

May 4, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

May 4, 2007 (9:20am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

Entergy Nuclear Vermont Yankee, LLC)
and Entergy Nuclear Operations, Inc.)

Docket No. 50-271-LR
ASLBP No. 06-849-03-LR

(Vermont Yankee Nuclear Power Station))

**JOINT MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT AND DISMISSAL OF DPS CONTENTION 1**

The Vermont Department of Public Service ("DPS"), on its own behalf and as lead representative for the New England Coalition ("NEC") with respect to DPS Contention 1, and Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. ("Entergy"), hereby jointly move the Atomic Safety and Licensing Board to approve the Settlement Agreement between DPS and Entergy (Attachment A hereto) and dismiss DPS Contention 1. A proposed Consent Order (Attachment B hereto) is provided.

The motion and settlement agreement are the result of a meeting between Mr. William Sherman, the State Nuclear Engineer, and Entergy Staff, at which further technical information was provided. This information included:

- temperature data for the past 25 years demonstrating that the drywell temperature measured at points below the 280' elevation is below the general area concrete temperature limit of 150 degrees F.
- drawings indicating the location of the sand cushion and of the 2" air gap between the drywell and exterior concrete above the sand cushion, which show that the 2" gap exists above the 238' elevation.
- temperature data for the past 25 years demonstrating that the drywell temperature in the upper region (between the 280' and 315' elevation)

averages at least 20 degrees F below the local area concrete temperature limit of 200 degrees F.

- Demonstration that any concrete temperatures exceeding 150 degrees in the upper region would be localized, and thus would not affect the structural integrity of the exterior concrete, consistent with prior precedents (see NUREG-1856 at 3-364 to 3-366).

Based on this additional information, DPS no longer challenges Section 3.5.2.2.1.3 of the Vermont Yankee license renewal application.

Pursuant to 10 C.F.R. § 2.323(b), Entergy and DPS have made a sincere effort to contact the other parties and resolve the issues raised in this motion. DPS has consulted with NEC, which has authorized DPS to state that NEC does not oppose the settlement. Entergy has consulted with the NRC Staff, which has authorized Entergy to state that the NRC Staff does not oppose the settlement. Because this settlement would avoid unnecessary litigation, granting this motion and approving the settlement is in the public interest.

Respectfully Submitted,



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Matias F. Travieso-Diaz
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Counsel for Entergy Nuclear Vermont Yankee,
LLC, and Entergy Nuclear Operations, Inc.

Sarah Hofmann
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Montpelier, VT 05620-2601

Counsel for Vermont Department of Public Service

Dated: May 4, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
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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))	

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of May 2, 2007, by and among the Vermont Department of Public Service (hereinafter "DPS"), acting on its own behalf and as the lead representative designated by the New England Coalition (hereinafter "NEC") with respect to DPS Contention 1, and Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter "Entergy").

WHEREAS, on May 26, 2006, DPS petitioned to intervene as a party in the NRC proceeding to renew the operating license of the Vermont Yankee Nuclear Power Station, and raised a contention relating to the aging management of primary containment concrete outside of the drywell ("DPS Contention 1");

WHEREAS, on June 5, 2006, NEC moved to adopt DPS's contentions, with the agreement that DPS would be NEC's representative on DPS's contentions; and DPS moved to adopt NEC's contentions with the agreement that NEC be DPS's representative on NEC's contentions.

WHEREAS, by Memorandum and Order dated September 22, 2006 (LBP-06-20), the Atomic Safety and Licensing Board admitted DPS and NEC as parties in this proceeding,

admitted certain contentions including DPS Contention 1, and granted the motions allowing DPS and NEC to adopt each other's admitted contentions.

