

**RAS 12158**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 08/24/06**

**SERVED 08/24/06**

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

August 24, 2006

ORDER

(Site Visit and Evidentiary Hearing Administrative Matters)

On July 28, 2006, the Board issued an order scheduling a site visit to the Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy) nuclear power station in Windham County, Vermont on September 11, 2006, and establishing a schedule for the evidentiary hearing on September 12-15, 2006 (Site Visit Order). On August 11, 2006, the intervenor, New England Coalition (NEC), unilaterally withdrew its Contention 4, leaving only one contention remaining to be adjudicated. The purpose of this order is to adjust the schedule to reflect the withdrawal of NEC Contention 4, to modify the Site Visit Order, and to instruct the parties as to certain administrative matters concerning the evidentiary hearing.

A. Schedule Adjustment

NEC Contention 4 was previously scheduled to be heard on September 12, 2006. In light of its withdrawal, we hereby modify the schedule by moving the site visit from September 11 to September 12, 2006. The evidentiary hearing on NEC Contention 3 will commence at 9:00 AM EDT on September 13, 2006.

B. Modification of Site Visit Order

The first sentence of paragraph 7 of Appendix A to the Site Visit Order is modified to read as follows: "Entergy is requested to provide the Board and all participants in the site visit with an appropriate map covering the site and locations to be viewed that are relevant to NEC Contention 3. Please also provide a schematic showing a functional overview of the systems."

C. Evidentiary Hearing Administrative Matters

Pursuant to 10 C.F.R. § 2.1207 and our Revised Scheduling Order of April 13, 2006, the parties filed their direct written testimony and associated exhibits on May 17, 2006, and their rebuttal written testimony and associated exhibits on June 14, 2006. In addition, the parties filed certain supplemental exhibits, and had the opportunity to file motions in limine concerning the direct and rebuttal testimony and the direct, rebuttal, and supplemental exhibits. The Board ruled on three motions in limine during a prehearing conference call on July 18, 2006, and issued an order memorializing these rulings on July 28, 2006. On August 4, 2006, each party provided the Board with proposed questions for the various witness panels.

Without revisiting any of these matters, the Board and the parties must now turn, inter alia, to the administrative procedures and details for introducing and admitting such testimony and documents into the evidentiary record. Accordingly, the parties are instructed to comply with the following:

1. Opening Statements. To the extent they wish to do so, at the outset of the hearing the Board will afford one counsel or representative for each of the parties a total of 10 minutes to present a summary of that party's position and the evidence and proof relative to NEC Contention 3. The order of party opening statements will be the same as that specified for witness panels in section C.2.a below. Each party will then have three minutes for rebuttal, if desired.

## 2. Testimony and Witness Panels.

a. Order. Entergy, as the party with the burden of proof under 10 C.F.R. § 2.325, will present its panel of witnesses first. The NRC Staff will present its panel of witnesses second, followed by the NEC witness. Where it would facilitate resolution of an issue, the Board may empanel and hear from opposing witnesses or panels concurrently.

b. Foundation Questions. Each panel/witness will be duly sworn in and the sponsoring party will ask the basic questions needed to lay the foundation for the adoption of the panel's/witness's prefiled direct and rebuttal testimony to be bound into the transcript and record as if read, in accordance with 10 C.F.R. § 2.711(b).<sup>1</sup>

c. Submission of Testimony. A party should submit three single-sided hard copy versions of both the direct and rebuttal testimony for a particular witness or witness panel to the Court Reporter/Clerk at the time the witness/panel is presented.<sup>2</sup> This testimony shall be the same as the party's prefiled direct and rebuttal testimony, except for corrections. If a party needs to make corrections to the direct or rebuttal testimony previously filed herein, then at the evidentiary hearing, the party shall (1) submit three hard copies of such corrected testimony to the Court Reporter/Clerk, (2) provide four copies of such corrected testimony to the Board and (3) provide at least one copy to the counsel or representative for each of the other parties. Any such corrected testimony shall summarize all such corrections on an errata sheet attached

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<sup>1</sup> The publicly available version of the transcript of the October 25, 2005, hearing in the matter of Louisiana Energy Services, L.P. (National Enrichment Facility), Docket No. 70-3103-ML, ASLBP No. 04-826-01-ML, at pages 2102-2105, provides an example of establishing the foundation for the adoption of such written testimony. See ADAMS # ML053610045.

<sup>2</sup> Unless corrections have been made to the written testimony, Board members and opposing counsel will rely on the copy of the prefiled testimony they have already received and need not be given an additional copy at the time the testimony is presented at the hearing.

thereto and, in the text where the correction occurs, shall prominently highlight any such deletions, additions, or other corrections.

d. Availability. Although the Board believes that the evidentiary hearing on NEC Contention 3 should be completed in no more than two days, the parties should be prepared to have their respective witnesses available for the entirety of September 13-15, 2006. In addition, the parties should plan for the possibility that a given hearing session might extend into the evening if such an extension would facilitate completing the evidentiary session within the allotted time.

