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STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE

May 9, 2006

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USNRC

May 9, 2006 (4:39pm)

OFFICE OF SECRETARY
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ADJUDICATIONS STAFF

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U.S. Nuclear Regulatory Commission
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Washington, DC 20555-0001

Administrative Judge Lester S. Rubenstein
Atomic Safety and Licensing Board Panel
4760 East Country Villa Drive
Tucson, AZ 85718

Administrative Judge Anthony J. Baratta
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC 20555-0001

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

Dear Administrative Judges:

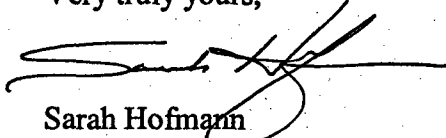
Please find enclosed an Amended Notice of Withdrawal and Request for Dismissal of Contentions of the Vermont Department of Public Service. With the Amended Notice is the Memorandum of Understanding (MOU) entered into between Entergy and the Department of Public Service and filed with the Atomic Safety and Licensing Board on May 2, 2006. Attached to the MOU is an executed¹ Addendum to the MOU (Addendum). The Addendum addresses the criteria of 10 C.F.R. § 2.338(h) as per the discussion at the prehearing conference call that took place on May 3, 2006.

The Department of Public Service hopes this filing addresses the concerns expressed by the ASLB in the prehearing conference of May 3, 2006. The Department greatly appreciates the

¹The copy filed with the Office of the Secretary contains the original signature page of Ms. Hofmann on the Addendum to the MOU. The original signature page for Mr. Silberg will be filed under separate cover by Entergy.

time and energy put into this case by the ASLB.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sarah Hofmann', with a large, stylized flourish extending to the right.

Sarah Hofmann
Director for Public Advocacy

cc: Certificate of Service

May 9, 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

| | | |
|--|---|-------------------------------|
| In the Matter of |) | |
| |) | Docket No. 50-271 |
| ENERGY NUCLEAR VERMONT |) | |
| YANKEE, LLC and ENERGENCY |) | ASLBP No. 04-832-02-OLA |
| NUCLEAR OPERATIONS, INC. |) | (Operating License Amendment) |
| (Vermont Yankee Nuclear Power Station) |) | |

**AMENDED
NOTICE OF WITHDRAWAL AND REQUEST FOR DISMISSAL OF CONTENTIONS
OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE**

Now Comes the Vermont Department of Public Service (State) by its undersigned counsel and, for the following reasons, voluntarily withdraws from this proceeding and requests the dismissal with prejudice of the State's contentions.

1. The State and Applicants Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Entergy) have agreed to a mutually satisfactory resolution of the issues raised by the State in this proceeding, as evidenced by the Memorandum of Understanding and the Addendum to the Memorandum of Understanding (MOU) attached as Exhibit A hereto. As explained in more detail in the MOU, the State's efforts in this proceeding have resulted in substantial and additional attention being paid by Entergy, the U.S. Nuclear Regulatory Commission (NRC) Staff and the Advisory Committee on Reactor Safeguards (ACRS) to the State's concerns about the use of containment overpressure. As a result of this added attention and analysis, plus additional inspections and other steps

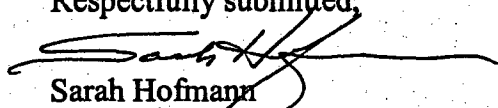
that have been agreed to by Entergy in the MOU, the State is now satisfied that its concerns have been satisfactorily addressed.

2. In July – August 2004, the NRC Staff performed an independent engineering assessment at Vermont Yankee. As part of the assessment, the State asked that calculations regarding the adequacy of the emergency cooling pumps be reviewed. The calculations were reviewed within the scope of the inspection team's charge and were found acceptable. The State Nuclear Engineer participated in the inspection.
3. In June 2004, the State asked that the NRC Staff perform independent calculations to verify the computer-model calculations associated with containment overpressure credit. The Final Safety Evaluation Report (SER) issued in March 2006 identifies that NRC performed independent verification calculations of the critical parts of the containment overpressure issue, giving the State confidence in the conservatism claimed by Entergy in its containment overpressure request.
4. As part of the review of power uprate, the NRC Staff submitted requests for additional information (RAIs) of Entergy resulting in over forty supplements to the amendment request. Many of these RAIs were regarding the State's issue of credit for containment overpressure. The State was able to review these supplements, as well as follow the NRC Staff's review and thinking on the issue through the Advisory Committee on Reactor Safeguards (ACRS) process as well as the Draft and Final SERs. The State is satisfied that the issue raised in the State's contentions was thoroughly reviewed.

