

March 9, 2009 (8:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

<i>In the Matter of</i>)	March 9, 2009
)	
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)	

NEW ENGLAND COALITION'S PETITION
FOR LEAVE REPLY TO ENTERGY RESPONSES
TO NEW ENGLAND COALITION'S MOTION TO ALTER OR
AMEND THE SCHEDULE IN THE ABOVE CAPTIONED PROCEEDING

New England Coalition, Inc. ("NEC"), intervenor in the above captioned matter, through its *pro se* representative, Raymond Shadis, herein petitions the Atomic Safety and Licensing Board Panel ("Board") for leave to reply to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.'s ("Entergy") to NEC's Motion to Alter or Amend the Schedule in the Above Captioned Proceeding alter or amend the schedule in the above captioned proceeding.

Specifically, in its Motion NEC requests that the Board extend the time permitted for intervenors to file comment, response, and timely new or amended contentions regarding Entergy Nuclear Vermont Yankee, LLC. and Entergy Nuclear Operations, Inc.'s ("Entergy") confirmatory environmentally-assisted fatigue analyses of Vermont Yankee's core spray ("CS") and recirculation outlet ("RO") nozzles until thirty (30) 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 RO nozzles.

Applicable Regulation

10 CFR § 2.323 Motions.

(c) Answers to motions. Within ten (10) days after service of a written motion, or other period as determined by the Secretary, the Assistant Secretary, or the presiding officer, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

Discussion

NEC had no way to anticipate at the time that it filed its Motion that Entergy would agree to a ten day extension. It was only at 4:39 PM on Friday, March 6, 2008 that NEC received the following e-mail message,

This is to advise the parties that, in our response to NEC's Motion to Alter or Amend the Schedule, Entergy will indicate that it would agree to a ten day extension to the time to file any contentions based on either the original or the revised confirmatory fatigue calculations, the ten days to count from the submittal of the revised calculations to the parties (expected next week). We understand that the Department of Public Service will take the same position in its response.

We tried to call counsel for the Staff and Sarah Hofmann tried to contact Mr. Shadis to advise of this development but we were unable to reach either.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

In fact two e-mails on the subject of NEC's proposed schedule amendment that Entergy sent prior NEC's filing were adamant in opposition to any schedule change:

Wednesday, March 4, 2009

Dear Mr. Shadis: Entergy disagrees that any schedule modifications are necessary or appropriate. NEC has had the new fatigue calculations since January 9. If NEC wishes to raise any new contentions with respect to those calculations, it should be able to do so by the already extended sixty day period provided by the Board, which expires on March 9.

With respect to the changes to the calculations announced in our letter of February 26, the letter describes in detail the nature of the changes and represents they are inconsequential. Please let us know if you have any specific questions on those minor changes.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

And, on Thursday, March 5, 2009,

Dear Mr. Shadis: The only substantive change to the fatigue calculations referenced in my February 26, 2009 letter had to do with the fatigue properties of the recirculation outlet nozzle safe end set forth in Table 3, page 12 of Calculation No. 0801038.306, Rev. 0. The table correctly identifies the material property parameters E , S_m and S_y of stainless steel as a function of temperature. However, in the underlying fatigue calculation files, values of E , S_m and S_y corresponding to Alloy 600 material (not low alloy steel as you state) were inadvertently used. The resulting, insignificant changes in environmentally assisted fatigue at that location of the nozzle are as described in my letter to the Board and parties of February 26. The use of erroneous austenitic material property values has absolutely nothing to do with the F_m calculation method nor does it affect fluid-temperature, strain, or dissolved oxygen. Therefore, there is no basis for the extension of time you seek and Entergy will oppose it.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

There is no way that NEC could have anticipated Entergy's change of position. The practical effect of Entergy's welcome schedule proposal remains however the denial of an opportunity for New England Coalition to adequately review Entergy's forthcoming amended confirmatory analysis. New England Coalition's expert, Dr. Joram Hopenfeld, upon completion of his technical review of Entergy's January 8, 2009 Confirmatory Analysis, left the country on what NEC understands to be a two-week vacation, one arranged long in advance. NEC's reasoning in requesting 30 days in its Motion was, in part, that 30 days would allow (narrowly) sufficient time upon Dr. Hopenfeld's return to complete a review and responsive filing on the forthcoming revised confirmatory analysis.

NEC did not raise this point in its Motion because of its conviction the 30 day allowance was reasonable and conservative standing on its own. Plus, NEC has Dr. Hopenfeld's Declaration on the (original) confirmatory analysis, now somewhat mooted by Entergy's

promised revision, in hand and ready for filing in support of NEC's responsive filing. Never anticipating that Entergy would propose an alternative time extension, NEC was prepared for a now or, in thirty-plus days conclusion. Thus NEC would be placed at a distinct disadvantage by anything less.

We make note here that for comparison sake, the NRC Staff has now let it be known that it will require until the end of April to prepare and file in this Docket an Audit Summary (of its review) and a Supplementary Safety Evaluation Report on the original Confirmatory Analysis. One may only guess at how much additional time may be required to incorporate Entergy's forthcoming changes.

Conclusion - For all of the good reasons stated above, NEC respectfully requests leave of the Board to reply; or in the alternative and in the interests of adjudicatory economy, NEC requests that the Board consider the above discussion as a permitted reply.

Respectfully submitted,



Raymond Shadis

Pro se Representative

New England Coalition

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid; where indicated by an asterisk, by electronic mail; and where indicated by a double asterisk, by both U.S. First Class and electronic mail, this 9th day of March, 2009.

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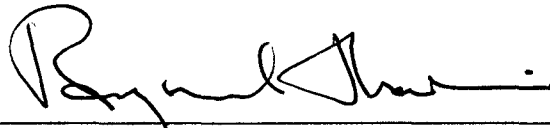
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A handwritten signature in black ink, appearing to read "Raymond Shadis", written over a horizontal line.

Raymond Shadis
New England Coalition

New England Coalition

VT NH ME MA RI CT NY

POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302

April 18, 2009

Office of the Secretary
Attn: Nancy Greathead.
Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Vermont Yankee Nuclear Power Station

Dear Ms. Greathead,

Per the attached e-mail, please find enclosed 3 paper copies of New England Coalition's : **PETITION FOR LEAVE TO REPLY TO ENTERGY'S RESPONSE TO NEW ENGLAND COALITION, INC.'S MOTION TO ALTER OR AMEND SCHEDULE**, as filed electronically on March 9, 2009.

Thank you for your kind attention,



for New England Coalition, Inc.

Raymond Shadis
Pro Se Representative
Post Office Box 98
Edgecomb, Maine 04556

New England Coalition

VT	NH	ME	MA	RI	CT	NY
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POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302

March 9, 2009

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Vermont Yankee Nuclear Power Station

Dear Rulemaking and Adjudications Staff,

Please find enclosed for filing before the Atomic Safety and Licensing Board in the above captioned proceeding: **PETITION FOR LEAVE TO REPLY TO ENTERGY'S RESPONSE TO NEW ENGLAND COALITION, INC.'S MOTION TO ALTER OR AMEND SCHEDULE**

Thank you for your kind attention,

/RS



for New England Coalition, Inc.

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