

June 21, 2006

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-LR
LLC, and ENTERGY NUCLEAR)	
OPERATIONS, INC.)	ASLBP No. 06-849-03-LR
)	
(Vermont Yankee Nuclear Power Station))	

NRC STAFF ANSWER TO VERMONT DPS NOTICE
OF INTENT TO ADOPT CONTENTIONS AND MOTION FOR LEAVE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the Nuclear Regulatory Commission ("Staff") hereby answers the Vermont Department of Public Safety's "Notice of Intent to Adopt Contentions and Motion For Leave to be Allowed to Do So," dated June 5, 2006 ("Motion"). Although the motion does not satisfy the requirements of 10 C.F.R. § 2.323(b),¹ the Staff does not oppose the proposed adoption provided that the Department of Public Safety ("DPS") 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, DPS 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 DPS 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 DPS 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, DPS provided notice that it was adopting contentions filed by NEC and the Commonwealth of Massachusetts, pursuant to 10 C.F.R. § 2.309(f)(3), and

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).

simultaneously filed a motion for leave from the Licensing Board to do so.⁴ Motion at 1. DPS 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. *Id.*

DISCUSSION

The Staff does not oppose DPS's request provided that DPS 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, DPS 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 DPS 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. *See id.* at 133.

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)

⁴ As was discussed in the "Letter from Mitzi A. Young, Counsel for NRC Staff, to the Administrative Judges," dated June 14, 2006, due to an error in DPS's e-mail service of the Motion, the Staff did not receive an electronic version. The Motion was served upon the Staff by U.S. mail, postmarked June 6, 2006.

("petitioners seeking intervention as a party under section 2.309 may choose 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 does not oppose allowing DPS to provisionally adopt contentions proffered by NEC and Massachusetts, provided DPS 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/

Steven C. Hamrick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 21st day of June 2006

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO VERMONT DPS NOTICE OF INTENT TO ADOPT CONTENTIONS AND MOTION FOR LEAVE" 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, this 21st day of June 2006.

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/RA/

Steven C. Hamrick
Counsel for NRC Staff

Dated at Rockville, Maryland,
this 21st day of June 2006