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ADJUDICATIONS STAFF

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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 OPPOSITION TO  
NEW ENGLAND COALITION'S STAY REQUEST**

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.

("Entergy") submit this response opposing the stay requested in this docket in New England Coalition's ("NEC") March 2, 2010 letter to the Commission ("Request"). NEC requests that the Commission "stay any further action" on NEC's Petition for Review of the Licensing Board's Full Initial Decision, LBP-09-09 (July 23, 2009) ("Appeal") in the Vermont Yankee license renewal proceeding until NEC's February 8, 2010 petition under 10 C.F.R. § 2.206 ("2.206 Petition") and the Commission's March 1, 2010 Demand For Information ("DFI") are resolved. For the reasons discussed below, NEC's Request is not only procedurally deficient but also baseless. It should therefore be denied.

First, NEC has not met any of the procedural or substantive requirements for requesting a stay. This alone is sufficient grounds for denial.

Second, apart from its deficiencies in form and substance, NEC's Request is not warranted by any facts. The issues that NEC has raised before the Commission in its Appeal in this license renewal proceeding are limited to: (1) whether the Licensing Board treated NEC's

witness fairly in the hearing on Entergy's program for managing the effects of environmentally assisted fatigue on VY's critical reactor components, and (2) whether the Board erred in later rejecting a late-filed contention on the same topic. See Appeal at 12, 14. Neither the 2.206 Petition nor the DFI have anything to do with these issues on appeal.<sup>1</sup>

NEC's Request and 2.206 Petition do not refer to, or even mention, environmentally assisted fatigue of reactor components. The Request and the 2.206 Petition focus entirely on the "[i]ncreasing concentrations of radio-contaminants in the soil and groundwater" that have been recently discovered at Vermont Yankee and whose causes are under investigation. See 2.206 Petition at 1. There is no relationship between possible releases of radionuclides to the soil and groundwater and the issues that NEC has raised before the Commission in its Appeal in this matter.

Similarly, there is no relationship between the DFI and the issues raised by NEC's Appeal. The DFI has nothing to do with whether the Licensing Board treated NEC's witness fairly or whether it was correct in later denying admission of an additional late-filed contention on the same topic.

Moreover, none of Entergy's witnesses in the hearing before the Licensing Board in this NRC license renewal proceeding are the subject of the DFI. Further, NEC received extensive document disclosure in the adjudicatory proceeding, including the engineering calculations and analyses demonstrating that environmentally-assisted fatigue will be adequately managed. NEC's own expert had the opportunity to examine this documentation. NEC also had the opportunity to submit proposed questions for the Licensing Board to ask Entergy's witnesses,

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<sup>1</sup> Indeed, it is improper for a 10 C.F.R. § 2.206 petition to raise any matter that could be addressed in an ongoing licensing proceeding, particularly one where the petitioner is already a party. NRC Management Directive 8.11, "Review Process for 10 C.F.R. 2.206 Petitions" (Oct. 25, 2000), Handbook 8.11 at 11. See, e.g., Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), DD-05-2, 62 N.R.C. 389, 390 (2005).

and the Board conducted an extensive examination of the witnesses. In sum, NEC had ample opportunity to litigate its Contention and probe the evidence.

Finally, any further delay in the resolution of NEC's Appeal would be contrary to the longstanding Commission commitment to the expeditious completion of adjudicatory proceedings. See, e.g., Statement of Policy on the Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 24 (1998). As the Commission stated, "applicants for a license are . . . entitled to a prompt resolution of disputes concerning their applications." Id. at 19. Consistent with the Commission's Policy Statement, Entergy urges the Commission to complete its review and render a timely decision on the issues that have been raised in NEC's Appeal in this proceeding.

For all of these reasons, the Commission should deny NEC's Request for a stay of action on NEC's Appeal in the Vermont Yankee license renewal proceeding.

Respectfully submitted,

[original signed by David R. Lewis]

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Dated: March 12, 2010

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of "Entergy's Response In Opposition To New England Coalition's Stay Request" dated March 12, 2010, 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 12th day of March, 2010.

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## Hearing Docket

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**From:** Lewis, David R. [david.lewis@pillsburylaw.com]  
**Sent:** Friday, March 12, 2010 2:15 PM  
**To:** OCAAMAIL Resource; Docket, Hearing; CHAIRMAN Resource; CMRSVINICKI Resource; CMRKLEIN; Karlin, Alex; Wardwell, Richard; whrcville@embarqmail.com; Uttal, Susan; Subin, Lloyd; Smith, Maxwell; Spencer, Mary; Mr. Raymond Shadis; Sarah.hofmann@state.vt.us; aroisman@nationallegalscholars.com; peter.roth@doj.nh.gov; Matthew.Brock@state.ma.us; Kahn, Zachary  
**Cc:** Travieso-Diaz, Matias F.  
**Subject:** Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR, ASLBP No. No. 06-849-03-LR  
**Attachments:** Entergy Opposition to NEC Stay Reques.pdf

Attached please find "Entergy's Response in Opposition to New England Coalition's Stay Request" in the above captioned proceeding. A copy of this pleading has also been served by mail. If you have any difficulty opening this attachment, please contact me at the number below.

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<<Entergy Opposition to NEC Stay Reques.pdf>>

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