

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**  
Before the Atomic Safety and Licensing Board

January 28, 2005

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of

ENTERGY NUCLEAR VERMONT  
YANKEE, LLC and ENTERGY  
NUCLEAR OPERATIONS, INC.  
(Vermont Yankee Nuclear Power Station)

Docket No. 50-271

ASLBP No. 04-832-02-OLA  
(Operating License Amendment)

**ENTERGY'S UNOPPOSED MOTION TO STAY DISCOVERY ON  
DEPARTMENT OF PUBLIC SERVICE CONTENTION 6**

Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") file this unopposed motion pursuant to 10 C.F.R. §2.323 requesting that the Atomic Safety and Licensing Board ("Board") stay discovery obligations regarding the Department of Public Service ("DPS") contention admitted by the Board's Memorandum and Order (Admitting Intervenor's New Contention)<sup>1</sup> on January 11, 2005 ("DPS Contention 6"). Entergy requests that the requested discovery suspension remain in effect until the Board decides Entergy's motion to dismiss the contention as moot, or in the alternative, for summary disposition. Entergy expects to file that motion next week. Counsel for DPS has authorized the undersigned to represent that DPS does not oppose the motion to stay discovery.

Through the instant motion, Entergy seeks to avoid the burden and expense of unnecessary discovery efforts should DPS Contention 6 be dismissed. Should the contention survive, DPS will not be adversely affected by a delay in disclosure of relevant documents. *First*, En-

<sup>1</sup> Memorandum and Order (Admitting Intervenor's New Contention) (Jan. 11, 2005) ("Order").

tergy has already provided DPS with the documents that DPS has requested regarding DPS Contention 6. *Second*, Entergy has agreed with DPS to provide additional documents related to the contention that DPS may request. *Finally*, DPS can obtain access to many, if not all, of those documents through its existing Memorandum of Understanding with Entergy. Moreover, a short delay as that contemplated here is not reasonably anticipated to adversely affect DPS' preparation for a hearing -- which has not yet been scheduled.

### DISCUSSION

On January 11, 2005, the Board admitted DPS Contention 6. Order at 1 (*citing* Vermont Department of Public Service Request for Leave to File a New Contention (Oct. 18, 2004) at 1). In admitting the contention, the Board noted "that the contention is narrow" because the contention merely "challenges the absence of the verification, not its quality." *Id.* at 7. Thus, the Board stated "when Entergy performs the verifications showing compliance, and duly submits them to NRC, this contention will be moot." *Id.* Entergy has performed the verification and submitted the results to NRC, and on that basis Entergy will move to dismiss DPS Contention 6 as moot, or in the alternative, for the Board to grant summary disposition of the contention.

The Board has the authority to adjust discovery deadlines. A presiding officer "has all the powers necessary" to "take appropriate action to control the prehearing and hearing process." 10 C.F.R. § 2.319. An Atomic Safety and Licensing Board "may exercise the powers of a presiding officer as granted by [10 C.F.R.] § 2.319." *Id.* § 2.321(c). General discovery by parties to a proceeding is required within thirty (30) days of the order granting a request for hearing or petition to intervene, unless "otherwise ordered by the Commission, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding." 10 C.F.R. § 2.336(a). Thus, the Commission's rules provide the Board with ample authority to suspend the discovery deadline for DPS Contention 6.

Discovery for DPS Contention 6 should be suspended until resolution of Entergy's dispositive motion. The disclosures mandated by 10 C.F.R. § 2.336(a) would require Entergy to dedicate resources to a process which may prove unnecessary. It would be burdensome for Entergy to expend these resources only to have the Board dismiss DPS Contention 6 shortly after the effort. On the other hand, DPS is not harmed by a stay if the contention is dismissed. If the contention survives, DPS will not suffer any material harm from the requested stay, as the hearing is not imminent and DPS already has access to many, if not all, of the relevant documents. Thus, fairness and resource conservation dictate that the Board suspend the disclosure requirement for DPS Contention 6 until it rules on Entergy's motion for dismissal or summary disposition.

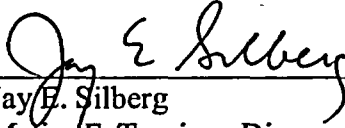
#### CERTIFICATION

Counsel for Entergy has contacted counsel for DPS and the NRC Staff regarding this motion pursuant to 10 C.F.R. § 2.323(b). Both parties have indicated that they will not oppose the instant motion.

#### CONCLUSION

For all the above reasons, the Board should suspend discovery related to DPS Contention 6 until it rules on Entergy's dispositive motion on that contention.

Respectfully submitted,

  
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Dated: January 28, 2005

January 28, 2005

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NUCLEAR OPERATIONS, INC.	)	(Operating License Amendment)
(Vermont Yankee Nuclear Power Station)	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of "Entergy's Unopposed Motion to Stay Discovery on Department of Public Service Contention 6" were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 28th day of January, 2005.

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