

SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

RONALD A. SHEMS

BRIAN S. DUNKIEL\*

JOHN B. KASSEL

MARK A. SAUNDERS

GEOFF H. HAND  
KAREN L. TYLER  
ASSOCIATE ATTORNEYS

ANDREW N. RAUBVOGEL  
EILEEN I. ELLIOTT  
OF COUNSEL

July 29, 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](mailto:ask2@nrc.gov)

DOCKETED  
USNRC

July 29, 2006 (11:51am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

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](mailto:rew@nrc.gov)

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](mailto:hearingdocket@nrc.gov)

Re: *In the matter of* ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY  
NUCLEAR OPERATIONS, INC., Vermont Yankee Nuclear Power Station License  
Renewal Application, Docket No. 50-271

NEC Letter Motion re: 7/28/06 Entergy filing

Dear Judges Karlin, Elleman and Wardwell, and Sir or Madam:

NEC respectfully requests immediate consideration of this letter. Please consider this  
letter as a motion.

On Friday afternoon, July 28, 2006, Entergy filed a significant amount of information in further answer to NEC's contentions and as amendments to its Application. Oral argument on the contentions is set for Tuesday and Wednesday, August 2-3, 2006 in Brattleboro, VT. Entergy had already filed its Answer on June 22, 2006.

Entergy made no attempt to consult with NEC prior to its Friday filing.

Entergy's last-minute additional answer is highly inappropriate, and indeed, apparently timed to ensure that the Board and other parties would not be able to review and substantively respond to this additional answer to NEC's contentions prior to the August 2 oral argument. NEC's lawyers (Karen Tyler and Ronald Shems) are both on vacation on Friday, July 28 through July 30, and are unable to print and review these filings. Likewise, the lawyers for the Vermont Department of Public Service (Sarah Hofmann and Anthony Roisman, whose vacation schedules were discussed at the June 19, 2006 telephone conference) are away on vacation. The Vt. PSD adopted NEC's contentions. Much of Monday, July 31 will be consumed by travel and meetings with experts who will not have been able to review Entergy's further answer, hence precluding NEC's consideration of Entergy's further answer.

More importantly, NEC's experts are not able to review this further answer prior to oral argument. Dr. Ross Jones is away through August 6. All of NEC's preparation for oral argument with Dr. Jones was completed prior to Entergy's Friday afternoon filing. Much of Entergy's new information appears to further answer NEC's contention 1 which was formulated with Dr. Jones's expertise. Travel and timing prevent review, certainly meaningful review, by NEC's other experts.

Consideration of Entergy's new information as part of the August 2-3 oral argument would be highly prejudicial to NEC. Entergy's tactics should not be countenanced.

NRC rules provide that Entergy's filing is illegal. 10 C.F.R. § 2.309(h)(3) (an answer may be filed within 25 days of a contention's filing, but "no other written answers or replies will be entertained."). Entergy's Friday filing must be struck. Under the guise of a motion to strike (July 10, 2006), Entergy already filed an illegal sur-reply/answer to NEC's reply to Entergy's Answer. Further answer violates NRC procedures.

Alternatively, Entergy's filing of its further answer is a *per se* demonstration of a genuine dispute of material fact and law, that NEC's contentions are material to and within the scope of this proceeding, that sufficient statements of fact, law, and expert opinion were provided in support of the contentions, and that the contentions are otherwise admissible. 10 C.F.R. § 2.309 (f)(1). Entergy should be barred from opposing admission of NEC's contentions, and the contentions should be admitted without further argument. This would allow the Board and parties to fairly and properly consider Entergy's further answer as part of hearings on the merits of NEC's contentions (assuming that the information is appropriate to such consideration).

If neither of the above alternatives suits the Board, the August 2-3 oral argument should be continued. Indeed, the Application amendments, if appropriate, may warrant new contentions. Proceeding with argument now may be an unnecessary expenditure of time and resources.

Time constraints and schedules (forced by Entergy's last-minute and illegal tactic) prevent a more formal motion supported by declaration and consultation. The undersigned has not been able to print and review Energy's new filing and does not have the information necessary to contact the parties on a weekend to consult with them regarding this motion. This letter was prepared remotely from the undersigned's office.

Thank you very much.

Sincerely,

/s/

Ronald A. Shems  
SHEMS DUNKIEL KASSEL & SAUNDERS, pllc  
For the firm

Attorneys for NEC

c: see attached certificate of service

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of NEC's Letter Motion in the above-captioned proceeding have been served on the following by electronic mail on July 29, 2006, with copies by U.S. mail, first class, on July 31, 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](mailto:ask2@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](mailto:elleman@eos.ncsu.edu)

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Richard E. Wardwell  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [rew@nrc.gov](mailto:rew@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](mailto:OCAAmail@nrc.gov)

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](mailto:hearingdocket@nrc.gov)

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](mailto:may@nrc.gov); [schl@nrc.gov](mailto:schl@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](mailto: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](mailto:dcurran@harmoncurran.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](mailto:cbnewton@sover.net)  
[marcialynn@ev1.net](mailto: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](mailto:mxc7@nrc.gov) [Jmr3@nrc.gov](mailto:Jmr3@nrc.gov)

Anthony Z. Roisman, Esq.\*  
National Legal Scholars Law Firm  
84 East Thetford Rd.  
Lyme, NH 03768  
E-mail: [aroisman@nationallegalscholars.com](mailto: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](mailto:matthew.brock@ago.state.ma.us)

Dan MacArthur, Director\*  
Town of Marlboro  
Marlboro, VT 05344  
E-mail: [dmacarthur@igc.org](mailto: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](mailto:david.lewis@pillsburylaw.com)  
[matias.travieso-diaz@pillsburylaw.com](mailto:matias.travieso-diaz@pillsburylaw.com)

/s/

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Ronald A. Shems

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