

June 13, 2017

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Secretary

In the Matter of)
Entergy Nuclear Vermont Yankee, LLC,)
Entergy Nuclear Operations, Inc., and)
NorthStar Nuclear Decommissioning) Docket No. 50-271-LT-2
Company, LLC)
(Vermont Yankee Nuclear Power Station))
)

**REQUEST FOR LEAVE TO REPLY AND REPLY TO APPLICANTS' RESPONSE
TO
NEW ENGLAND COALITION'S REQUEST FOR EXTENSION**

On June 9, 2017 New England Coalition submitted "Request for Extension of Time in Which to File Request for a Hearing and Petition For Leave to Intervene" in the above captioned matter.

On June 12, 2017, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. ("Entergy"), on behalf of themselves and NorthStar Nuclear Decommissioning Company, LLC (together, "Applicants"), filed a response in opposition to New England Coalition's Request for Extension.

Applicants argued that an "extension should be denied because NEC has not demonstrated good cause for the extension, as required by 10 C.F.R. § 2.307, and has failed to consult with Applicants, as required by 10 C.F.R. § 2.323(b)."

New England Coalition agrees in part (with respect to 10 C.F.R. § 2.323(b). New

England Coalition did fail to consult with applicants. New England Coalition is today resubmitting its request for extension of time together with the requisite 10 C.F.R. § 2.323(b) certification.

New England Coalition strongly disagrees with and could not have anticipated the Applicant's allegations and characterizations with respect to the good cause requirements of 10 C.F.R. § 2.307. Therefore, New England Coalition respectfully requests leave to reply per 10 C.F.R. § 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.

New England Coalition demonstrates that it could not have reasonably anticipated the following Applicant's contorted and misleading arguments:

1. The Commission's adjudicatory rules at 10 C.F.R. § 2.307(a) allow extensions only upon demonstration of "good cause." The Commission has explained that good cause, in the context of adjudicatory filings, requires a showing of "unavoidable and extreme circumstances."¹ As explained below, such circumstances are not present here. [Emphasis added].

The Applicant conflates personal priorities (as personal choices between participating in an intervention meeting family responsibilities) with obligations and plans cast (travel funded, tickets purchased, reservations made, etc.) long before the Federal Register Notice date of May 24, 2017.

Likewise the decision to intervene before the Vermont Public Service Board was made based on the Applicant's original testimony; approximately a month before NorthStar's supplemental testimony provided a copy of the License Transfer Application ("LTA"). As might be expected, New England Coalition reviewed the LTA looking for contradictions and admissions relevant to the state proceeding. Thus access was not a leg up

on the Federal Register Notice, but a distraction. As New England Coalition stated the state proceeding's draw on the organizations limited resources diminishes our tenuous ability to participate in the NRC hearing process. New England Coalition was taken aback by the Applicant's representations because we believe that the Applicant's counsel has over a number of cases with new England Coalition has become familiar with our many resource limitations and with our dogged attempts to follow the spirit and the letter of the law. In short, we believe that his representations therefore contradict what he knows to be true and given his demonstrated character and intelligence, we could not have anticipated them.

The Applicant selectively quotes,

[T]he fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 N.R.C. 452, 453 (1981). *See also Tenn. Valley Auth.* (Bellefonte Nuclear Plant, Units 1 & 2), CLI-10-26, 72 N.R.C. 474, 476, 2010.

Notwithstanding that "hearing obligations" may be reasonably construed as to include filing Requests for Extension of Time when they are appropriate, New England Coalition is surprised to see the Applicant invoke this dark shadow on what we have mutually experienced through several interventions at NRC, the attorneys working out a hearing calendar around vacation plans, especially during the upcoming summer vacation season.

The Applicant mischaracterizes and conflates the availability of application's content and Notice of Opportunity of a Hearing.

Thus, the license transfer application has been available to NEC for nearly four months, and NEC has been both very aware of its filing and very familiar with its substance.

New England Coalition had no reason to review the application for conflict with NRC regulation until issuance of the Federal Register Notice of an Opportunity for a Hearing and no reason to commit to an intervention until we knew that there would be an opportunity for a

hearing. It might be useful at this juncture to compare what is required of would be interveners reviewing the same material as NRC Staff and what may be expected of them. According to NRC's Notice of Acceptance for Review (ML17094A848) it required two months from the date that the Application was filed (February 19, 2017) until Acceptance for Review (April 6, 2017) just to determine if the Application contained the information required to process. Intervenors are given just 20 days; not two months, to review the same material for content and understanding, to compare it independent sources, and to draft contentions that can pass NRC's stringent requirements for admission. New England Coalition is not at this point complaining but we are drawing a contrast to the picture of relaxed scheduling, decision-making, and contention-drafting that the Applicant paints.

Finally, the Applicant misleads on the question of NEC's facility and the ease with which it engages in these proceedings.

Moreover, while NEC may be a volunteer organization, it has decades of experience participating in NRC proceedings³ and is therefore certainly capable of requesting a hearing on time when so inclined.

In searching through NRC's Practice and Procedures Digest, nowhere could New England Coalition find the distinction between experienced and unexperienced pro se representation. While pro se representatives are obligated to familiarize themselves with the rules, pro se representation is generally held to a less rigid standard.

