

June 20, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

June 20, 2006 (4:39pm)

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)	)	

**ENERGY'S ANSWER TO NEW ENGLAND COALITION'S  
NOTICE AND MOTION TO ADOPT CONTENTIONS**

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy") hereby answer and oppose "New England Coalition's Notice of Adoption of Contentions, or in the Alternative, Motion to Adopt Contentions," dated June 5, 2006 (the "Motion"). NEC's Motion, which seeks to adopt the contentions of the Department of Public Service ("DPS"), 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 (Mar. 27, 2006)) in this proceeding require that a petitioner file its list of contentions within 60 days of the Notice. 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) 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).

NEC states that 10 C.F.R. § 2.309(f)(3) appears to allow a party seeking to adopt a contention to do so simply upon agreement with the sponsoring party. 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 allow such adoption. Indeed, by referring to a requestor/petitioner “who seeks to adopt the contentions” of another, section 2.309(f)(3) clearly contemplates a request for leave of the presiding officer.

Nor does section 2.309(f)(3) waive compliance with the criteria in sections 2.309(c)(1)(i)-(viii) and (f)(2)(i)-(iii) governing whether such leave should be granted. If a petitioner could adopt another party’s contentions without any showing of compliance with the late-filing standards, a petitioner could totally ignore its initial obligation to plead specific,<sup>1</sup> supported contentions and yet remain in the proceeding simply by subsequently adopting all the

---

<sup>1</sup> The NRC Staff Answer to New England Coalition Notice of Adoption of Contentions or Alternative Motion to Adopt Contentions” (June 15, 2006) (“Staff Answer”) states that use of terms such as “adoption of “another . . . requester/petitioner” implies that a contention adoption request would be timely if made prior to any rulings on contentions. Staff Answer at 3. Section 2.309(f)(3) says nothing about timeliness, says nothing about the standards by which a request to adopt contentions should be judged, and indeed, does not waive the standards for adding contentions after the initial filing. If the Staff’s interpretation were correct, there would be no need for a petitioner to “seek” to adopt contentions (see 10 C.F.R. § 2.309), because there would be no standards to apply to the request.

The Staff Answer also quotes Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 N.R.C. 619, 627 (2004), as stating: “petitioners seeking intervention as a party under section 2.309 may chose to participate on other petitioners contentions by adopting them.” Staff Answer at 3. However, this statement does not state what showing a petitioner must make to adopt such contentions. Further, because the quoted decision did not involve a request to adopt contentions, it is dicta.

contentions of any other petitioners. This would be bad policy and clearly cannot be what the Commission intended. Rather, before a licensing board grants a request by a petitioner to adopt another person's proposed contentions, it should ensure that there is good cause for the request, that the petitioner has something to contribute, and that adoption is appropriate because of the unavailability of other means to protect the petitioner's interest. The criteria in sections 2.309(c)(1)(i)-(viii) and (f)(2)(i)-(iii) ensure such factors are appropriately considered.

NEC has not addressed the late-filing criteria. Longstanding NRC practice 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.” Its failure to do so is grounds by itself to deny the Motion. Because NEC has not discharged its burden of justifying its late filing, its Motion must be denied.<sup>2</sup>

Even if NEC had addressed the lateness criteria, its motion to adopt DPS' contentions would fail. NEC has no good cause for not having proffered such contentions itself, other than perhaps not having thought of them. If the information was available to the DPS to formulate its contentions, it should also have been available to NEC. Further, NEC has asserted no expertise or relevant experience regarding those issues, has provided no indication of how its participation

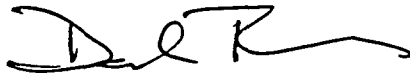
---

<sup>2</sup> Entergy will address the admissibility of DPS' contentions when it files its answer to DPS' hearing request.

would assist in developing the record on any of DPS' contentions, and has made no showing why the DPS' sponsorship of its contentions is insufficient to protect NEC's interest. In short, there is no merit to NEC's request.

For all of the foregoing reasons, NEC's Motion should be denied.

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 20, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Answer to New England Coalition's Notice and Motion to Adopt Contentions" dated June 20, 2006, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 20<sup>th</sup> 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. Thomas S. Elleman  
Atomic Safety and Licensing Board  
5207 Creedmoor Road, #101,  
Raleigh, NC 27612.  
tse@nrc.gov; elleman@eos.ncsu.edu;

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

\*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

\*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

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

\*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

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

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

\*Mr. Dan MacArthur  
Director, Emergency Management  
P.O. Box 30  
Marlboro, VY 50344  
dmacarthur@igc.org

\*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

\*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  
marcialynn@ev1.net; cbnewton@sover.net



David R. Lewis