

RAS 8345

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

August 18, 2004 (9:01AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED August 18, 2004

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

ORDER

On July 1, 2004, the Nuclear Regulatory Commission ("NRC") published in the *Federal Register* a notice of opportunity to request a hearing in connection with the pending application for a license amendment submitted by Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc. ("Licensees") to increase the maximum authorized power level for operation of the Vermont Yankee Nuclear Power Station ("Vermont Yankee"). See 69 Fed. Reg. 39976 (July 1, 2004). The notice specified that any request for a hearing must be filed within sixty days of the date of its publication -- i.e. by August 30, 2004 (August 29 falling on a Sunday).

On August 6, 2004, the NRC published notice that said beginning August 9, 2004, the NRC would begin a three-week engineering assessment inspection ("engineering inspection") of Vermont Yankee as a pilot program to improve the effectiveness of the Reactor Oversight

Process. On the same day, the NRC received a letter from the Governor of the State of Vermont and a letter from Vermont's three members of Congress supporting the Governor's request for an extension of the deadline to request a hearing on the Licensees' application "for a reasonable time beyond the completion of" the engineering inspection "to have the findings available before the deadline to request a formal hearing."

Pursuant to my authority under 10.C.F.R. §2.346(b), the request for an extension of time is denied. Hearing requests are to focus on the information submitted by the licensee in its application to the Commission, or otherwise available at the time the petition is to be filed. 10 C.F.R. 2.309(f)(2).¹ An extension of time will not be granted to allow potential participants to review the results of ongoing staff license review-related activities before filing their hearing requests and accompanying contentions. *See Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232, 242-43 (1998), *aff'd*, CLI-98-25, 48 NRC 325, 350-51 (1998), *pet. for review denied sub nom. National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000). If the engineering inspection "raises a legitimate question


¹ Final Rule, "Changes to the Adjudicatory Process," 69 Fed. Reg. 2182, 2240 (Jan. 14, 2004).

about the adequacy of the application, the petitioner is free to posit that issue as a new or amended contention, subject to complying with the late-filing standards....” *See id.*, 48 NRC at 243.²

IT IS SO ORDERED.

For the Commission




Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 18th day of August, 2004

² Under the NRC’s Rules of Practice, “contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that --

(i) The information upon which the amended contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.” 10 CFR § 2.309(f)(2).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

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

Docket No. 50-271

(Vermont Yankee Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER DENYING EXTENSION REQUEST have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution with copies by electronic mail or facsimile as indicated.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lawrence J. Chandler, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ljc@nrc.gov

John M. Fulton, Esq.
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
E-mail: jfulto1@entergy.com

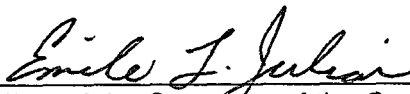
The Honorable James H. Douglas
Governor of Vermont
109 State Street - The Pavilion
Montpelier, VT 05609
Fax: 802-828-3339

The Honorable James Jeffords
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510
ATTN: Mary Frances Repko
E-mail: mary_repko@epw.senate.gov

The Honorable Patrick Leahy
United States Senate
433 Rayburn House Office Building
Washington, DC 20510
ATTN: Susanna Fleek
E-mail: susanne_fleek@leahy.senate.gov

Docket No. 50-271
COMMISSION ORDER DENYING
EXTENSION REQUEST

The Honorable Bernard Sanders
United States House of Representatives
2233 Rayburn House Office Building
Washington, DC 20515
ATTN: Mike Behan
E-mail: michael.behan@mail.house.gov



Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of August 2004