

October 7, 2005

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 UNOPPOSED MOTION FOR EXTENSION OF TIME  
(1) TO RESPOND TO THE LICENSING BOARD'S ORDER OF SEPTEMBER 30, 2005,  
CONCERNING THE STATE OF VERMONT'S FIRST MOTION TO COMPEL, AND  
(2) TO RESPOND TO THE STATE OF VERMONT'S SECOND MOTION TO COMPEL

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the NRC Staff ("Staff") hereby requests (1) a nine-day extension of time, until October 21, 2005, in which to respond to the Atomic Safety and Licensing Board's "Order (Regarding State of Vermont's Motion of Aug. 31, 2005)" ("Order"), dated September 30, 2005 (pertaining to the "Vermont Department of Public Service Motion to Compel Production of Certain Staff Documents" ("First Motion to Compel"), filed August 31, 2005), and (2) a ten-day extension of time, also until October 21, 2005, to respond to the "Vermont Department of Public Service Motion to Compel Production of Certain Staff Documents (II)" ("Second Motion to Compel"), filed September 29, 2005. In support of this request, the Staff states as follows:

1. On August 31, 2005, the State of Vermont Department of Public Service ("DPS" or "State") filed its First Motion to Compel, in which it sought to compel the production of three documents listed on the Staff's July 27, 2005, deliberative process privilege log. The Staff filed

its answer in opposition to that motion on September 12, 2005.<sup>1</sup> DPS subsequently filed a request for oral argument or, alternatively, for leave to file a request to file a reply brief; the Staff filed an answer in opposition to that motion on September 21, 2005; and DPS then filed a motion for leave to file a reply brief in support of its Motion to Compel.<sup>2</sup>

2. On September 29, 2005, the State filed its Second Motion to Compel, in which it sought to compel the production of 25 of the 38 documents listed on the Staff's September 6, 2005, deliberative process privilege log. Pursuant to 10 C.F.R. § 2.323, the Staff's response to the State's Second Motion to Compel is due to be filed on October 11, 2005.

3. On September 30, 2005, the Licensing Board issued its Order, in which (a) it directed the Staff to provide, on October 12, 2005, information concerning "the third requirement - that a high ranking agency official personally reviewed the document and made the decision to invoke the deliberative process privilege" (Order at 2), legal argument concerning the applicability of this third element in NRC adjudicatory proceedings and the adequacy of the rank of the individual(s) who personally reviewed these documents and made the decision to invoke the privilege, and it directed the Staff to file the three documents for *in camera* review; and (b) it directed the State to respond to the Staff's legal brief, on October 19, 2005, limited to the issues specified in Paragraph 1.B of the Board's Order concerning the third requirement involved in the Staff's invocation of the deliberative process privilege.

---

<sup>1</sup> "NRC Staff's Answer to Vermont Department of Public Service's Motion to Compel," dated September 12, 2005.

<sup>2</sup> See (1) "Vermont [DPS] Request for Oral Argument or, Alternatively, for Leave to File a Request to File a Reply Brief," dated September 15, 2005; (2) "NRC Staff's Answer to Vermont [DPS's] 'Request for Oral Argument or, Alternatively, for Leave to File a Request to File a Reply Brief,'" dated September 21, 2005; and (3) "Vermont [DPS] Motion for Leave to File a Reply Brief in Support of Its Motion to Compel," dated September 29, 2005. The Staff's response to the State's motion for leave to file a reply brief was due to be filed on October 11, 2005; however, inasmuch as the Licensing Board has held that motion in abeyance (Order, at 2), the Staff may defer filing its response, if any, to that motion.

4. The Staff has commenced preparation of its responses to the Licensing Board's Order and the State's Second Motion to Compel, but has found that a brief extension of time is needed to permit the completion of those responses. Specifically, the undersigned Staff Counsel has been and will be out of the office for several days during this period, due to religious and federal holidays; in addition, Staff Counsel have been and will be required to address other time-sensitive matters, including preparation of a response to a late-filed seismic contention submitted by the New England Coalition in this proceeding, and other pressing matters involved in other NRC adjudicatory proceedings. For these reasons, the Staff is unable to complete its responses to the Licensing Board's Order or the State's Second Motion to Compel within the time required.

