

RLS H-429

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

New England Coalition

VT NH ME MA RI CT NY

POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302

June 15, 2009
E-mail: ask2@nrc.gov

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

**Re: Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station, Docket No. 50-271LR ASLBP No. 06-849-03-LR**

**New England Coalition's Request for Leave to Reply To Entergy's Answer To New
England Coalition's Request for Extension of Time to Reply to Entergy and NRC
Staff Oppositions to New England Coalition's Motion for Leave to File a Timely
New Contention**

Dear Judge Karlin,

New England Coalition (NEC) respectfully request your permission, as
presiding officer in the above captioned matter, to Reply To Entergy's Opposition To
New England Coalition's Request for Extension of Time to Reply to Entergy and NRC
Staff Oppositions to New England Coalition's Motion for Leave to File a Timely New
Contention

NEC is aware that under 10 CFR §2.323(c),

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.

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DS-03

NEC could not have reasonably anticipated the arguments in Entergy's Opposition. Entergy has misrepresented and starkly discolored NEC statements in both NEC's Opposition to Entergy's Motion to Strike and NEC's Request for Extension of Time. In the Discussion section of its filing, Entergy has taken NEC to task for arguments NEC never made and selectively ignored arguments that it did make. In a blatant attempt to impugn the character and integrity of NEC, Entergy quotes out of context a three-year old Order from another docket and injects highly colored language, such as "mysterious" to suggest that NEC's computer service problems are spurious or misrepresented.

Specifically,

1. Entergy states at page 2, "NEC acknowledges that it has been misrepresenting the mailing date in its certificates..." and "NEC Response at 13. NEC admits that its practice has been to backdate its certificates of service throughout this proceeding..."

NEC did not say that it was "misrepresenting" anything; NEC said that it presumed the meaning of the posting date in a Certificate of Service to encompass the very earliest physically possible posting. Prepaid postage (metered postage) allows for deposit in-house with postal pickup next day, but citizen intervenors, such as NEC, have no such advantage.

Further, NEC did not say that its practice was to backdate its certificates throughout this proceeding. NEC said "it has been operating on the assumption" and that it has "routinely assumed, not that its "practice...throughout" was such-and-such." NEC could not reasonably anticipate such a distortion from Entergy. The Certificate in question, for NEC's Reply was dated when it was signed and placed in an envelope on May 26, 2009. NEC's Pro Se Representative made no filings in this proceeding until replacing NEC's counsel after the Partial Initial Order was entered on November 24, 2008. It is clear that all of NEC's many filings between May 26, 2006 and November 24, 2008, as made by counsel, were postmarked (via metered postage) or receipted by express service on the day of electronic service. The interpretation of service rules for this filing is that of NEC's pro se counsel and can only be meant apply to his tenure.

2. Entergy says on Page 3, "With respect to its failure to timely serve electronic copies of its Reply, and its complete failure to serve counsel for Entergy, NEC recites a complex tale of electronic misfortune (NEC Response at 3-4), culminating in the mysterious "clipping off" of Entergy's counsel from the list of addressees." NEC objects to snide connotations in Entergy's coloration; all intended to imply that NEC's representation of the facts is untrue. This appears to have the marks of an attempt to controvert with a factless drive-by and should not be countenanced. Attached is an e-mail that NEC received from its server's e-mail delivery system

on June 13, 2009, which pointedly demonstrates just once example of how addressees can be mysteriously clipped. The e-mail informs NEC, five days after the fact, that its e-mail service of Administrative Judge William Reed of this ASLBP was not delivered due to "time-out." If the movant is not controverted, the movant factual representations must be presumed to be true.¹

3. NEC could not have anticipated Entergy's selective and out-of-context citation to the Board's Order in Docket No. 50-271-OLA /ASLBP No. 04-832-02-OLA (Granting Motion for Enlargement of Time Related to NEC Contention 4 and Granting Enlargement of Time, Subject to Sanction, Related to NEC Contention 3) (Mar. 23,2006). NEC , says Entergy was admonished about its "cavalier disregard for the schedule" in filing motions for extension of time. What Entergy does not say is that the Board made this statement under the mistaken impression that NEC was filing a request for Extension of Time for two filings; one due and one overdue, the Board overlooking the fact that the second filing had already been timely filed. The Board later withdrew the uncalled-for second extension of time. Further Entergy does not say that the Motion in question was unopposed².

