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NUCLEAR REGULATORY COMMISSION

Title: Entergy Nuclear Operations
Vermont Yankee Nuclear Power Station

Docket Number: 50-271-LA-2

ASLBP Number: 15-937-02-LA-BD01

Location: (teleconference)

Date: Wednesday, April 8, 2015

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Pages 1-35

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: : Docket No.
ENTERGY NUCLEAR VERMONT : 50-271-LA-2
YANKEE, LLC, AND ENTERGY : ASLBP No.
NUCLEAR OPERATIONS, INC. : 15-937-02-LA-BD01
(Vermont Yankee Nuclear :
Power Station) :

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Wednesday, April 8, 2015

Teleconference

BEFORE:
PAUL S. RYERSON, Chair
DR. MICHAEL F. KENNEDY, Administrative Judge
DR. RICHARD E. WARDWELL, Administrative Judge

1 APPEARANCES:

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On Behalf of the State of Vermont
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P R O C E E D I N G S

9:00 a.m.

1
2
3 CHAIR RYERSON: Good morning everyone and
4 welcome. We're here on the matter of an application
5 by Entergy Nuclear Vermont Yankee, LLC and Entergy
6 Nuclear Operations, Inc. to amend the license for
7 Vermont Yankee Nuclear Power Station.

8 I'm Judge Ryerson. Excuse me one second.

9 MR. PEPPERL: I think we need to join the
10 conference to get the listeners in as well.

11 Is the conference leader still on the
12 line?

13 OPERATOR: Yes, I'm here.

14 MR. PEPPERL: Have we joined in with the
15 listeners?

16 OPERATOR: I will join you now, one moment
17 please.

18 MR. PEPPERL: Okay, great, thank you.
19 Sorry.

20 OPERATOR: All right, you may proceed.

21 CHAIR RYERSON: Okay, so we'll start over.

22 Again, I'm Judge Ryerson. We're here on
23 the matter of an application by Entergy Nuclear
24 Vermont Yankee, LLC and Entergy Nuclear Operations,
25 Incorporated to amend the license for Vermont Yankee

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1 Nuclear Power Station.

2 I'm trained as a lawyer. I chair the
3 Atomic Safety and Licensing Board that the NRC has
4 assigned this particular proceeding.

5 With me is Judge Kennedy. Dr. Kennedy is
6 a nuclear engineer and our third Board Member who is
7 also here with us is Dr. Wardwell who is trained as a
8 civil engineer and has a particular focus on
9 environmental geoscience.

10 Today's proceeding concerns a petition by
11 the State of Vermont for a hearing on Entergy's
12 License Amendment Application and to intervene. And
13 I should say that, in addition to being recorded by
14 the Court Reporter today, our telephone conference is
15 being made available in a listen only telephone mode
16 to members of the public and the press.

17 Before we take the appearances of counsel,
18 I'd like to summarize how the Board intends to proceed
19 this morning.

20 Our purpose is to hear arguments on
21 whether Vermont has submitted an admissible contention
22 so as to justify a hearing on Entergy's application.
23 There doesn't appear to be any questions, but that the
24 State of Vermont has standing to petition for a
25 hearing. But the question is whether Vermont has put

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1 forward an admissible contention appropriate for a
2 hearing before the Board under the NRC's rules.

3 All of the Board Members, I can assure
4 you, have read the parties' legal memorandum, we've
5 studied them. We understand your arguments and,
6 therefore, I'm hopeful that today's call will be a
7 relatively short one. We really want to focus today
8 on questions the Board Members have.

9 And in particular, as we indicated in the
10 Scheduling Order for this call, we expect that most of
11 our questions will focus on whether Vermont's
12 contention number two is admissible regardless of
13 whether the Commission reconsiders Entergy's request
14 for an exemption from certain NRC regulations.

15 The Commission has already approved that
16 exemption request once and the Commission has before
17 it the State of Vermont's request for reconsideration
18 of that approval.

19 So, our argument -- the arguments that
20 we're most interested in today, frankly, are the
21 arguments that are, I think, are advanced at page
22 seven of Vermont's reply primarily. And that is, even
23 if the Commission were to reaffirm the granting of an
24 exemption in full, is it still an admissible
25 contention here?

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1 Generally, I think when any Board Member
2 asks a question, we will try to direct it to a
3 particular party, but we're going to be fairly
4 informal here. If someone feels a need to comment on
5 a question and they haven't been specifically asked
6 for an answer, just let us know at the earliest
7 convenience or appropriate moment.

