

**RAS 11403**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 03/23/06**

ATOMIC SAFETY AND LICENSING BOARD

**SERVED 03/23/06**

Before Administrative Judges:

Alex S. Karlin, Chairman  
Dr. Anthony J. Baratta  
Lester S. Rubenstein

In the Matter of

ENTERGY NUCLEAR VERMONT YANKEE,  
L.L.C.  
and  
ENTERGY NUCLEAR OPERATIONS, INC.

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-OLA

ASLBP No. 04-832-02-OLA

March 23, 2006

ORDER

(Granting Motion for Enlargement of Time Related to NEC Contention 4  
and Granting Enlargement of Time, Subject to Sanction, Related to NEC Contention 3)

On March 21, 2006, NEC filed an unopposed motion for enlargement of time seeking a retroactive extension from March 17, 2006 to March 21, 2006 for the filing of its initial brief concerning the legal scope of NEC Contention 4. The motion is incorrectly entitled as a motion for enlargement of time to file a "reply brief" and incorrectly certifies that it is being filed on March 20, 2006, whereas the actual date was March 21, 2006. Further, the motion incorrectly indicates that, if granted, the answers of the NRC Staff and the Applicant would be due on March 24, 2006, the original due date, whereas these parties consented to the extension only on the condition that they obtain a similar extension. The deadline in question - March 17, 2006 - was one that NEC itself suggested on March 10, 2006.<sup>1</sup> Tr. 790-91. Among NEC's various

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<sup>1</sup> Given that the representative of NEC participated in a conference call with the  
(continued...)

motions for extension of time, this is the third that it has filed after it had already missed the relevant deadline.<sup>2</sup>

Presumably, NEC will soon be filing a fourth motion seeking a retroactive extension of time.<sup>3</sup> This is because NEC has already failed (without requesting an extension) to comply with a fourth briefing deadline – the March 20, 2006, deadline for NEC to file a brief stating its position with regard to the scope of NEC Contention 3. Tr. 819; Licensing Board Order (March 14, 2006) at 2.

As we stated during the March 10, 2006 prehearing conference call, the briefing schedule for these matters was set so that the parties would be able to meet the May deadlines for the filing of direct and rebuttal testimony. Tr. 789. The Board is concerned about NEC's repeated and cavalier disregard for the schedule. This pattern of conduct will have a cascading negative effect on the remainder of the proceeding. We note especially that motions for extension of time that are not filed before the relevant deadlines are contrary to long-standing Commission practice. See, e.g., Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-117, 6 AEC 261 (1973). "The right of participation accorded pro se representatives carries with it the corresponding responsibilities to comply with and be bound by the same agency procedures as all other parties, even where a party is hampered by limited

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<sup>1</sup>(...continued)

Chairman of this Board on March 16, 2006, it would have been easy and appropriate for him to inform the Board, in advance, that NEC would be requesting an extension from the March 17, 2006 deadline.

<sup>2</sup> NEC's first motion for extension of time filed after the relevant deadline had passed was filed on February 6, 2006. See [NEC]'s Unopposed Motion for Enlargement of Time to File a Brief (Feb. 6, 2006). Its second such motion was filed on March 7, 2006, seeking relief from a February 28, 2006 deadline. See [NEC]'s Unopposed Motion for Enlargement of Time to File a Reply Brief (Mar. 7, 2006).

<sup>3</sup> This numbering does not include the various NEC motions for extension of time that were not retroactive.

resources.” Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984).

In these circumstances, the Board rules as follows:

1. NEC’s motion for retroactive extension of time within which to brief the issue as to the legal scope of NEC Contention 4 is granted. The NRC Staff and the Applicant shall file their respective answers on or before March 28, 2006. NEC shall file its reply on or before April 4, 2006.
2. On or before April 7, 2006, NEC shall file its required initial brief as to the scope of NEC Contention 3. If NEC fails to file this brief by that date, then, pursuant to 10 C.F.R. §§ 2.319 and 2.320, the scope of NEC Contention 3 shall be limited to the Main Steam Isolation Valve (MSIV) Closure Test and the Turbine Generator Load Rejection (TGLR) test.<sup>4</sup> If NEC timely files this initial brief, the NRC Staff and the Applicant shall file their respective answers on or before April 14, 2006.
3. Hereinafter, absent very extraordinary circumstances submitted to us via sworn declaration or affidavit, any motion (opposed or unopposed) for an extension or enlargement of time that is not filed and in our hands by 2:00 PM on the day before the deadline in question, shall be automatically denied. The parties are

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<sup>4</sup> The matter seemed resolved at the January 24, 2006, prehearing conference call, when the Applicant stated that the large transient tests that are the subject of NEC Contention 3 seemed to be the MSIV Closure Test and the TGLR test, Tr. 711-12, and NEC indicated it agreed. Tr. 718-20. The Board directed the parties to file a written submission reflecting this agreement. Tr. 719. On February 3, 2006, the Applicant filed a letter reporting that it had proposed such a written agreement and discussed the matter with the representative of NEC, who had promised to “let us know NEC’s position by next Wednesday [March 8, 2006].” Letter from Jay E. Silberg, Counsel for Entergy, to Chairman Karlin et. al (Feb. 3, 2006), ADAMS Accession No. ML060440144. As of the March 10, 2006 prehearing conference call, NEC had still not responded to the February 3<sup>rd</sup> letter, but indicated that it would contact the Applicant “this coming week [the week of March 13], and try to come to terms on this.” Tr. 812.

advised that the failure to meet the deadlines and briefing schedules may include default under 10 C.F.R. § 2.320.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>5</sup>

*/RA/*

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Anthony J. Baratta  
ADMINISTRATIVE JUDGE

*/RA by G. P. Bollwerk for/*

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Lester S. Rubenstein  
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 23, 2006

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<sup>5</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) licensees Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc.; (2) intervenors Vermont Department of Public Service and New England Coalition of Brattleboro, Vermont; and (3) the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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ENTERGY NUCLEAR VERMONT YANKEE L.L.C. ) Docket No. 50-271-OLA  
and ENTERGY NUCLEAR OPERATIONS, INC. )  
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(Vermont Yankee Nuclear Power Station) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING MOTION FOR ENLARGEMENT OF TIME RELATED TO NEC CONTENTION 4 AND GRANTING ENLARGEMENT OF TIME, SUBJECT TO SANCTION, RELATED TO NEC CONTENTION 3) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-271-OLA  
LB ORDER (GRANTING MOTION FOR ENLARGEMENT OF  
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ENLARGEMENT OF TIME, SUBJECT TO SANCTION,  
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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 23<sup>rd</sup> day of March 2006