4. In arranging its arguments, Entergy ignores the context in which NEC's Request for Extension was brought. This cannot have been anticipated and the Board should not, in considering NEC's Request, follow suit.³ of NEC has made an attempt to respond to and refute the above NRC Staff's unanticipated arguments in the attached Reply and for all of the good reasons above, NEC respectfully requests that you permit its Reply.

¹ Insofar as the facts relate to the excuse for untimely filing, where they are not controverted by opposing affidavits they must be taken as true. Florida Power & Light Co. (St. Lucie Nuclear Power-Plant, Unit 2), ALAB-420, 6 NRC 8,13 (1977).

² Entergy might also have pointed out that the Contention in question, regarding in part cooling tower structural integrity, was mooted when Entergy next presented a contractor's analysis purporting to show that the structures were thoroughly examined and in good condition. NEC withdrawing; the Board declined to pursue the question sua sponte. A little over a year later, in August 2007, the cooling towers suffered a structural collapse. Every party seek modification for good cause of time limits previously set by a Board. Moreover, good cause, by its very nature, must be an ad hoc determination based on the facts and circumstances applicable to the particular determination. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-26,17 NRC 945; 947 (1983).

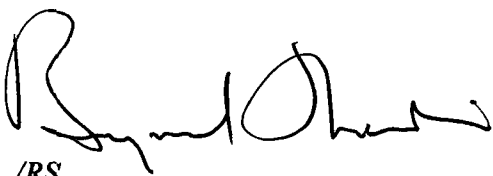
³ Any party may seek modification of time limits previously set by a Board for good cause. Further, good cause, by its very nature, must be an ad hoc determination based on the facts and circumstances applicable to the particular determination. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-26,17 NRC 945; 947 (1983).

5. Entergy correctly points out that the Initial Scheduling Order requires that an affidavit be attached to any late request for extension of time. It may be argued that NEC should have anticipated this argument, however, NEC's pro se representative was focused on the calendar aspects of the Order for a process which terminated with briefs prior to November 2008 and did not, on taking over NEC's case in December, re-read the Order in depth sufficient to catch that requirement. As NEC was proceeding unaware of the Board's requirement, it could not have anticipated Entergy's argument regarding it. However, both NEC's Response to Entergy's Motion to Strike and its Request are largely in narrative form and are signed by NEC's pro se representative; analogous to an affidavit. Therefore NEC hopes that the Board can accept those aspects of its filings in lieu of an affidavit. Alternatively, NEC requests that the Board grant it permission to now file a corroborating affidavit.

For all of the good reasons stated above, NEC respectfully requests the presiding officer's leave to file a Reply to Entergy's Opposition To New England Coalition's Request for Extension of Time to Reply to Entergy and NRC Staff Oppositions to New England Coalition's Motion for Leave to File a Timely New Contention. NEC would file its Reply by close of business, tomorrow, June 16, 2009.

NEC's pro se representative hereby certifies that a good faith effort was made via e-mail to seek accord with the other parties regarding this filing. NRC Staff indicated that they would not oppose, but that they would reserve the right to comment. Entergy said that it would oppose. At this time NEC has yet to receive response from the states.

Thank you for your kind attention,



/RS

Raymond Shadis
Pro se Representative

New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
207-882-7801
Shadis@prexar.com

-----Original Message-----

From: Mail Delivery System [mailto:MAILER-DAEMON@balder.prexar.com]
Sent: Saturday, June 13, 2009 2:57 PM
To: shadis@prexar.com
Subject: Undelivered Mail Returned to Sender

This is the mail system at host balder.prexar.com.

I'm sorry to have to inform you that your message could not be delivered to one or more recipients. It's attached below.

For further assistance, please send mail to postmaster.

If you do so, please include this problem report. You can delete your own text from the attached returned message.