8 If would be helpful, of course, and
9 especially helpful to the Court Reporter, if everyone
10 remembers to identify themselves before they speak.

11 I am hopeful, I think the Board is hopeful
12 that we will finish within an hour or so. If it looks
13 like it might go much longer than that, we'll consider
14 taking a short break.

15 Any comments from the other Judges before
16 we take the formal appearances of counsel?

17 Judge Kennedy?

18 JUDGE KENNEDY: Nothing.

19 CHAIR RYERSON: Judge Wardwell?

20 JUDGE WARDWELL: I have nothing.

21 CHAIR RYERSON: Okay. Well, let's begin
22 then.

23 Let's start first with the State of
24 Vermont. Who will be the primary speaker at least for
25 the State of Vermont today?

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1 MR. KISICKI: Good morning, Your Honor.
2 My name is Aaron Kisicki and I represent the State of
3 Vermont.

4 CHAIR RYERSON: Okay, welcome, Mr.
5 Kisicki.

6 MR. KISICKI: Thank you.

7 CHAIR RYERSON: And for Entergy, is the
8 Mr. Kuyler?

9 MR. KUYLER: Yes, Your Honor, this is Ray
10 Kuyler for Entergy. Also in the room with me is my
11 colleague, Paul Bessette and Susan Raimo, Senior
12 Counsel at Entergy.

13 CHAIR RYERSON: Okay, and welcome to you.
14 And the NRC staff?

15 MS. MIZUNO: For the NRC staff, this is
16 Beth Mizuno. The primary speaker today will be Mitzi
17 Young. Accompanying us are Daniel Straus and Jeremy
18 Wachutka. We're also joined by a number of members of
19 the staff.

20 And, if I could, since we're doing notices
21 of appearance right now, or we're doing appearances,
22 I'd like to apologize, it was last night that we
23 discovered that, through inadvertent, we had failed to
24 file notices of appearances in this particular Vermont
25 Yankee proceeding. And we have remedied that now. My

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1 apologies.

2 CHAR RYERSON: We noticed a number of
3 filings early this morning. Thank you.

4 And welcome to all of you, as well, to the
5 call.

6 All right. Well, let's begin with
7 essentially the question we posed in the Order setting
8 up the call. We're not asking for formal opening
9 arguments, but essentially, this will be a chance to
10 say what you would like about that issue.

11 So, specifically, the question is, let's
12 assume for purposes of argument, that the Commission,
13 again, affirms the approval of the exemptions. And I
14 know the exemptions haven't technically issued yet,
15 but they Commission has approved them conceptually
16 once, I guess is an accurate way to describe where we
17 are.

18 There's a pending petition by the State in
19 front of the Commission and if the Commission simply
20 says we were right the first time or dismisses the
21 petition on procedural grounds or whatever, let's
22 assume that those exemptions are, in fact, allowed by
23 the NRC.

24 Is the contention still admissible? And
25 that's an argument that the State makes, as I said, I

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1 think on page seven, in particular, of your reply.

2 So, I will turn it to you, Mr. Kisicki.

3 Do you want to elaborate on that argument?

4 MR. KISICKI: Certainly, Your Honor.

5 And first and foremost, before I begin, I
6 also would like to apologize on behalf of the State
7 for some of its procedural missteps that we've made in
8 this proceeding so far.

9 In particular, obtaining certain
10 certifications regarding our Motion to Stay. We will
11 endeavor to do a better job going forward.

12 CHAIR RYERSON: No need to apologize, but
13 that is, in my view, an important requirement of the
14 rules. If the parties can work things out, often they
15 can't, but if they can work things out, that makes
16 life easier for everyone including, I think,
17 ultimately the parties.

18 But, in any event, yes, thank you for
19 mentioning that and please continue.

20 MR. KISICKI: Thank you.

21 In response to your question, the answer
22 is yes, contention two standing alone, I think, is
23 admissible even in the event that the Commission were
24 to reaffirm its approval of the NRC's staff
25 recommendation to the exemption request.

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1 As outlined on page seven of our reply, we
2 have expert -- we have standings from our experts that
3 the analysis used to justify the LAR is deficient on
4 its face. It doesn't analyze credible beyond design
5 basis threats to include a possible action, use of
6 accelerants and fuel transfer accidents.

7 That alone, I think it would be left to
8 justify at a hearing on it was viewed under the
9 requirements of 50.54(q)(4).

