

September 24, 2010 (8:00a.m.)

OFFICE OF SECRETARY
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RAS M-447

September 23, 2010

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))	

**ENTERGY'S MOTION TO STRIKE
THE DECLARATION OF PAUL BLANCH**

Pursuant to 10 C.F.R. § 2.323(a), Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. ("Entergy") hereby move to strike the Declaration of Paul Blanch (Sept. 20, 2010), which accompanied the "New England Coalition's Reply to NRC Staff and Entergy Nuclear Vermont Yankee Opposition to New England Coalition's Motion to Reopen the Hearing and Reply to NRC Staff's Answer to Proposed New Contention (Sept. 20, 2010) ("NEC Reply"). The NRC's regulation governing motions to reopen the hearing record requires that the motion itself "be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria" contained in 10 C.F.R. § 2.326(a) for reopening the record are satisfied. 10 C.F.R. § 2.326(b). In other words, the affidavit accompanying the motion to reopen the record must provide the requisite support. The regulations do not provide for the submittal of affidavits with a reply.

The situation here is analogous to longstanding Commission precedent prohibiting a reply to be used to cure an otherwise deficient contention, because such practice "would effectively bypass and eviscerate [the Commission's] rules governing timely filing, contention

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amendment, and submission of late-filed contentions.” See Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 N.R.C. 619, 623 (2004). Here, NEC’s attempt to provide new support in a reply would eviscerate the Commission’s rules governing motions to reopen. Moreover, consideration of new evidence appended to a reply deprives other parties of an opportunity to challenge the new evidence. Entergy Nuclear Operations, Inc. and Entergy Nuclear Fitzpatrick, LLC (James L. FitzPatrick Nuclear Power Plant), CLI-08-19, 68 N.R.C. 251, 261-62 (2008).

Counsel for Entergy certifies that he has consulted with the other parties as required by 10 C.F.R. § 2.323(b). NEC opposes this motion. The NRC Staff supports the motion.

Respectfully submitted,



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Dated: September 23, 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Motion to Strike the Declaration of Paul Blanch," dated September 23, 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 23rd day of September, 2010.

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