### 3. Exhibits.

a. Submission at Evidentiary Hearing. Immediately following the adoption of written testimony, and before Board questioning of a panel, each party shall present to the Board for identification, and proffer as evidence, each direct, rebuttal, or supplemental exhibit that the party has previously filed herein. Pursuant to 10 C.F.R. § 2.711(h), each party should provide the Court Reporter/Clerk with an original and two copies of each such prefiled direct, rebuttal, or supplemental exhibit, marked as specified in section C.3.c below.<sup>3</sup> Such exhibits must be submitted in hard copy format.

b. Brief Description. When first seeking to have an exhibit identified, the sponsoring party should give a brief description of that individual exhibit for the record.<sup>4</sup> The description shall conform to the description contained in the party's exhibit list specified at section C.3.f, below.

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<sup>3</sup> As with prefiled testimony, Board members will rely on the copies of exhibits already provided to the Board.

<sup>4</sup> The publicly available version of the transcript of the October 25, 2005, hearing in the matter of Louisiana Energy Services, L.P. (National Enrichment Facility), Docket No. 70-3103-ML, ASLBP No. 04-826-01-ML, at pages 2108-2111, provides an example of establishing the foundation for the admission of exhibits. See ADAMS # ML053610045.

c. Marking. The Board will provide each party with a stamp and a black ink pad to use to pre-mark the original and two copies of each prefiled direct, rebuttal, or supplemental exhibit it will submit during the evidentiary hearing. That stamp includes several items the party will need to have completed before providing the exhibit to the Court Reporter/Clerk, specifically case name (Entergy Nuclear Vermont Yankee L.L.C.), docket number (50-271), party name (Entergy and the NRC Staff can circle appropriate designations; NEC should fill in the blank after the designation “Intervenor”), exhibit number (per section C.3.e below), and the witness/panel sponsoring the exhibit or with whom the exhibit is used. The stamp should be placed in the lower right-hand corner if possible; if not, any location on the first page is acceptable or, if there is no area on the first page where the stamp would fit without obscuring information, by folding over the bottom right hand corner of the first page sufficiently so the stamp can be placed on the back side of the page. The parties should bring the stamp and pad to the evidentiary hearing and should return them to the Court Reporter/Clerk at the conclusion of that hearing.

d. Avoidance of Duplication. Only one set (consisting of the original and two copies) of each direct, rebuttal, or supplementary exhibit should be offered as evidence in this proceeding. For example, if Entergy and the NRC Staff both use the same portion of a document as an exhibit, the Staff should not introduce into evidence a duplicate set of the same document. Instead, the NRC Staff should rely on the document already proffered by Entergy. To this end, the parties should consult with one another and determine whether any of the prefiled exhibits a party intends to offer into evidence would otherwise be duplicated by another party in the proceeding. In each such instance, the parties should determine, based on the order of party presentations, which party will first offer the exhibit into evidence and should mark and identify the exhibit accordingly.

e. Exhibit Order and Numbering. Each party should number its exhibits consistent with the numbering scheme it used in submitting its direct, rebuttal, and supplemental exhibits, except that the rebuttal and supplemental exhibits should simply continue the sequence of numbers started in the direct exhibits, rather than restarting the numbering sequence. For example, the NRC Staff exhibits, including direct, rebuttal, and supplemental exhibits, should be numbered in one sequence, such as "Staff 1, Staff 2, . . . Staff 29."

f. Exhibit List. On or before September 6, 2006, each party shall provide the Board's law clerk, Marcia Carpentier, Esq. (e-mail address: mxc7@nrc.gov), an electronic copy of a list of all of its prefiled exhibits. The parties should use the exhibit list template included as Attachment A hereto as the format for the list, and should complete the party exhibit number, witness/panel, and description fields, including a designation in **bold** type for any proprietary/protected status.

4. Miscellaneous Matters.

a. Copies of Transcripts. Parties other than the Staff (which is covered under the agency's existing court reporting contract) should contact the Court Reporter (Neal R. Gross & Co., 202-234-4433) well before the first day of the evidentiary session to arrange for the number of copies of the daily transcript it requires.

b. Counsel/Representative Attendance During Evidentiary Hearing. On or before September 6, 2006, each party shall file a list of its counsel, authorized representatives, and witnesses, who plan to attend the September 13-15, 2006, evidentiary hearing. This list shall also identify each of the attendees who has signed the nondisclosure agreement attached to our March 1, 2005, Protective Order.

c. Proprietary Sessions/NonDisclosure Agreements. On or before September 6, 2006, each party shall file a copy of each nondisclosure agreement (complying with our March 1,

2005 Protective Order) signed by the counsel, authorized representatives, or witnesses of that party who plan to attend any proprietary portion of the evidentiary hearing. Anyone who has not signed the nondisclosure agreement will not be admitted to the portion of the hearing involving proprietary information.

d. Site Visit. The parties are reminded that paragraph 4 of Appendix A to the Site Visit Order requires that they provide certain information to Entergy at least ten days prior to the site visit.

It is so ORDERED.

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

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Alex S. Karlin  
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 24, 2006

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

## Appendix A

**Dated September 6, 2006**

**Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations Inc.  
(Vermont Yankee Nuclear Power Station). Docket No. 50-271-OLA  
September 2006 Evidentiary Hearing  
Exhibit List**

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SITE VISIT AND EVIDENTIARY HEARING ADMINISTRATIVE MATTERS) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Administrative Judge  
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Docket No. 50-271-OLA  
 LB ORDER (SITE VISIT AND EVIDENTIARY  
 HEARING ADMINISTRATIVE MATTERS)

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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 24<sup>th</sup> day of August 2006