

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of |) | |
| |) | |
| ENTERGY NUCLEAR VERMONT YANKEE |) | Docket No. 50-271-OLA |
| LLC and ENTERGY NUCLEAR |) | |
| OPERATIONS, INC. |) | ASLBP No. 04-832-02-OLA |
| |) | |
| (Vermont Yankee Nuclear Power Station) |) | |

NRC STAFF ANSWER TO NEW ENGLAND COALITION'S MOTION AND MEMORANDUM
FOR PROCEDURAL PROTECTIONS AND PROPOSED ORDERINTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the Nuclear Regulatory Commission ("Staff") herein answers the motion of petitioner New England Coalition ("NEC") for certain "procedural protections" in view of the NRC's temporary suspension of access to the Agencywide Documents Access and Management System ("ADAMS").¹ For the reasons set forth below, the Staff submits that the Motion should be denied.

BACKGROUND

On October 25, 2004, the NRC initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from public access on the agency Web site.² As a result, during this review, ADAMS is, and will continue to be, temporarily unavailable to the public. The review, when complete, is intended to ensure that documents which potentially might be useful to terrorists will be inaccessible, while maintaining public access to information regarding NRC activities. Given the volume of documents and the nature of this

¹ See "New England Coalition's Motion and Memorandum for Procedural Protections and Proposed Order," dated October 26, 2004 ("Motion").

² See Letter from Brooke D. Poole to Administrative Judges, dated October 25, 2004.

review, it is expected to be at least several weeks before public access to ADAMS can be restored.

On October 26, 2004, NEC filed the instant Motion.

DISCUSSION

In its Motion, NEC requests that the Licensing Board issue an order imposing certain “procedural protections” in order to “safeguard” NEC’s participation in this case. Specifically, NEC requests the following actions:

- Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, “Entergy”) should copy to NEC all correspondence with NRC related to the extended power uprate (“EPU”) application;
- Entergy should provide four complete sets of all non-confidential EPU application documents, supplements and “any other EPU related matter” to NEC;
- The Staff should copy to NEC all correspondence with Entergy related to “all aspects of the EPU at Vermont Yankee;”
- The Staff should copy to NEC “any and all generic correspondence, reports, or announcements related to EPU[] issues at all nuclear reactors;” and
- All filing deadlines in this proceeding should be extended by thirty days from the date public access to ADAMS is restored.

Motion at 4-5. For the reasons set forth below, these requests are either unnecessary or overbroad, and should be denied.³

First, both the NEC Technical Advisor, Raymond Shadis, and counsel for NEC, Jonathan Block, are already included on the NRC’s distribution list for non-sensitive docketed correspondence from the NRC to Entergy associated with the Vermont Yankee Nuclear Power Station.⁴ This encompasses correspondence with Entergy pertaining to the EPU

³ It should be noted that 10 C.F.R. § 2.323(b) states (emphasis added), “A motion must be rejected if it does not include a certification by the attorney or representative of the moving party *that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion*, and that the movant’s efforts to resolve the issue(s) have been unsuccessful.” NEC did not contact the Staff prior to filing this Motion.

⁴ Counsel for the Staff confirmed that the addresses on file with the technical staff for
(continued...)

application.⁵ Thus, the Staff is providing NEC the correspondence it seeks from the Staff, and no further relief is necessary with respect to this request.

Second, NEC's request for "all generic correspondence, reports or announcements related to EPU[] issues at all nuclear reactors" is beyond the scope of what is required of the NRC Staff at this stage in this proceeding. As a procedural matter, NEC's request for hearing in this matter has not yet been granted. Contentions have been proposed, and are pending before the Licensing Board on the issue of admissibility. This request is essentially a request for production of documents. The Staff does not have an obligation, at this stage, to create a hearing file or otherwise provide *any* documents in the style of discovery to a petitioner who has not yet been granted a hearing.⁶

Finally, NEC has presented insufficient basis for its request to delay "all filing deadlines" in this proceeding by thirty days from the date public access to ADAMS is restored. The provisions of 10 C.F.R. § 2.309(c) and (f)(2) with respect to the submission of late-filed contentions take into account the unavailability of information upon which a new or amended contention is based. Provided that NEC is able to make the requisite showing under those provisions, it will have an opportunity to pursue issues based on previously unavailable information. An additional stay of the proceeding is, however, not warranted. If new information comes to NEC's attention after the

⁴(...continued)

Messrs. Shadis and Block are the same as those provided in the notices of appearance for this proceeding.

⁵ The Staff does not take a position as to the propriety of NEC's requests of Entergy, although the Staff certainly has no objection to Entergy providing the requested documents, to the extent that no sensitive homeland security information is included. It would seem that relatively simple requests such as these could be resolved without the need for the instant Motion.

⁶ The Staff does not concede that this document request would be permissible in the event NEC is admitted as a party to this proceeding. The request is overly broad and impermissibly vague. It is not at all clear that "generic" documents – whatever these may be – related to "all EPUs" would necessarily be subject to inclusion in any hearing file or mandatory disclosures prepared by the Staff pursuant to 10 C.F.R. §§ 2.336 and 2.1203.

re-opening of ADAMS, § 2.309 provides sufficient procedural safeguards to prevent prejudice to its interests.

CONCLUSION

In sum, NEC is currently, and will continue to be, on the Staff's distribution list to receive non-sensitive NRC correspondence related to Vermont Yankee. The Staff opposes NEC's other document request of the Staff, on the ground that it is tantamount to discovery and improper at this stage of the proceeding, as well as overbroad. Furthermore, the Staff opposes any extension of deadlines in this proceeding in view of the existing late-filing provisions, which take into account the potential unavailability of information. For these reasons, the Motion should be denied.

Respectfully submitted,

/RA/

Brooke D. Poole
Counsel for NRC Staff

Dated in Rockville, Maryland
this 5th day of November 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO NEW ENGLAND COALITION'S MOTION AND MEMORANDUM FOR PROCEDURAL PROTECTIONS AND PROPOSED ORDER," in the captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (**), this 5th day of November, 2004.

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Respectfully submitted,

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