

June 15, 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**DOCKETED
USNRC**

Before the Atomic Safety and Licensing Board

June 15, 2006 (3:38pm)

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

In the Matter of)	
)	
Entergy Nuclear Vermont Yankee, LLC)	Docket No. 50-271-LR
and Entergy Nuclear Operations, Inc.)	ASLBP No. 06-849-03-LR
)	
(Vermont Yankee Nuclear Power Station))	

**ENTERGY'S ANSWER TO
VERMONT DEPARTMENT OF PUBLIC SERVICE
NOTICE AND MOTION TO ADOPT CONTENTIONS**

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy") hereby answer the "Notice of Intent to Adopt Contentions and Motion for Leave to be Allowed to Do So," dated June 5, 2006 (the "Motion"). DPS' Motion to adopt the contentions of the New England Coalition ("NEC") should be denied as unsupported by any showing of compliance with the late-filing criteria in 10 C.F.R. §§ 2.309(c)(1)(i)-(viii) and (f)(2)(i)-(iii).

10 C.F.R. § 2.309(b) and the Notice of Opportunity for Hearing (71 Fed. Reg. 15,220 (March 27, 2006)) in this proceeding require that a petitioner file its list of contentions within 60 days of the Notice (i.e., by May 26, 2006). 10 C.F.R. § 2.309(c) provides that any non-timely contentions will not be entertained absent a determination by the presiding officer that the request should be admitted based on a balancing of eight factors. In addition, 10 C.F.R. § 2.309(f)(2) provides that new contentions may only be added after the initial filing based on a showing that:

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of subsequent information.

NRC case law establishes that these factors apply in cases where one intervenor seeks to adopt the contentions of another after the initial filing date. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-779, 21 N.R.C. 360, 381-82 (1985). DPS states that 10 C.F.R. § 2.309(f)(3) authorizes one party to adopt the contentions of other parties. Motion at 1 n.1. However, that section merely requires designation of a lead representative when a party seeks to adopt another's contention. It does not "authorize" such adoption and does not waive compliance with the late-filing requirements.

DPS has not addressed the late-filing criteria. Longstanding NRC precedent obliges a petitioner to show that untimely contentions satisfy the late filing requirements, and where a petitioner fails to do so, the Board may properly dismiss the late request without further consideration. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 347 (1998) ("[T]he Commission itself has summarily dismissed petitioners who failed to address the five factors for a late-filed petition.")(footnote omitted); Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461, 465-66 (1985) ("[G]iven its failure to even address the . . . lateness factors, [a late] intervention petition [is] correctly denied because it [is] untimely." DPS' failure to do so is grounds by itself to deny the Motion. Because DPS has not discharged its burden of justifying its late filing, its Motion must be denied.

Entergy does not object to DPS participating as an interested State as authorized by 10 C.F.R. § 2.315(c) with respect to any admitted contentions.¹

Respectfully Submitted,



David R. Lewis
Matias F. Travieso-Diaz
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Tel. (202) 663-8474
David.Lewis@Pillsburylaw.com

Counsel for Entergy

Dated: June 15, 2006

¹ Entergy will address the admissibility of NEC's contentions when it files its answer to NEC's hearing request.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Answer to Vermont Department of Public Service Notice and Motion to Adopt Contentions," dated June 15, 2006, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, or with respect to Judge Elleman by overnight mail, and where indicated by an asterisk by electronic mail, this 15th day of June, 2006.

*Administrative Judge
Alex S. Karlin, Esq., Chairman
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ask2@nrc.gov

*Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
rew@nrc.gov

*Administrative Judge
Dr. Thomas S. Elleman
Atomic Safety and Licensing Board
5207 Creedmoor Road, #101,
Raleigh, NC 27612.
tse@nrc.gov; elleman@eos.ncsu.edu;

*Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
secy@nrc.gov, hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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

*Mitzi A. Young, Esq.
*Steven C. Hamrick, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
may@nrc.gov; sch1@nrc.gov

*Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
dcurran@harmoncurran.com

Mr. Dan McArthur
Director, Emergency Management
P.O. Box 30
Marlboro, VY 50344

*Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
84 East Thetford Road
Lyme, NH 03768
aroisman@nationallegalscholars.com

*Ronald A. Shems, Esq.
*Kareb Tyler, Esq.
Shems, Dunkiel, Kassel & Saunders, PLLC
9 College Street
Burlington, VT 05401
rshems@sdkslaw.com
ktyler@sdkslaw.com

*Matthew Brock, Esq.
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Matthew.brock@ago.state.ma.us

Callie B. Newton, Chair
Gail MacArthur
Lucy Gratwick
Town of Marlboro
Selectboard
P.O. Box 518
Marlboro, VT 05344



David R. Lewis