

June 22, 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 TOWN OF MARLBORO'S REQUEST FOR HEARING

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the Staff of the Nuclear Regulatory Commission (“Staff”) hereby answers the “Request for Hearing in Entergy Vermont Yankee License Extension Request” (“Request”) filed by the Selectboard of the Town of Marlboro, Vermont, dated April 27, 2006. As discussed below, Marlboro’s request should be denied because it fails to include written contentions, as required by 10 C.F.R. §§ 2.309(a) and (f).

BACKGROUND

By letter dated January 25, 2006, as supplemented March 15 and May 15, 2006, Entergy Nuclear 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 the Vermont Yankee Nuclear Power Station (“VYNPS”).¹ The renewal would extend the license for an additional 20 years beyond the current expiration date of midnight on March 21, 2012 to midnight on March 21, 2032.

¹ See Letter from William F. Maguire, Entergy, to the NRC Document Control Desk, “Vermont Yankee Nuclear Power Station, License No. DPR-28 (Docket No. 50-271), License Renewal Application,” dated January 25, 2006 (Agencywide Documents Access and Management System (“ADAMS”) Accession Nos. ML060300082, ML060300085, ML060300086).

On March 27, 2006, the NRC published in the *Federal Register* a notice of acceptance for docketing and opportunity for a hearing.² In response to this notice, the Town of Marlboro timely filed its request.³ On June 8, 2006, this Atomic Safety and Licensing Board (“Licensing Board”) was established to preside over the proceeding.⁴

DISCUSSION

The Commission’s rules of procedure allow any person whose interest may be affected by a proceeding to file a written request for hearing. 10 C.F.R. § 2.309(a). The Town of Marlboro’s Request asserts that it has a right to a hearing because part of the town falls within the ten-mile radius of VYNPS. Request at 1. Because of its proximity to the facility, the Staff does not oppose the Town of Marlboro’s standing to request a hearing. See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff’d on other grounds*, CLI-01-17, 54 NRC 3 (2001) (The proximity presumption principle “presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity.”).

² See Entergy Nuclear Operations, Inc., Vermont Yankee Nuclear Power Station; Notice of Acceptance for 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. 15,220 (March 27, 2006).

³ On May 31, 2006, the Staff project manager for Vermont Yankee (who has been out of the office the previous two weeks) discovered a letter dated April 27, 2006 (addressed to him and postmarked May 15, 2006) from the Town of Marlboro, VT, requesting a hearing on that application. The Office of the General Counsel immediately forwarded a copy of the letter to the Office of the Secretary. Although Marlboro’s Request indicates that a copy was sent to the Office of the General Counsel, our office has no record of prior receipt of the letter. Accordingly, the Staff has determined its response to this Request is due to the Licensing Board within 25 days from the actual receipt of the letter on May 31. See “Letter from Mitzi A. Young, Counsel for NRC Staff, to the Rulemaking and Adjudicatory Staff, Office of the Secretary,” dated June 1, 2006 (ADAMS Accession No. ML061600089).

⁴ See “Establishment of Atomic Safety and Licensing Board,” dated June 6, 2006. 71 Fed. Reg. 34,397 (June 14, 2006).

However, in addition to demonstrating standing, a request for hearing must also include a specification of the contentions which the person seeks to have litigated in the hearing. 10 C.F.R. § 2.309(a). Contentions must be set forth with particularity, meaning they must, among other things, provide a specific statement of the issue the person wishes to raise, provide a brief explanation of the basis for the contention, demonstrate that the issue raised is within the scope of the proceeding, and show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. 10 C.F.R. § 2.309(f). Marlboro's request for hearing must be denied because it contains no specific contentions.

Instead of asserting specific contentions, Marlboro's Request expresses generalized concerns about emergency planning. Emergency planning is not within the scope of a license renewal proceeding, which is generally limited to those issues involving plant structures, systems, or components that are subject to age-related degradation during the extended renewal period. See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560-61 (2005); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 640 (2004); *Florida Power & Light*, (Turkey Point Generating Plant, Units 3 and 4) CLI-01-17, 54 NRC 3, 9-10 (2001).

The Commission has various regulations establishing standards for emergency plans. See 10 C.F.R. §§ 50.47, 50.54(s)-(u); Part 50, Appendix E. These requirements are independent of license renewal and will continue to apply during the renewal term. *Turkey Point*, 54 NRC at 9, (citing Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,966 (Dec. 13, 1991)). They include provisions to ensure that the licensee's emergency plan remains adequate and continues to meet performance objectives. *Id.* The Commission ensures that existing plans are adequate throughout the life of any plant, accounting for changing demographics and other site-related factors through mandated

periodic reviews and emergency drills. *Id.* Therefore, emergency planning and other issues that are the subject of ongoing regulatory processes are not within the scope of the Commission's safety review at the license renewal stage. *Id.*

CONCLUSION

Based on the foregoing, the Staff respectfully submits that Marlboro's request for hearing should be denied because it fails to include contentions as required by 10 C.F.R. § 2.309(a) or to specify any areas of concern within the scope of a license renewal proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii).

Respectfully submitted,

/RA/

Steven C. Hamrick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of June, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO TOWN OF MARLBORO'S REQUEST FOR HEARING" 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 22nd day of June 2006.

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/RA/

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Dated at Rockville, Maryland,
this 22nd day of June 2006