

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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

March 9, 2009

ORDER

(Clarifying Deadline for Filing New or Amended Contentions)

On November 24, 2008, the Board issued a Partial Initial Decision (PID) stating that this adjudicatory proceeding is open until 45 days after Entergy performs its confirmatory CUFen analyses on the core spray (CS) and reactor recirculation (RR) nozzles and serves the other parties with copies of the full written results of such analyses.¹ We stated that certain new or amended contentions might be filed concerning the confirmatory CUFen analyses and that “[i]f no motion involving any such new, amended, or revitalized contention is filed by the 45th day, the adjudicatory proceeding on these matters shall be terminated.” PID at 67-68. In light of subsequent events, this order clarifies the deadline for filing of new or amended contentions.

The relevant subsequent events are as follows. On January 8, 2009, Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy) submitted a letter stating that the confirmatory CUFen analyses on the CS and RR nozzles had been

¹ Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-08-25, 68 NRC __, __ (slip op. at 67 and 151-52) (Nov. 24, 2008), as clarified by Licensing Board Order (Granting Entergy Motion for Clarification) (Dec. 22, 2008) (unpublished) [PID].

performed and that the results had been served on the parties to this proceeding.² On January 26, 2009, the Board granted a motion by the Department of Public Services of the State of Vermont (Vermont) to extend the time for filing of responses to Entergy's January 8, 2009, filing until March 9, 2009.³ On February 26, 2009, Entergy issued another letter indicating that, it was making certain "inconsequential" changes to the January 8, 2009, confirmatory analyses for the CS and RR nozzles and that certain other parts of the CUFens will be modified and that other "editorial changes" will be made.⁴ On March 6, 2009, the New England Coalition (NEC), filed a motion requesting that the Board

[A]lter or amend the schedule so as to extend the time permitted for intervenors to file comment, response, and timely new or amended contentions regarding [Entergy's] confirmatory environmentally-assisted fatigue analyses of Vermont Yankee's [CS] and [RR] nozzles until thirty days after Entergy has filed final, accurate, and complete analyses and until at least fifteen days after NRC Staff has filed its planned Supplemental Safety Evaluation Report and Audit Summary regarding the confirmatory analyses of the CS and [RR] nozzles.⁵

On March 9, 2009, Entergy filed an answer to NEC's motion,⁶ and NEC filed a petition for leave to reply thereto.⁷

² Letter from Matias Travieso-Diaz, Counsel for Entergy, to the Atomic Safety and Licensing Board (Jan. 8, 2009).

³ Licensing Board Order (Granting Unopposed Motion for Extension of Time) (Jan. 26, 2009) (unpublished).

⁴ Letter from Matias Travieso-Diaz, Counsel for Entergy, to the Atomic Safety and Licensing Board (Feb. 26, 2009).

⁵ New England Coalition's Motion to Alter or Amend the Schedule in the Above Captioned Proceeding (Mar. 6, 2009) at 7.

⁶ Entergy's Opposition to New England Coalition's Motion to Alter or Amend the Schedule (Mar. 9, 2009).

⁷ New England Coalition's Petition for Leave [to] Reply to Entergy Responses to New England Coalition's Motion to Alter or Amend the Schedule in the Above Captioned Proceeding (Mar. 9, 2009).

In light of this situation, the Board clarifies the schedule as follows. First, the parties need to recognize that the 45 day time period specified in the PID is triggered by a specific event – Entergy’s service on NEC and Vermont of its confirmatory CUFen analyses for the CS and RR nozzles. These must be Entergy’s final analyses of record, not analyses that Entergy is still modifying or correcting. Entergy’s February 26, 2009, letter makes clear that Entergy’s January 8, 2009, confirmatory CUFen analyses did not meet these criteria. Until Entergy has finalized its CUFens as the analyses of record, the triggering event has not yet occurred. Thus, for example, if Entergy issues what it denominates as its “final” analyses of record CUFens, and then, as result of NRC Staff comments or otherwise, Entergy further modifies these calculations and submits “revisions” or “corrections” or supplementary letters or analyses regarding the formerly “final” analyses of record CUFens, then the 45 days begins to run after the service of such revisions, corrections, and/or supplements.⁸ The triggering of the 45 day time frame is in Entergy’s hands.⁹

Second, the schedule is not being held open as an opportunity for NEC to file mere commentary or other responses to the final confirmatory CUFens. It is for the filing of new or amended contentions, meeting the requirements of 10 C.F.R. § 2.309(f)(1) and (2) and the criteria set forth in the PID at page 67.

⁸ We are not requiring that the final CUFen analyses of record be restated in their entirety, only that they be final and be the analyses of record that Entergy will rest upon for purposes of the pending license renewal application. Furthermore, we recognize that such final analyses of record may be amended again later as part of some subsequent amendment to the Vermont Yankee license. Such later amendments are not the subject of this proceeding.

⁹ It may not be apparent, before the expiration of 45 days, whether a confirmatory CUFen analyses that Entergy has submitted might be further modified by Entergy. In such circumstances, the intervenors must file any new or amended contentions within that initial 45 day period, because if Entergy does not further revise its final CUFens, the deadline for filing such contentions will have expired. Meanwhile, if Entergy does further amend or correct its CUFens, the intervenors will have another 45 day opportunity to amend their proposed new or amended contentions.

Finally, in light of the foregoing, the Board denies NEC's motion to alter the schedule and its petition to file a reply.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁰

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 9, 2009

¹⁰ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.; (2) the Department of Public Service of the State of Vermont and the New England Coalition of Brattleboro, Vermont; (3) the NRC Staff; and (4) the State of New Hampshire and the Commonwealth of Massachusetts.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CLARIFYING DEADLINE FOR FILING NEW OR AMENDED CONTENTIONS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
William H. Reed
Atomic Safety and Licensing Board Panel
1819 Edgewood Lane
Charlottesville, VA 22902

Lloyd B. Subin, Esq.
David E. Roth, Esq.
Mary C. Baty, Esq.
Susan L. Uttal, Esq.
Jessica A. Bielecki, Esq.
Brian Newell, Paralegal
Office of the General Counsel O15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sarah Hofmann, Esq.
Director for Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601

Docket No. 50-271-LR

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Matthew Brock
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768

Callie B. Newton, Chair
Gail MacArthur
Lucy Gratwick
Town of Marlboro
SelectBoard
P.O. Box 518
Marlboro, VT 05344

Dan MacArthur, Director
Town of Marlboro
Emergency Management
P.O. Box 30
Marlboro, VT 05344

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

Peter C. L. Roth, Esq.
Senior Assistant Attorney General
State of New Hampshire
Office of the New Hampshire
Attorney General
33 Capitol Street
Concord, NH 03301

Robert L. Stewart
New England Coalition
229 Kibbee Ext.
Brookfield, Vermont 05036

Alan A. Pemberton, Esq.
Derron J. Blakely, Esq.
Covington & Burling LLP
Counsel for Electric Power Research Institute
(EPRI)
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401

Docket No. 50-271-LR

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Raymond Shadis
37 Shadis Road
P.O. Box 98
Edgecomb, Maine 04556

Raymond Shadis
New England Coalition
P.O. Box 545
Brattleboro, VT 05302

Ronald A. Shems, Esq.
Karen Tyler, Esq.
Andrew Raubvogel, Esq.
Shems Dunkiel Kassel & Saunders, PLLC
91 College Street
Burlington, VT 05401

[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of March 2009