

July 17, 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 REPORT TO THE BOARD

About 12:30 PM on Friday July 11, 2008, Kaihwa R. Hsu, one of the Staff's witnesses for NEC Contention 4, came to my office and showed me, Mary Baty, a document someone had left on his office chair while he was out to lunch. I looked at the document and saw that it was NEC's proposed questions filed pursuant to 10 C.F.R. § 2.1207(3)(i)¹ and that, based upon the certificate of service attached thereto, the questions had been served on and docketed by the Office of the Secretary ("SECY"). I then looked to see if the questions were on the electronic hearing docket ("EHD") and discovered that the plan was available on the EHD. I called Emile Julian of SECY and informed him that the questions were publicly available and should be removed from the EHD and ADAMS. I e-mailed the Board and the parties to inform them of the situation.

In accordance with Judge Karlin's instructions, I spoke with or left voicemails for

¹ Section 2.1207(3)(i) states that proposed questions for the presiding officer to consider propounding to persons sponsoring testimony "need not be filed with any other party." Such questions may be asked at the discretion of the presiding officer and will be kept in confidence until after an initial decision on the issue being litigated is issued, at which time the presiding officer shall provide the questions to the Office of the Secretary for inclusion in the record of the proceeding. 10 C.F.R. § 2.1207(3)(iii).

all the witnesses and attorneys working on the case telling them not to read or access the questions and, if they had a copy, to bring it to me for destruction. Also as directed, I followed-up with an e-mail conveying the same instructions to all Staff witnesses and attorneys working on the case. In response to my e-mail, on Friday afternoon (July 11, 2008) Mr. Scarbrough brought me the questions that had been left on his office chair that morning while he was away from his desk. When Mr. Hsu and Mr. Scarbrough returned the questions to me, I asked them if they had read the questions. Both Mr. Hsu and Mr. Scarbrough informed me that they had skimmed the document looking for questions directed to them, but did not study the document. Neither witness used the questions to prepare for the hearing.

On Monday, July 14, 2008, John Fair returned to me the copy of the questions that had been left on his chair while he was out of the office on Friday, July 11, 2008. Mr. Fair did not read the questions.

Also on Monday morning, I learned that it was Staff witness and Vermont Yankee License Renewal project manager, Jonathan Rowley, who distributed the questions to his fellow witnesses. Mr. Rowley discovered the questions when he was doing his biweekly search of ADAMS for documents to add to the Staff hearing file and mandatory disclosures. Although Mr. Rowley printed and distributed the questions he did not read. He returned the hard copy he retained to me, Mary Baty, for destruction on the morning of July 14, 2007. I have destroyed copies of the questions returned to me by Messrs. Hsu, Scarbrough, Fair, and Rowley.

No other attorney working on this case read or accessed the questions.

Respectfully submitted,

/RA/

Mary C. Baty
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of July, 2008

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LLC, and ENTERGY NUCLEAR)
OPERATIONS, INC.) ASLBP No. 06-849-03-LR
)
(Vermont Yankee Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF REPORT TO THE BOARD" 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 17th day of July, 2008.

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: Rulemakings and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

William H. Reed*
Administrative Judge
Atomic Safety and Licensing Board
1819 Edgewood Lane
Charlottesville, VA 22902
E-mail: whrcville@embarqmail.com

Marcia Carpentier, Law Clerk
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mxc7@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

Lauren Bregman, Law Clerk
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001
E-mail: lauren.bregman@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAmail@nrc.gov

Peter C.L. Roth, Esq*
Office of the Attorney General
33 Capitol Street
Concord, NH 3301
E-mail: peter.roth@doj.nh.gov

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

David R. Lewis, Esq.*
Matias F. Travieso-Diaz, Esq
Elina Teplinsky, Esq
Blake J. Nelson, Esq
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
E-mail: david.lewis@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com
elina.teplinsky@pillsburylaw.com
blake.nelson@pillsburylaw.com

Diane Curran*
Harmon, Curran, Spielberg, & Eisenberg, LLP
1726 M Street N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

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

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

Matthew Brock*
Assistant Attorney General, Chief
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
E-mail: matthew.brock@state.ma.us

/RA/

Mary C. Baty
Counsel for NRC Staff