

July 7, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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'S ANSWER TO
"NEW ENGLAND COALITION'S MOTIONS IN LIMINE"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff ("Staff") hereby responds to the "New England Coalition's ["NEC"] Motions in Limine" ("Motion"), filed on June 26, 2006. In its Motion, NEC requests that the Licensing Board (1) exclude the testimony of Craig Nichols, a witness sponsored by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, "Entergy" or "Applicant"), or that Mr. Nichols' testimony "be accorded only the weight of non-expert, witness-of-events, testimony," Motion at 2; (2) require the Applicant to provide NEC with a non-proprietary version of all documents upon which the Applicant intends to rely at hearing, *Id.*; and (3) "consider extending the schedule for filing additional supporting information until Adjust [sic] 1, 2006." *Id.* at 3. For the reasons set forth below, the Staff opposes NEC's Motion and recommends that it be denied.

DISCUSSION

A. NEC's Motion Concerning Applicant Witness Craig Nichols.

In its Motion, NEC asserts that the *curriculum vitae* filed by Applicant witness Craig Nichols shows that he is an expert in electrical engineering and in managing nuclear power plant personnel, Motion at 1, but shows no more than "entry-level education, training, or

experiences in thermal-hydraulics ('T-H'), strength of materials, T-H code design or any of the other highly specialized disciplines necessary to determine appropriate substitution for full transient testing." *Id.* at 2. NEC therefore seeks to exclude or accord limited, non-expert, weight to all such testimony submitted by Mr. Nichols.

NEC's request lacks merit. The Applicant filed the written testimony of Craig J. Nichols and Jose L. Casillas to address the issues raised in NEC Contention 3.¹ In his testimony, Mr. Nichols stated that he is the Extended Power Uprate ("EPU") Project Manager for Entergy Nuclear Operations, Inc., and that he serves as the manager for implementation of the EPU at the Vermont Yankee Nuclear Power Station ("Vermont Yankee" or "VY"). App. Testimony at 1. Mr. Nichols stated that he received a B.S. degree in Electrical Engineering from Northeastern University, has managed all activities relating to implementation of the EPU at Vermont Yankee for the last four years, and has over 20 years of professional experience working in various technical and managerial activities at Vermont Yankee. *Id.* at 1-2. He further stated that, in his capacity as manager of the Vermont Yankee EPU, he has been "responsible for overseeing the plant modifications needed to implement the upgrade and the performance of the technical evaluations and analyses required to demonstrate VY's ability to operate safely under uprate conditions," and that he is "familiar with VY's operating history, current plant operations, and the anticipated operating conditions after the uprate." *Id.* at 2-3. Mr. Nichols attached to his testimony a *curriculum vitae*, summarizing his educational background and experience.

While NEC seeks to exclude Mr. Nichols' testimony on "thermal-hydraulics ('T-H'), strength of materials, [and] T-H code design," *Id.* at 2, NEC fails to identify which portions of Mr. Nichols' testimony address such subjects – and indeed, no such testimony appears to have

¹ See "Testimony of Craig J. Nichols and Jose L. Casillas on NEC Contention 3 – Large Transient Testing," filed May 17, 2006 ("App. Testimony").

been submitted by Mr. Nichols.² Similarly, while NEC seeks to exclude Mr. Nichols' testimony on "any of the other highly specialized disciplines necessary to determine appropriate substitution for full transient testing," it fails to indicate the "disciplines" to which it is referring, thus rendering this portion of NEC's request overly vague and unsubstantiated. Accordingly, the Staff submits that NEC's request to exclude or accord limited weight to Mr. Nichols' testimony should be denied.

B. NEC's Motion Concerning Proprietary Documents.

On June 5, 2006, the Licensing Board directed the parties to file copies of all documents relied upon or referenced in and material to their testimony;³ the Applicant submitted documents in response to the Board's Order on June 19, 2006.⁴ In its Motion, NEC seeks to compel the Applicant to provide non-proprietary versions of any proprietary documents which the Applicant had identified in response to the Licensing Board's Order. Motion at 2. NEC, however, does not specify any particular documents in which it is interested, does not indicate whether these documents were prepared by Entergy or some other entity, and does not make any attempt to

² Mr. Nichols' *curriculum vitae* appears to indicate that his background includes experience with the matters addressed in his testimony. Specifically, Mr. Nichols' testimony addresses his background (Answers 2, 5); an overview of the contention and his conclusions regarding its merits (Answers 10-11, 43, 60-61); the Applicant's EPU application, large transient testing ("LTT") requirements, the Applicant's request for an exception to those requirements, and the Staff's approval thereof (Answers 13, 19-28); the transient analyses that were conducted at Vermont Yankee using the NRC-approved ODYN code, and the ability of VY's transient analyses to bound plant behavior in a transient (Answers 29, 40); transients that have been experienced at Vermont Yankee, and their relevance to the Applicant's LTT exception request (Answers 40, 49-51); testing that has been conducted at Vermont Yankee (Answers 52-54); similarities in pre- and post-EPU plant design and physical configuration (Answers 55-57); impact of large transient testing on plant systems and components (Answer 58); and approval of the Applicant's LTT exception request by the Advisory Committee on Reactor Safeguards (Answer 59). By comparison, Applicant witness Casillas' testimony addresses the ODYN Code (Answers 30-39, 41); transients that have been experienced at other nuclear reactors, and the related ODYN analyses (Answers 44-45); and the large transient testing at other plants (Answers 46-48).

³ See "Order (Regarding Submission of Supplemental Documents)," dated June 5, 2006.

