

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-271-LA
ENTERGY NUCLEAR VERMONT)	
YANKEE, LLC AND ENTERGY)	ASLBP No. 15-934-01-LA-BD01
NUCLEAR OPERATIONS, INC.)	
)	December 12, 2014
(Vermont Yankee Nuclear Power Station))	

**STATE OF VERMONT’S PROPOSED REPLY TO NRC STAFF ANSWER TO
ATOMIC SAFETY AND LICENSING BOARD QUESTION ASKED DURING
DECEMBER 1, 2014 CONTENTION ADMISSIBILITY ORAL ARGUMENT**

On December 1, 2014, an oral argument was held before the Atomic Safety and Licensing Board (“Board”) in the above-captioned proceeding,¹ addressing the State of Vermont’s (“State”) hearing request.² At the oral argument, the Nuclear Regulatory Commission (“NRC”) Staff (“Staff”) cited to and quoted from a non-public letter, dated August 19, 2014, from Vanessa Quinn of the Federal Emergency Management Agency (“FEMA”) Radiological Emergency Preparedness Branch to Joseph Anderson of the NRC Office of Nuclear Security and Incident Response (“FEMA Letter”).³ The FEMA Letter states, in part, that:

A review of the license amendment noted that the changes were coordinated with, and approved by the States of Massachusetts, New Hampshire and Vermont. FEMA Region I reviewed these changes for impact to the State and local

¹ Official Transcript of Proceedings (“Tr.”) (Dec. 1, 2014) (Agencywide Documents Access and Management System [ADAMS] Accession No. ML14337A666).

² Vermont Department of Public Service Notice of Intention to Participate, Petition to Intervene, and Hearing Request (Sept. 22, 2014) (ADAMS Accession No. ML14267A524) (“Petition”).

³ Letter from Vanessa Quinn, FEMA Radiological Emergency Preparedness Branch to Joseph Anderson, NRC Office of Nuclear Security and Incident Response (Aug. 19, 2014) (ADAMS Accession No. ML14233A593).

organizations and determined the amendment would not significantly affect the state plans based on information from the affected states.”⁴

The NRC Staff further cited the FEMA Letter in its answer to the Board’s question at the oral argument, filed on December 8, 2014.⁵

The State reiterates its position that the Staff presentation of the FEMA Letter at oral argument was inappropriate, given that: (1) as Staff conceded during the oral argument, the letter was not contained in the Staff’s pleadings under consideration at the argument,⁶ and (2) the letter was not a public document – and thus was neither available to the State in this proceeding, nor had counsel for the State seen it – until *after* the pleadings were submitted and oral argument had occurred. For both of these reasons, the State has been unfairly deprived of an opportunity to fully analyze this letter and respond to the Staff’s arguments. The State therefore respectfully suggests that the Board give no weight to the FEMA Letter, and/or representation from Staff regarding the same, when considering the admissibility of its contention.

More importantly, the Board should give no weight to the FEMA Letter because it is contextually incomplete and therefore inaccurate in stating that the LAR “changes were coordinated with, and approved by . . . Vermont.” To the contrary, as the State noted in its Petition, it first learned about this LAR “when it was filed.”⁷ As the State further noted, “[d]espite ongoing discussions with the State on decommissioning matters, Entergy did not

⁴ *Id.* at 1.

⁵ NRC Staff Answer to Atomic Safety and Licensing Board Question Asked During December 1, 2014 Contention Admissibility Oral Argument, at 3 (Dec. 8, 2014) (ADAMS Accession No. ML14342A336).

⁶ Tr. at 94; *See* ASLB Memorandum and Order (Oral Argument Schedule), Docket No. 50-271-OLA, ASLBP No. 04-832-02-OLA, at 2 (The main purpose of the oral argument is to allow the Board to elicit legal and factual points that will assist it in deciding the issues presented by the pleadings) (Oct. 18, 2004) (ADAMS Accession No. ML042940087).

