

June 15, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC) Docket No. 50-271-LR
)
(Vermont Yankee Nuclear Power Station))

NRC STAFF ANSWER TO NEW ENGLAND COALITION NOTICE OF ADOPTION
OF CONTENTIONS OR ALTERNATIVE MOTION TO ADOPT CONTENTIONS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the Nuclear Regulatory Commission ("NRC" or "Commission") hereby answers the "New England Coalition's Notice of Adoption of Contentions, or in the Alternative, Motion to Adopt Contentions," dated June 5, 2006 ("Motion"). Although the motion does not satisfy the requirements of 10 C.F.R. § 2.323(b),¹ the Staff has no objection to the proposed adoption provided that New England Coalition (NEC) is admitted as a party to this proceeding (based on its initial petition) and, if the initial contention sponsor is not admitted as a party to (or subsequently departs from) this proceeding, NEC then demonstrates an independent ability to litigate any adopted contentions.

BACKGROUND

By letter dated January 26, 2006, as supplemented March 15, 2006, Entergy Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, "Entergy" or "Applicant") submitted an application, under 10 C.F.R. Part 54, to renew Operating License No. DPR-28 for

¹ NEC does not certify that it tried to contact other participants in the proceeding, namely the NRC Staff or the Licensee, as required by 10 C.F.R. § 2.323(b). A motion is to be rejected if it does not include a certification that the movant's attorney or representative made a sincere effort to contact the other parties in the proceeding to resolve issues raised in the motion, and that those efforts were unsuccessful. 10 C.F.R. § 2.323(b).

the Vermont Yankee Nuclear Power Station ("VYNPS").² The proposed renewal would authorize the Applicant to operate VYNPS for an additional 20 years beyond the current expiration date of March 21, 2012. See "Entergy Nuclear Operations, Inc.; [VYNPS]: Notice of Acceptance of Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR-28 for an Additional 20-Year Period," 71 Fed. Reg. 15220 (Mar. 27, 2006). In response to the notice of acceptance for docketing and opportunity for hearing published in the *Federal Register*, *id.*, the New England Coalition (NEC), the Massachusetts Attorney General, the Town of Marlboro, Vermont Select Board, and the Vermont Department of Public Service timely filed intervention petitions. See [NEC] Petition for Leave to Intervene Request for Hearing and Contentions, dated May 26, 2006; Massachusetts Attorney General's Request for a Hearing and Petition for Leave to Intervene With Respect To Entergy Nuclear Operations Inc.'s Application for Renewal of the Vermont Yankee Nuclear Power Plant Operation and Petition for Backfit Order Requiring New Design Features to Protect Against Spent Fuel Accidents, dated May 26, 2006; Vermont Department of Public Service Notice of Intention to Participate and Petition to Intervene, dated May 26, 2006; Letter from Town of Marlboro Selectboard and Emergency Management Director, dated April 27, 2006.³

In a filing dated June 5, 2006, NEC provided notice that it was adopting contentions filed by the State of Vermont and the Commonwealth of Massachusetts, pursuant to 10 C.F.R. § 2.309(f)(3), or alternatively, filing a motion, pursuant to 10 C.F.R. § 2.323, to adopt such

² See Letter from William F. Maguire, Entergy, to U.S. NRC, dated January 25, 2006 (Agencywide Documents Access and Management System ("ADAMS") Accession Nos. ML 060300082, ML060300085, ML060300086).

³ On June 8, 2006, this Atomic Safety and Licensing Board was established to preside over the proceeding. See "Establishment of Atomic Safety and Licensing Board," dated June 6, 2006. 71 Fed. Reg. 34397 (June 14, 2006).

contentions. Motion at 1. NEC further indicated that it had consulted with representatives for Vermont and Massachusetts who agreed to the arrangement provided that each governmental entity served as the representative for their respective contentions. Motion at 2.