10 But beyond that, the question itself goes
11 to a larger issue which needs to be addressed with
12 this contention two can't be properly evaluated at
13 this time because we don't know what the Commission is
14 going to rule. It's speculative at best to say that
15 the Commission will reaffirm its initial ruling.

16 One, the Commission may wind up siding
17 with the State and deciding that there is a hearing
18 right that's been triggered with respect to the
19 exemption request which very well may cause an
20 amendment of contention two that would change the
21 dynamics of the position with respect to contention
22 two.

23 Or the Commission may instruct the NRC
24 staff to treat contention two in a particular way.

25 We simply don't know at this time and I

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1 think that makes it very difficult for any party here
2 to say with any certainty whether or not contention
3 two isn't admissible. On its face right now it is and
4 any change to contention two that might be triggered
5 by a Commission ruling pursuant to the Motion for
6 Reconsideration could fundamentally change the
7 dynamics of the entire contention from the State's
8 perspective.

9 CHAIR RYERSON: Yes, Mr. Kisicki, let me
10 sort of run through the scenarios at least as I see
11 them and see whether you disagree.

12 It is possible that the Commission will
13 simply reject your Petition for Reconsideration in its
14 entirety on procedural grounds, on some other grounds,
15 we don't know, but simply reject it.

16 And if that's the case, then the question
17 that the Board has posed for you would seem to be
18 highly relevant to me and that is, suppose the
19 Commission does that? Is there still, in those
20 circumstances, an admissible contention two?

21 And that's what we would appreciate your
22 addressing in a little more detail than on page seven
23 of the reply.

24 Now, if the Commission does something else
25 which is a much broader category, it is certainly

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1 possible that the Commission has been known to do
2 this, but this Commission might explain how it would
3 expect the Board to proceed in these circumstances.
4 I think that's very possible or the Board would have
5 to figure out how it's supposed to proceed or you
6 might want to amend or whatever.

7 But, I mean don't those seem to you to be
8 the options? If the Commission simply rejects your
9 Petition for Reconsideration and, in effect, has twice
10 approved the exemption that we're talking about or
11 exemptions, then isn't the critical question whether
12 you have asserted an admissible contention, even in
13 those circumstances?

14 And if the Commission does something else,
15 well, I'm sure that we have to probably kind of play
16 it by ear because we'll see what the Commission says
17 about that if the Commission does something else.

18 I mean do you disagree with that analysis
19 of the likely scenarios that are in front of us?

20 MR. KISICKI: I agree with you, Your
21 Honor, that in the event that if the Commission were
22 to reject our Motion for Reconsideration completely
23 out of hand in its entirety, we would be left with the
24 core question of whether or not contention two is
25 admissible as is today.

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1 CHAIR RYERSON: Right.

2 MR. KISICKI: With that being said, I
3 think, again, the answer is yes, it certainly is.

4 Again, it goes to another procedurally
5 we're up in an upward position and we've been put in
6 that position because of Entergy's actions where they
7 failed to get the predicate exemption request prior to
8 filing the LAR.

9 Right now, what is undisputed by any party
10 is, if the Board were to grant the LAR today, it would
11 -- the LAR would be essentially illegal. It would be
12 in violation - it violates the regulations as they are
13 put out today. There is no exemptions that's been
14 granted at this point.

15 So with that said, under the requirements
16 at 50.54(q)(4), Entergy is required to show that any
17 reduction in emergency plans and emergency plan
18 safety, they have to identify the basis for concluding
19 that the revised emergency plan would meet the
20 requirements of 50.47(b) and Appendix E.

21 In this situation, the State's contention
22 points out that because the underlying safety analysis
23 fails to identify and analyze credible beyond design
24 basis threats including hostile actions, use of
25 accelerants and, in particular, fuel transfer

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1 accidents.

2 That satisfies all the admissibility
3 requirements justifying a hearing on this issue alone.

4 CHAIR RYERSON: And that, again, is
5 because what NRC regulatory requirement mandates that?

6 MR. KISICKI: 50.54(q)(4).

7 JUDGE WARDWELL: Mr. Kisicki, this is
8 Judge Wardwell.

9 Do you know if any of these particular
10 scenarios were evaluated as part of the exemption
11 request?

12 MR. KISICKI: My understanding is with
13 respect -- there was no analysis of a situation where
14 accelerants were used and particular hostile actions
15 including I think what our experts identified was a
16 lack of analysis of say and airplane strike.