WHEREAS, in an effort to resolve DPS Contention 1, Entergy's staff has met with William Sherman, the State Nuclear Engineer, and presented additional technical information to address the concerns raised by DPS Contention 1;

WHEREAS, DPS has informed Entergy that its concerns raised in DPS Contention 1 have been resolved as a result of the additional technical information that Entergy's staff provided to Mr. Sherman; and

WHEREAS, DPS has consulted with NEC on this settlement, and NEC has stated that it does not oppose the settlement;

NOW, THEREFORE, in consideration of the premises and mutual promises hererin, DPS and Entergy agree as follows:

1. DPS agrees that its technical concerns with the adequacy of the aging management program for primary containment concrete have been resolved. DPS therefore withdraws DPS Contention 1.
2. DPS and Entergy agree to file a joint motion seeking a Consent Order from the Atomic Safety and Licensing Board approving this Settlement Agreement and dismissing DPS Contention 1 (hereinafter the "Consent Order").
3. Entergy agrees that by virtue of DPS's adoption of NEC's contentions, DPS will remain a party to this proceeding. Accordingly, Entergy agrees that DPS's withdrawal and settlement of DPS Contention 1 will not terminate DPS's participation in this proceeding.

4. The parties to this Settlement Agreement acknowledge that the NRC and the Board appointed to hear In Re: Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. Docket No. 50-271-OLA (ASLBP No. 06-849-03-LR) have jurisdiction over the parties and over the subject matter of this Settlement Agreement, including jurisdiction to take the actions sought in the attached Joint Motion For Approval Of Settlement Agreement and Dismissal Of DPS Contention 1 ("Joint Motion").

5. With regard to this Settlement Agreement, the parties to it expressly waive any and all further procedural steps before the Board or any right to challenge or contest the validity of any order entered by the Board in accordance with this Settlement, and waive all rights to seek judicial review or otherwise to contest the validity of any order entered by the Board so long as such order is fully consistent with each provision of this Settlement Agreement.

6. An order entered by the Board in accordance with this Settlement Agreement will have the same force and effect as an order entered after full hearing.

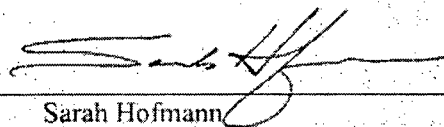
7. All matters referred to in the Settlement Agreement and the Joint Motion that were required to be adjudicated have been resolved by the Settlement Agreement and by an order entered by the Board in accordance with the Settlement Agreement.

8. This Settlement Agreement will become effective upon issuance of the Consent Order.

[END OF PAGE]

IN WITNESS WHEREOF, Entergy and DPS have executed this Settlement Agreement on the
dates indicated below:

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: 
Sarah Hofmann
Director for Public Advocacy

Date: 5/3/07

ENTERGY NUCLEAR VERMONT YANKEE, LLC,
AND ENTERGY NUCLEAR OPERATIONS, INC.

By: _____
David R. Lewis
Counsel for Entergy

Date: _____

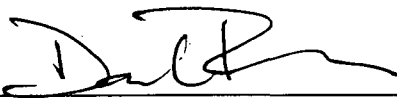
IN WITNESS WHEREOF, Entergy and DPS have executed this Settlement Agreement on the
dates indicated below:

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____
Sarah Hofmann
Director for Public Advocacy

Date: _____

ENTERGY NUCLEAR VERMONT YANKEE, LLC,
AND ENTERGY NUCLEAR OPERATIONS, INC.

By:  _____
David R. Lewis
Counsel for Entergy

Date: 5/4/07

Attachment B

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Richard E. Wardwell
Dr. Thomas S. Elleman

In the Matter of

ENTERGY NUCLEAR VERMONT YANKEE,
L.L.C.,
and
ENTERGY NUCLEAR OPERATIONS, INC.

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271-LR

ASLBP No. 06-849-03-LR

May __, 2007

CONSENT ORDER
(Approving Settlement of DPS Contention 1)

The Joint Motion for Approval of Settlement Agreement and Dismissal of DPS Contention 1 (May 4, 2007) is granted. The avoidance of unnecessary litigation is in the public interest. Accordingly, the Settlement Agreement is approved, and DPS Contention 1 is hereby dismissed.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

May __, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
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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 Motion for Approval of Settlement Agreement and Dismissal of DPS Contention 1," dated May 4, 2007, 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 4th day of May, 2007.

*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
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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
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Washington, D.C. 20555-0001
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*Secretary
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