The mail system

<whrcville@embargmail.com>: connect to embargmail.com[66.98.242.165]:
Connection timed out

Header

Received: from RaymondPC (detroit-ip-14-7.dynamic.ziplink.net [206.15.186.7])
by balder.prexar.com (Postfix) with ESMTTP id 2AD423B81BF;
Mon, 8 Jun 2009 14:39:06 -0400 (EDT)
From: "Raymond Shadis" <shadis@prexar.com>
To: "'Zachary Kahn'" <Zachary.Kahn@nrc.gov>,
"'Anthony Roisman'" <aroisman@nationallegalscholars.com>,
"'David R. Lewis'" <david.lewis@pillsburylaw.com>,
"'Dianne Curran'" <dcurran@harmoncurran.com>,
"'Hearing Docket'" <Hearing.Docket@nrc.gov>,
"'Lloyd Subin'" <Lloyd.Subin@nrc.gov>,
"'Matias Travieso-Diaz'" <matias.travieso-diaz@pillsburylaw.com>,
"'Matthew Brock'" <Matthew.Brock@state.ma.us>,
"'Maxwell Smith'" <Maxwell.Smith@nrc.gov>,
"'Peter Roth'" <Peter.Roth@doj.nh.gov>,
"'Sarah Hofmann'" <sarah.hofmann@state.vt.us>,
"'Susan Uttal'" <Susan.Uttal@nrc.gov>
Cc: "'Alex Karlin'" <Alex.Karlin@nrc.gov>,
"'Karen Valloch'" <Karen.Valloch@nrc.gov>,
"'Richard Wardwell'" <Richard.Wardwell@nrc.gov>,
"'William Reed'" <whrcville@embargmail.com>
References: <CEEA97CC21430049B821E684512F6E5EB70AD5E6AA@HQCLSTR01.nrc.gov>
In-Reply-To: <CEEA97CC21430049B821E684512F6E5EB70AD5E6AA@HQCLSTR01.nrc.gov>
Subject: RE: Today's New England Coalition Filing
Date: Mon, 8 Jun 2009 14:39:02 -0400
Message-ID: <51576F326EA5421D841335CFB44D2A99@RaymondPC>
MIME-Version: 1.0
Content-Type: multipart/mixed;
boundary="-----= NextPart_000_0063_01C9E846.ECDC5FF0"
X-Mailer: Microsoft Office Outlook 11
Thread-Index: Acmg6bjQaWr/tP7QQbihlgIS2Pfc6xHfkfpw
X-MimeOLE: Produced By Microsoft MimeOLE V6.0.6001.18049

**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))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing New England Coalition's Request for Leave to Reply To Entergy's Answer To New England Coalition's Request for Extension of Time to Reply to Entergy and NRC Staff Oppositions to New England Coalition's Motion for Leave to File a Timely New Contention will be served on the persons listed below by deposit in the U.S. Mail, first class, on the 16th day of June and by electronic mail, this 15th day of June, 2009.

Administrative Judge
Alex S. Karlin, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

Administrative Judge
William H. Reed
1819 Edgewood Lane
Charlottesville, VA 22902
E-mail: whrcville@embarqmail.com

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAmail@nrc.gov

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

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

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

Lloyd B. Subin, Esq.
Mary C. Baty, Esq.
Susan L. Uttal, Esq.
Jessica A. Bielecki, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: lbs3@nrc.gov; mcb1@nrc.gov;
susan.uttal@nrc.gov;
jessica.bielecki@nrc.gov

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

Zachary Kahn
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: zachary.kahn@nrc.gov

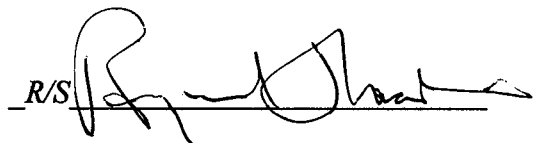
Peter C. L. Roth, Esq.
Office of the Attorney General
33 Capitol Street
Concord, NH 03301
E-mail: Peter.roth@doj.nh.gov

David R. Lewis, Esq.
Matias F. Travieso-Diaz
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037-1128
E-mail: david.lewis@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com

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

* Lauren Bregman
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
lauren.bregman@nrc.gov

by:

A handwritten signature in black ink, appearing to read 'R/S Raymond Shadis', is written over a horizontal line. The signature is stylized and cursive.

Raymond Shadis
Pro se Representative
New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
207-882-7801
shadis@prexar.com

New England Coalition

VT . NH . ME . MA . RI . CT . NY .

POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302

June 16, 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:

New England Coalition's Request for Leave to Reply To Entergy's Answer To New England Coalition's Request for Extension of Time to Reply to Entergy and NRC Staff Oppositions to New England Coalition's Motion for Leave to File a Timely New Contention

Thank you for your kind attention,

/RS 

for New England Coalition, Inc.

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