⁷ DPS Notice and Petition at 1.

consult with the State before making this filing.”⁸ NRC Staff is aware of Entergy’s failure in this regard. Again, as noted in the Petition, Staff sent two Requests for Additional Information (“RAI”) asking Entergy whether it had considered “licensee interface and coordination with State and local response organizations.”⁹

The RAIs prompted Entergy to reach out to and solicit comments from the Vermont Division of Emergency Management and Homeland Security (“VDEMHS”) regarding its proposed elimination of two Emergency Response Organization (“ERO”) positions at the plant only after filing its LAR. Entergy’s communications on that front are telling – it did not once mention the elimination of ERDS.¹⁰ To the contrary, Entergy’s communications asserted that the “tasks for every ERO position that are being eliminated have been evaluated and tasks that are required have been reassigned to other ERO positions.”¹¹ Entergy then affirmatively told the State that “there would be *no impact* to you.”¹² A month later, in May 2014, Entergy explicitly stated that it had reviewed the Radiological Emergency Response Plans (“RERP”) for Vermont, New Hampshire, and Massachusetts, and that “[t]he only changes that we identified were references to the EOF Manager in one of [Massachusetts’s] procedures.”¹³ In June 2014, Entergy asked the State to confirm its assessment, again without any mention of the elimination

⁸ *Id.*

⁹ See NRC Request For Additional Information Regarding License Amendment Request For Emergency Plan Change (TAC NO. MF3668) (May 5, 2014 & July 1, 2014) (ADAMS Nos. ML14115A029 & ML14163A590)

¹⁰ See Email from Michael McKenney, Entergy Vermont Yankee Emergency Preparedness Manager, to Erica Bornemann, VDEMHS Planning Section Chief (Apr. 25, 2014) (ADAMS Accession No. ML14209A853).

¹¹ *Id.*

¹² *Id.* (emphasis added).

¹³ Email from Michael McKenney, Entergy Vermont Yankee Emergency Preparedness Manager, to Erica Bornemann, VDEMHS Planning Section Chief (May 13, 2014) (ADAMS Accession No. ML14209A853).

of ERDS, and on July 1, 2014, VDEMHS's Planning Section Chief, Erica Bornemann, gave the following response to Entergy:

We have reviewed the changes to the staffing at the ERO and specifically the positions you have outlined as having responsibilities to directly interface with state representatives. . . . As it relates to the elimination of the EOF Manager and the JIC Logistic Coordinator we are comfortable with the reallocation of their responsibilities to other positions within the ERO. We don't, however, have enough information from the documentation to be able to tell what impact the broader staffing reductions have on the capacity of those individuals to be able to handle the additional responsibilities, but that is outside of the scope of this particular RAI. While having the opportunity to review the changes and provide input as outlined by the NRC RAI is appreciated, ideally we would be able to take a look at these impacts before these filings which could potentially reduce the back and forth after the fact. There are no additional changes needed in our plans related to those two positions being eliminated.¹⁴

Ms. Bornemann's response makes clear that the State's agreement was limited only to the reduction of two identified staff positions contemplated in the LAR, in the context of representations made by Entergy that all relevant duties had been reassigned to others. The email also makes clear that the State did not voice support for or comfort with any additional aspect of the LAR, including the discontinuance of the ERDS relay.

The State had significant concerns about the broader impacts that the proposed staffing reductions might have on overall RERP effectiveness. In this instance, the State was in no way made aware of Entergy's plan to discontinue the plant's ERDS feed to the NRC (and thus the State) prior to the filing of the LAR with the NRC. This is precisely the kind of broader impact Ms. Bornemann spoke of in her response, as well as a suggestion that the State be made aware of all changes proposed in the LAR prior to filing in order to allow the State to better understand potential impacts on the RERP. Furthermore, the State had no direct contact with FEMA regarding its support (or lack thereof) for the changes proposed in the LAR. The FEMA Letter,

¹⁴ Email from Erica Bornemann, VDEMHS Planning Section Chief to Michael McKenney, Entergy Vermont Yankee Emergency Preparedness Manager (Jul. 1, 2014) (ADAMS Accession No. ML14209A853).

at best, reflects only the representations Entergy made regarding the three states' "approval" of the proposed staffing reductions.

The State's contention it now seeks to have admitted is entirely consistent with the comments it made to Entergy about the proposed staffing reductions. The State had not received sufficient information to allow it to properly understand and evaluate the full impacts of the LAR on July 1, 2014. Indeed, the State's concerns about this lack of information have proved to be correct, as the State now requests this Board to hold an in-depth inquiry into the broader impacts of Entergy's proposed discontinuance of its ERDS relay as proposed in the LAR.

Based on the foregoing, the State respectfully recommends that this Board not consider the FEMA Letter as part of a determination on the admissibility of the State's contention. Alternatively, if the FEMA Letter is to be considered in any respect, the proper place to do so would be at a later merits hearing, where it could be placed into proper context and the State would have an opportunity to challenge the accuracy and reliability of these hearsay statements. As noted in numerous filings in this proceeding, if a hearing is granted, the State is prepared to present testimonial evidence that elimination of ERDS will adversely impact the State's RERP implementation and effectiveness.

Respectfully submitted,

/Signed (electronically) by/
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This 12th day of December, 2014