5. The State actively participated in the Advisory Committee on Reactor Safeguards' review of the generic issue of taking credit for containment overpressure and the site-specific review of the extended power uprate at Vermont Yankee. The State made four formal presentations to the full ACRS or the ACRS subcommittee on power uprates on the issue of containment overpressure, and was present to answer questions by the Committee and listen to its discussion and Entergy's and the NRC Staff's presentations on almost all the occasions on which the topic of containment overpressure credit was discussed. The ACRS, at times, required additional analysis from Entergy and the NRC Staff to fully review the issue. Ultimately, the ACRS determined that the overall risk associated with extended power uprate at Vermont Yankee is small, and that the change in risk resulting from allowing the requested containment overpressure credit is also small. The State was satisfied with the level of the review and the time spent on this issue of import.

NOW, THEREFORE, for the reasons stated herein and in the attached MOU, the State hereby requests the dismissal with prejudice of its two admitted contentions.

Respectfully submitted,



Sarah Hofmann
Director for Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05602-2601

Anthony Z. Roisman
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768
Counsel for the Vermont Department
of Public Service

MEMORANDUM OF UNDERSTANDING

This is a Memorandum of Understanding ("MOU"), dated May 1, 2006, between Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together "Entergy VY"), and the Vermont Department of Public Service (the "DPS").

PRELIMINARY STATEMENT

1. Entergy VY has petitioned and received approval from the Nuclear Regulatory Commission ("the NRC") to amend its operating license to implement an extended power uprate at the Vermont Yankee Nuclear Power Station (the "Station") which permits an increase in power of the Station from a maximum of 1593 MWt to 1912 MWt. Acting through the DPS, the State of Vermont moved to intervene and is participating in proceedings before the NRC's Atomic Safety and Licensing Board ("Board") on the extended power uprate amendment. The State's efforts in this proceeding have resulted in substantial and additional attention being paid by Entergy, the NRC Staff and the Advisory Committee on Reactor Safeguards to the State's concerns about the use of containment overpressure. As a result of this added attention and analysis, plus additional inspections and other steps that have been agreed to by Entergy in the MOU, the State is now satisfied that its concerns have been satisfactorily addressed. By this agreement, the State of Vermont, acting through the DPS, has agreed to withdraw from the Board proceedings.

STIPULATION

Entergy VY and the DPS agree as follows:

1. Entergy VY shall perform a Type A Containment Leak Rate Test (the "Type A Test") during the Station's refueling outage in 2010 (the "Outage") and make the results available to the DPS within 60 days of the Outage's completion.
2. During the period between the date of this MOU and completion of the Type A Test in 2010, Entergy VY shall provide to the DPS weekly readings of nitrogen usage at the Station as an indication of containment integrity in a format jointly agreed upon by Entergy VY and DPS.
3. During and following the completion of the refueling outages currently scheduled for 2007 and 2008, Entergy VY will perform detailed visual inspections of the torus to confirm that there are no potential leakage paths. The inspections will look specifically at work that was performed during the outage that may have had contact with the torus. Entergy VY will consult with the DPS in developing any new inspection procedures, and any new revisions thereto, for conducting such visual inspections. During normal plant operations, Entergy VY will perform daily Operator rounds in accessible areas of the torus to identify any potential leakage paths.
4. Entergy VY will provide the DPS with the current revision of 1) ENN-DC-334 – Primary Containment Leakage Rate Testing (Appendix J), and 2) PP 7006 - Primary Containment Leakage Rate Testing Program, and any future revisions thereto during the period between the date of this MOU and completion of the Type A Test in 2010.

5. Following the completion of each of the refueling outages currently scheduled for 2007 and 2008, Entergy VY will provide the DPS with a summary of the results of all primary containment leakage rate tests performed during those outages.
6. All documents agreed to be provided by Entergy VY in accordance with this MOU will be provided to the DPS offices in Montpelier.
7. Within 7 days after this MOU's execution, the DPS shall file with the Board in Docket No. 50-271, ASLBP No. 04-832-02-OLA (Operating License Amendment), a Notice of Withdrawal, in substantially the same form as set forth in Attachment A, and take all other actions necessary to withdraw from such proceeding and have its contentions therein dismissed with prejudice. The DPS further agrees that it will, from time to time, duly execute and deliver any additional documents and take or cause to be taken such further actions (including the making of filings) as may be reasonably necessary and appropriate to implement the DPS withdrawal from such proceeding and the dismissal with prejudice of its contentions.
8. Nothing in this MOU is intended to prevent the State from fulfilling its obligations under State law. It is the intent of this MOU that the State is only agreeing to withdraw, and dismiss its contentions with prejudice, from the current Board hearing on the extended power uprate.
9. The parties agree that this MOU shall not be construed by any party or tribunal as having precedential impact on any future proceeding involving the parties, except as necessary to implement this MOU or to enforce an order of the Board resulting from this MOU.