While the late filing of documents is not condoned, a petitioner acting pro se is not always expected to meet the same high standards to which the Commission holds entities represented by lawyers. Int'l Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 207-208 (2001). See also Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 581 (2006); Tennessee Valley Auth. (Bellefonte Nuclear Power Plant, Units 3 & 4), LBP-08-16, 68 NRC 361, 381-82 (2008) (interpreting ambiguous language in notice of filing date for hearing request in favor of pro se

participant, in order to avoid denying petition on the grounds of tardiness).[Emphasis added]

Petitioners proceeding pro se will be shown greater leeway on the question of whether they have demonstrated good cause for lateness than petitioners represented by counsel. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), LBP-03-23, 58 NRC 372, 378 (2003).

Pro se intervenors are not held in NRC proceedings to a high degree of technical compliance with legal requirements and, accordingly, as long as parties are sufficiently put on notice as to what has to be defended against or opposed, specificity requirements will generally be considered satisfied. However, that is not to suggest that a sound basis for each contention is not required to assure that the proposed issues are proper for adjudication. Consolidated Edison Co. of N.Y. (Indian Point Nuclear Generating Unit 2) and Power Authority of the State of N.Y. (Indian Point Nuclear Generating Unit 3), LBP-83-5, 17 NRC 134, 136 (1983).[Emphasis added]

In considering the extent to which the petitioner had shown good cause for filing supplements out-of-time, the Licensing Board recognized that the petitioner was appearing pro se until just before the special prehearing conference. Petitioner's early performance need not adhere rigidly to the Commission's standards and, in this situation, the Board would not weigh the good cause factor as heavily as it might otherwise. Florida Power and Light Co. (Turkey Point Nuclear Generating Station, Units 3 & 4), LBP-79-21, 10 NRC 183, 190 (1979)

If Brief, New England Coalition having demonstrated that it could not have anticipated details, which amount to the bulk of the Applicant's Response, and which are recounted in the foregoing discussion, should be allowed to Reply.

REPLY

If NRC permits the New England Coalition to Reply, the Coalition then respectfully makes its Reply by incorporation of all the foregoing good relevant statements of fact, argument, and citations, equally applicable to both the Request for Leave to Reply and the Reply.

10 C.F.R. § 2.323(b) CERTIFICATION

New England Coalition, through its pro se representative, hereby certifies that a good faith

effort was made to reach agreement with the Applicant's counsel via E-mail. Copies of the pertinent e-mails are attached and follow the pleading.

Respectfully Submitted, /Signed electronically by/

A handwritten signature in black ink that reads "Raymond Shadis". The signature is written in a cursive style with a large, prominent initial "R".

Raymond Shadis
Pro Se for New England Coalition
Post Office Box 76
Edgecomb, Maine 04556
207-882-7801
shadis@prexar.com

Pro Se Representative for New England Coalition

ATTACHMENT ONE – E-Mail Seeking Agreement AND E-mail Reply from Entergy

June 12, 2017

From: Raymond Shadis [mailto:shadis@prexar.com]

Sent: Tuesday, June 13, 2017 9:57 AM

To: 'david.lewis@pillsburylaw.com'; 'sraimo@entergy.com'

Subject: FW: New England Coalition's Request for Extension of Time in 50-271 LT2

Dear Parties,

New England Coalition seeks your agreement to a Request For Leave to Reply and Reply to be filed in 50-271 LT-2 shortly. We are objecting to the Applicant's characterizations of NEC's situation vis-à-vis intervention. Please agree to our filing a Request for Leave to Reply. If you have any questions or would like discuss further our mutual concerns, I may be reached at 207-380-5994.

Thank you,

Raymond Shadis

New England Coalition

From: Raymond Shadis [mailto:shadis@prexar.com]

Sent: Monday, June 12, 2017 4:27 PM

To: 'Anita.Ghosh@nrc.gov'; 'david.lewis@pillsburylaw.com'; 'sraimo@entergy.com'

Subject: New England Coalition's Request for Extension of Time in 50-271 LT2

Dear Parties,

By this E-mail we are seeking concurrence on New England Coalition's proposed refiling of a Request For Extension of Time filed on June 9, 2017 but without the requisite consultation with the parties. Regardless of the time that has passed since the License Transfer was first filed, we had no reason to review it for NRC compliance until NRC posted an Opportunity for a Hearing in the Federal Register. That notice caught NEC short-handed during the twenty day filing period due to obligatory travel/absence of key persons among our volunteers. We are asking for an additional two weeks in which to prepare a request for a hearing and petition for leave to intervene. Thank you for your consideration of this consultation.

Raymond Shadis

New England Coalition

If you have any questions I may be reached 207-380-5994

From: Lewis, David R. [mailto:david.lewis@pillsburylaw.com]

Sent: Tuesday, June 13, 2017 10:20 AM

To: shadis@prexar.com; Anita.Ghosh@nrc.gov

Subject: New England Coalition's Request for Extension of Time in 50-271 LT2

Mr. Shadis,

Applicants continue to oppose New England Coalition's Extension Request for failure to demonstrate

good cause and meet the consultation requirement. Applicants do not view the message that was sent after we responded to the extension request, and at the end of the day before hearing requests are due, as constituting "a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion," as 10 CFR 2.323(b) requires.

Sincerely,
David Lewis
Counsel for Entergy