion in Limine at 4), and that his testimony on NEC Contention 4 is likewise "unsupported, unreliable, irrelevant, and not useful to the trier of fact." Id. at 7.

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Entergy fully supports the Staff Motion in Limine. Entergy has filed its own Motion in Limine to exclude the entirety of the rebuttal testimony and exhibits proffered by Mr. Witte on similar grounds to those raised by the Staff. Entergy's Motion in Limine to Exclude Rebuttal Testimony of Ulrich Witte (June 23, 2008) ("Entergy's Motion to Exclude Witte's Rebuttal").

Rebuttal Testimony and Exhibits on NEC Contentions 2A and 2B

Mr. Witte is clearly unqualified to testify as an expert on environmentally assisted fatigue, the subject of NEC Contentions 2A and 2B. See Entergy's Motion to Exclude Witte's Rebuttal at 2-4.¹ Also, his testimony contains many statements that are speculative (see, e.g., Staff Motion in Limine at 5-6; Entergy's Motion to Exclude Witte's Rebuttal at 4); irrelevant (see, e.g., Staff Motion in Limine at 5; Entergy's Motion to Exclude Witte's Rebuttal at 6); and lacking any factual support, (see, e.g., Staff Motion in Limine at 5-6; Entergy's Motion to Exclude Witte's Rebuttal at 5-6). Likewise, the exhibits included with Mr. Witte's rebuttal testimony are unidentified and lack any probative value. For all these reasons, Mr. Witte's testimony and exhibits are inadmissible.

Rebuttal Testimony and Exhibits on NEC Contention 4

Both Entergy and the NRC Staff have already moved to exclude Mr. Witte's direct testimony on NEC Contention 4 because Mr. Witte does not qualify as an expert on the issues raised by NEC Contention 4 by "knowledge, skill, experience, training, or education." Entergy's Motion in Limine (June 12, 2008) at 22; NRC Staff's Motion in Limine to Strike Testimony and Exhibits Filed by New England Coalition, Inc. (June 12, 2008) at 5-9. Mr. Witte acknowledges in his rebuttal testimony that he has no expertise on the use of CHECWORKS, which is the main issue in controversy on NEC Contention 4. See Witte Rebuttal at A8. For that reason and the

¹ As the Staff points out (Staff Motion at 4, n.6) Mr. Witte was not even identified by NEC in its final list of witnesses as a witness on NEC Contentions 2A and 2B. This suggests that Mr. Witte's rebuttal testimony is an afterthought and that NEC implicitly recognized that he was not qualified to testify on those contentions.

others discussed in Entergy's and the Staff's previous and current motions in limine, Mr. Witte's testimony should be stricken. See Staff Motion in Limine at 7-9; Entergy's Motion to Exclude Witte's Rebuttal at 7.

In addition, Mr. Witte's rebuttal testimony on NEC Contention 4 suffers from the same deficiencies that rendered his direct testimony inadmissible: it is outside the scope of the admitted contention, is speculative, is without factual support, and is inaccurate. See Staff Motion in Limine at 9-12; Entergy's Motion to Exclude Witte's Rebuttal at 8-9.

If further proof were needed that Mr. Witte's direct and rebuttal testimony on NEC Contention 4 warrant exclusion, such proof has been provided by the motion just filed by NEC to withdraw portions of both pieces of testimony as erroneous, to correct countless other errors in both, and to substitute exhibits determined to be "incomplete" and "corrupted." New England Coalition, Inc's Motion to File Corrections to Exhibits and to Withdraw Certain Testimony of Ulrich Witte (June 27, 2008). Such flaws in the testimony of an alleged expert evidence a lack of care that renders Mr. Witte's entire direct and rebuttal testimony unreliable.

For the above stated reasons, the Staff Motion in Limine should be granted and the entire Witte Rebuttal and exhibits thereto should be stricken.

Respectfully Submitted,



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Dated: June 30, 2008

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NUCLEAR REGULATORY COMMISSION

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Entergy Nuclear Vermont Yankee, LLC) Docket No. 50-271-LR
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response in Support of Staff's Motion in Limine to Exclude Witte Rebuttal Testimony" were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 30th day of June, 2008.

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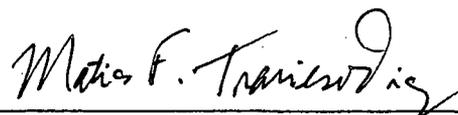
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