5. Accordingly, the Staff has determined that it requires an additional period of nine or ten days, respectively, until October 21, 2005, in which to file its response to the State's Second Motion to Compel and the Licensing Board's Order of September 30, 2005. The Staff respectfully submits that the filing of its responses on October 21 will not cause harm to any other party or undue delay in the conclusion of this proceeding.

6. Counsel for the Staff has discussed this request with Counsel for the State and Counsel for the Applicant. Counsel for the Applicant stated that he does not oppose this request. Counsel for the State stated that they do not oppose this request, provided that the State's response to the Staff's legal brief, required by the Board's Order, be similarly extended until October 28, 2005 (*i.e.*, seven days after the filing of the Staff's legal brief, as required by the Board's Order).

WHEREFORE, the Staff respectfully requests that the schedule for filing its responses to the State's Second Motion to Compel and to the Licensing Board's Order be modified to allow the filing of the Staff's responses on October 21, 2005, and that the time for filing the

State's response to the Staff's legal brief, established in the Board's Order, be modified to allow the filing of the State's response on October 28, 2005.

Respectfully submitted,

*/RA/*  
Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 7<sup>th</sup> day of October 2005

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) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S UNOPPOSED MOTION FOR EXTENSION OF TIME (1) TO RESPOND TO THE LICENSING BOARD'S ORDER OF SEPTEMBER 30, 2005, CONCERNING THE STATE OF VERMONT'S FIRST MOTION TO COMPEL, AND (2) TO RESPOND TO THE STATE OF VERMONT'S SECOND MOTION TO COMPEL," 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 7<sup>th</sup> day of October, 2005.

Alex S. Karlin, Chair\*\*  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: ask2@nrc.gov

Dr. Anthony J. Baratta\*\*  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: ajb5@nrc.gov

Lester S. Rubenstein\*\*  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
4760 East Country Villa Drive  
Tucson, AZ 85718  
E-mail: lesrrr@comcast.net

Office of the Secretary\*\*  
ATTN: Rulemaking and Adjudications Staff  
Mail Stop: O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate  
Adjudication\*  
Mail Stop: O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

John M. Fulton, Esq.  
Assistant General Counsel  
Entergy Nuclear Operations, Inc.  
440 Hamilton Avenue  
White Plains, NY 10601

Jay E. Silberg, Esq.\*\*  
Matias Travieso-Diaz, Esq.\*\*  
Douglas Rosinski, Esq.\*\*  
Pillsbury Winthrop Shaw Pittman, LLP  
2300 N St., NW  
Washington, DC 20037-1128  
E-mail: jay.silberg@pillsburylaw.com  
matias.travieso-diaz@pillsburylaw.com  
douglas.rosinski@pillsburylaw.com

Jonathan M. Rund, Esq.\*\*  
Law Clerk  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [jmr3@nrc.gov](mailto:jmr3@nrc.gov))

Anthony Z. Roisman, Esq.\*\*  
National Legal Scholars Law Firm  
84 East Thetford Rd.  
Lyme, NH 03768  
E-mail: [aroisman@nationallegalscholars.com](mailto:aroisman@nationallegalscholars.com)

Raymond Shadis\*\*  
Staff Technical Advisor  
New England Coalition  
P.O. Box 98  
Edgecomb, ME 04556  
E-mail: [shadis@prexar.com](mailto:shadis@prexar.com), [shadis@ime.net](mailto:shadis@ime.net)

Sarah Hofmann, Esq.\*\*  
Special Counsel  
Department of Public Service  
112 State Street - Drawer 20  
Montpelier, VT 05620-2601  
E-mail: [sarah.hofmann@state.vt.us](mailto:sarah.hofmann@state.vt.us)

*/RA/*

---

Sherwin E. Turk  
Counsel for NRC Staff