DISCUSSION

The Staff does not object to NEC's request provided that NEC is admitted as a party to this proceeding (based upon its initial petition) and, if the primary sponsor of the adopted contention is not admitted as a party or subsequently leaves this proceeding, NEC then demonstrates its independent ability to litigate any contentions adopted. *See Consolidated Edison Co. of New York & Entergy Nuclear Indian Point 2 LLC and Entergy Nuclear Operations, Inc.* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 131-33 (2001) (adoption provisionally permitted at an early stage of a proceeding so long as it does not circumvent pleading requirements and the proponent later demonstrates its independent ability to litigate the issue upon the departure of the original sponsor). If NEC were allowed merely to adopt the contentions of another party without otherwise establishing standing and proffering its own admissible contention, there would be a circumvention of NRC pleading requirements.

The Commission's regulations do not appear to specify how or when a request to adopt a contention may be raised. *See* 10 C.F.R. § 2.309(f)(3). The use of terms such as adoption of contentions of "another . . . requestor/ petitioner," however, implies that a contention adoption request would be timely if made prior to any ruling on contentions. *See id.* *See also* Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 NRC 619, 627 (2004) ("petitioners seeking intervention as a party under section 2.309 may chose to participate on other petitioners' contentions by *adopting* them") (emphasis in original).

CONCLUSION

For the foregoing reasons, although the motion has procedural defects, the Staff has no objection to NEC being allowed to provisionally adopt contentions proffered by Vermont and

Massachusetts, provided NEC is admitted as a party to this proceeding based on its initial petition and later demonstrates an independent ability to litigate any adopted contentions if the initial sponsor is not admitted as a party to, or subsequently departs from, this proceeding.

Respectfully submitted,

/RA/

Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of June 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC) Docket No. 50-271-LR
)
(Vermont Yankee Nuclear Power Station)

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO NEW ENGLAND COALITION NOTICE OF ADOPTION OF CONTENTIONS OR ALTERNATIVE MOTION TO ADOPT CONTENTIONS" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or, as indicated by an asterisk, by electronic mail with copies by U.S. mail, first class, or, as indicated by a double asterisk, by electronic mail with copies by overnight express mail, this 15th day of June 2006.

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

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rew@nrc.gov

Administrative Judge
Thomas S. Elleman**
Atomic Safety and Licensing Board Panel
5207 Creedmoor Road, #101
Raleigh, NC 27612
E-mail: elleman@eos.ncsu.edu

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
E-mail: OCAAmail@nrc.gov

Sarah Hofmann, Esq.*
Director of Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601
E-mail: sarah.hofmann@state.vt.us

Diane Curran, Esq.*
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW., Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

Ronald A. Shems, Esq.*
Karen Tyler, Esq.
Shems Dunkiel Kassel & Saunders, PLLC
91 College Street
Burlington, VT 05401
E-mail: rshems@sdkslaw.com
Ktyler@sdkslaw.com

Callie B. Newton, Chair
Gail MacArthur
Lucy Gratwick
Marcia Hamilton
Town of Marlboro
Selectboard
P.O. Box 518
Marlboro, VT 05344
E-mail: cbnewton@sover.net
marcialynn@ev1.net

Marcia Carpentier, Esq.
Jonathan M. Rund, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mxc7@nrc.gov
Jmr3@nrc.gov

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

Matthew Brock, Esq.*
Assistant Attorney General
Office of the Massachusetts Attorney
General
Environmental Protection Division
One Ashburton Place, Room 1813
Boston, MA 02108-1598
E-mail: matthew.brock@ago.state.ma.us

Dan MacArthur, Director
Town of Marlboro
Emergency Management
P.O. Box Box 30
Marlboro, VT 05344
E-mail: dmacarthur@igc.org

David R. Lewis, Esq.*
Matias F. Travieso-Diaz
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
E-mail: david.lewis@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com

/RA/

Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland,
this 15th day of June 2006