⁴ "Entergy's Supplement to Direct Testimony on NEC Contentions 3 and 4," dated June 19, 2006.

demonstrate its need for such documents; rather, it seeks to obtain non-proprietary versions of all such proprietary documents, on general grounds of “fairness.” *Id.*⁵

Early in this proceeding, the Licensing Board provided a means for NEC and other parties to obtain copies of proprietary documents. By Order of March 1, 2005, the Licensing Board directed that “counsel, witnesses, employees, consultants, and others representing . . . the New England Coalition (NEC), and the NRC Staff (Staff) shall be permitted access” to documents that the Applicant claims “contain proprietary trade secrets and commercial and financial information of Entergy or its vendors and contractors,” upon their execution of a non-disclosure agreement attached thereto.⁶ The failure to execute such an agreement would preclude a party from obtaining access to documents identified as proprietary. Order at 5, ¶ 6. NEC did not execute a non-disclosure agreement, and on June 1, 2006, it restated its determination not to do so.⁷

In its June 19, 2006 response to the Licensing Board’s Order, the Applicant (like the Staff)⁸ provided copies of all documents upon which its testimony relies, or which is referenced by and material to its testimony, as required by the Board. To the extent that those materials included proprietary documents, the Applicant provided copies to the Licensing Board but not to NEC, inasmuch as NEC had declined to execute an agreement for the protection of proprietary information. NEC had a full opportunity to obtain copies of the proprietary documents filed by

⁵ In its response to NEC’s Motion, the Applicant indicates its belief that NEC’s Motion relates to seven documents listed in its response to the Licensing Board’s Order of June 5, 2006 – and that these are General Electric Company (“GE”) documents, which GE had previously designated as proprietary. See “Entergy’s Answer to New England Coalition’s Motions in Limine,” dated July 7, 2006 (“Entergy’s Answer”), at 4.

⁶ See “Order (Protective Order Governing Non-Disclosure of Proprietary Information),” dated March 1, 2005.

⁷ See letter from Raymond Shadis (NEC) to the Licensing Board, dated June 1, 2006.

⁸ See “NRC Staff’s Supplement to Its Initial testimony Concerning NEC Contentions 3 and 4,” dated June 19, 2006 (non-proprietary documents); and letter from Sherwin E. Turk to the Licensing Board, dated June 20, 2006 (proprietary documents);

the Applicant, and only its decision not to execute a non-disclosure agreement barred it from obtaining those documents. NEC's failure to obtain the proprietary documents thus results from its own actions.

NEC's assertion that "fairness" requires that the Applicant provide non-proprietary copies of the documents to it appears to be reasonable – but the reasonableness of its request must be viewed in terms of fairness to all parties. In this regard, the Staff submits that NEC's request should not be permitted to result in delay to this proceeding; further, NEC's request should not be permitted to result in excessive or unreasonable costs to any other party,⁹ inasmuch as no such costs would be incurred if NEC had agreed to execute a non-disclosure agreement as prescribed by the Licensing Board's Order of March 1, 2005. In the event that NEC is willing to assume responsibility for payment of such additional costs, and no delay is caused to the proceeding by the preparation of a non-proprietary version of the documents in question, the Staff would not oppose this aspect of its Motion.

C. NEC's Motion for Schedule Modification.

NEC's third request asks the licensing Board to "consider extending the schedule for filing additional supporting information until Adjust [sic] 1, 2006." Motion at 3. It is unclear which deadline NEC is referring to in this request, although it may relate to the Licensing Board's Order of June 5, 2006, which set June 19 – *i.e.*, one week prior to the date of NEC's Motion – as the date for filing documents relied upon, or referenced and material to, each party's testimony.

NEC's request for an extension of time is unreasonable. The Licensing Board has previously directed the parties to submit their proposed questions for the Licensing Board to

⁹ The Applicant has estimated the potential cost of producing non-proprietary versions of the seven proprietary GE documents as approximately \$120,000.

ask of witnesses, by August 4, 2006.¹⁰ NEC's proposed submission of additional information in support of its position just three days before that deadline would preclude other parties from being able to formulate proposed questions thereon in a timely manner, and would thus interfere with the established schedule for hearing in this proceeding.

Moreover, the Licensing Board has previously directed that motions for an extension of time "should be filed at the earliest opportunity, as soon as the movant knows or should have known of the facts circumstances, or grounds for the motion."¹¹ Further, the Board ruled that "[a]bsent very extraordinary circumstances," any motion for an extension of time that is not filed by 2:00 PM on the day before the established deadline "shall be automatically denied." *Id.* at 5-6. NEC has failed to meet these requirements, and instead filed its motion one week after the established deadline had passed. No showing of "very extraordinary circumstances" has been made to support its lateness in filing this motion; indeed, NEC fails to indicate any reason why it was unable to meet the deadline specified in the Board's Order. Further, NEC does not explain why it failed to file its motion until seven days after the deadline set by the Board had passed.¹² Accordingly, NEC's request for an extension of time should be denied.

¹⁰ "Revised Scheduling Order," dated April 13, 2006, at 4-5.

¹¹ "Revised Scheduling Order," dated April 13, 2006, at 5.

¹² The Board has previously remarked upon NEC's failures to file a motion for extension of time until after the established deadline had passed. See "Memorandum and Order (Clarifying the Factual Scope of NEC Contention 4 and Denying Untimely Motion for Enlargement of Time to File Reply Brief)," dated March 24, 2006, at 6 n.11. As noted by the Board, "[t]he fact that NEC filed the motion seven days after the deadline had expired, reflects a cavalier approach that bodes ill for the remainder of the proceeding." *Id.* at 6; emphasis in original.

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that NEC's Motion should be denied.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of July, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO 'NEW ENGLAND COALITION'S MOTIONS IN LIMINE,'" in the above-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 7th day of July, 2006.

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