- 10 This MOU is governed by Vermont law.
11. The parties have made specific compromises to reach this Memorandum of Understanding. In the event that the Board does not approve the Notice of Withdrawal identified in paragraph 7 of this MOU, each party agrees that the agreements set forth herein may terminate if either party so determines in its sole discretion and each party shall have the same rights as it would have had absent this MOU.

Dated at Montpelier, this 2nd day of May, 2006.

**VERMONT DEPARTMENT OF PUBLIC
SERVICE**

By: 

Name: David O'Brien
Title: Commissioner of the Department of
Public Service

**ENERGY NUCLEAR VERMONT YANKEE,
LLC**

By: 

Name: Jay K. Thayer
Title: Vice President of Operation and
Duly Authorized Agent

ENERGY NUCLEAR OPERATIONS, INC.

By: 

Name: Jay K. Thayer
Title: Vice President of Operation and
Duly Authorized Agent

ADDENDUM TO MOU

This is an Addendum to the Memorandum of Understanding ("MOU") dated May 2, 2006 between Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. (collectively "VY Entergy") and the Vermont Department of Public Service ("DPS").

VY Entergy and DPS agree that the following four paragraphs are added to the MOU dated May 2, 2006, and that they should be considered part of the original MOU:

12. The parties to this MOU acknowledge that the NRC and the Board appointed to hear *In Re: Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. (Operating License Amendment)*, Docket No. 50-271-OLA (ASLBP No. 04-832-02-OLA) have jurisdiction over the parties and over the subject matter of this MOU, including jurisdiction to take the actions sought in the attached Notice of Withdrawal and Request for Dismissal of Contentions of the Vermont Department of Public Service (Notice of Withdrawal).

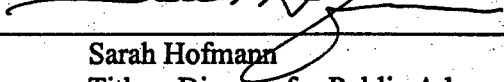
13. With regard to this MOU, the parties to it expressly waive any and all further procedural steps before the Board or any right to challenge or contest the validity of any order entered by the Board in accordance with this MOU, and waive all rights to seek judicial review or otherwise to contest the validity of any order entered by the Board so long as such order is fully consistent with each provision of this MOU.

14. An order entered by the Board in accordance with this MOU will have the same force and effect as an order entered after full hearing.

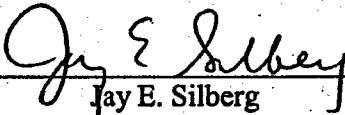
15. All matters referred to in the MOU and the Notice of Withdrawal that were required to be adjudicated have been resolved by the MOU and by an order entered by the Board in accordance with the MOU.

Dated at Montpelier, this 9th day of May, 2006.

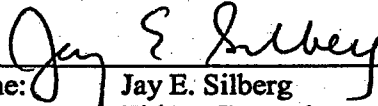
VERMONT DEPARTMENT OF PUBLIC
SERVICE

By: 
Name: Sarah Hofmann
Title: Director for Public Advocacy

ENERGY NUCLEAR VERMONT YANKEE, LLC

By: 
Name: Jay E. Silberg
Title: Counsel

ENERGY NUCLEAR OPERATIONS, INC.

By: 
Name: Jay E. Silberg
Title: Counsel

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket No. 50-271
ENTERGY NUCLEAR VERMONT)
YANKEE LLC AND ENTERGY NUCLEAR) ASLBP No. 04-832-02-OLA
OPERATIONS, INC.)
(Vermont Yankee Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the Amended Notice of Withdrawal and Request for Dismissal of Contentions of the Vermont Department of Public Service and cover letter in the above captioned proceeding has been served on the following by electronic mail where indicated by an asterisk on this 9th day of May, 2006, and will be mailed by deposit in the United States Mail, first class, postage prepaid, on the 9th day of May, 2006.

Alex S. Karlin, Chair*
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E-mail: ask2@nrc.gov

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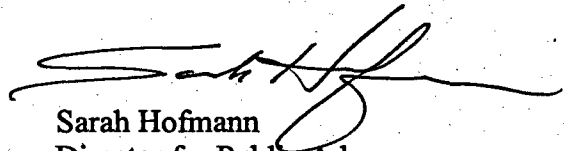
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Sincerely,



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