17 I apologize, I'm not sure of the answer
18 with respect to fuel transfer accidents. But I think
19 the answer to that is also no, I don't think was
20 analyzed as part of the exemption request.

21 I'm more than happy to check on that and
22 get back to you with that question.

23 JUDGE WARDWELL: We'll let you know
24 whether we need that or not based on responses we
25 receive here from the other parties.

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1 MR. KISICKI: Thank you.

2 CHAIR RYERSON: Do you have anything more
3 to add in regards to whether contention two would be
4 admissible if the exemptions were granted?

5 MR. KISICKI: Again, I think on its face,
6 the State has put forth a contention that identified
7 with specificity deficiencies in their analysis that
8 is support by expert affidavits not only from the
9 Department of Public Affairs and State Nuclear became
10 aware but as well as representatives from the State's
11 Division of Emergency Management and Homeland Security
12 and the State Department of Health.

13 And that analysis and those affidavits
14 satisfy the admissibility requirements justified in
15 here.

16 CHAIR RYERSON: Mr. Kisicki, this is Judge
17 Ryerson.

18 The affidavits that you talk about are the
19 statements that were submitted? Are they sworn
20 affidavits or subject to penalty of perjury or are
21 they simply statements?

22 MR. KISICKI: They are sworn as far as I
23 can tell. We did not include an affidavit to that
24 effect but we can supply the Board with that if they
25 would like.

1 CHAIR RYERSON: Okay. It's not that I
2 missed something, there is no sworn declaration with
3 the statement at this point.

4 MR. KISICKI: No, there is not.

5 CHAIR RYERSON: But you are asserting that
6 you believe that these individuals would, in fact,
7 sign an affidavit incorporating what they wrote?

8 MR. KISICKI: Yes.

9 JUDGE WARDWELL: Under the basis of our
10 arguments -- this is Judge Wardwell again -- the line
11 of questioning that we're doing now, that is assuming
12 that the exemptions are maintained and as we move
13 forward, do you agree that challenging an exemption
14 that's been approved by the Commission is
15 impermissible similar to any other Commission ruling?

16 MR. KISICKI: I think in this instance,
17 there is a unique circumstance which may override that
18 general rule.

19 Here, as outlined in our reply and in our
20 Motion for Reconsideration, the NRC has found that a
21 hearing right is triggered with respect to exemption
22 requests when the exemption request is related to the
23 LAR.

24 Here, Entergy is very clear on the face of
25 its LAR that the LAR is predicated exclusively on the

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1 granting of the exemption request.

2 And in the Private Fuel Storage case which
3 is cited in the Motion for Reconsideration and the
4 State's reply, NRC was clear that the exemption can't
5 remove quote, a matter germane to a licensing
6 proceeding in consideration in a hearing assuming that
7 an interested party raises an admissible contention
8 thereof. To do otherwise would exclude critical
9 safety questions from licensing hearings merely on the
10 basis of an exemption label.

11 That's exactly what's occurred here.
12 Entergy is seeking to remove scrutiny by this State
13 and by the Board of critical safety questions
14 contained in the exemption request simply by labeling
15 it an exemption.

16 JUDGE WARDWELL: Yes, but does not
17 contention two still need to meet the admissibility
18 criteria? And if, in fact, it hinges on challenging
19 the exemption, if that exemption has been ruled by the
20 Commission to be valid, then isn't that grounds for
21 dismissing that contention?

22 MR. KISICKI: It would be if the
23 contention itself was grounded on the exemption
24 request.

25 JUDGE WARDWELL: Right, that's all I'm

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1 saying. Under that scenario, you agree that it would
2 be, correct?

3 So, what we're left with is your abilities
4 to demonstrate that, in fact, you have other things in
5 contention to that are not related to those exemptions
6 in order to make that admissible, is not that correct
7 under the premise of where we're moving forward on
8 this argument today?

9 MR. KISICKI: Correct. And I think, again
10 --

11 JUDGE WARDWELL: Do you agree with that?

12 MR. KISICKI: Yes, I would insofar that
13 fundamentally, the State is seeking to have the Board
14 consider the exemption request.

15 More to the point, NRC precedent indicates
16 that we have a right of the exemption request.

17 It's hard to align, but I agree with you,
18 but it's hard to separate that out.

19 CHAIR RYERSON: Mr. Kisicki, this is Judge
20 Ryerson.

21 If I understand the Private Fuel Storage
22 case --

23 MR. KISICKI: It's quite all right.

24 CHAIR RYERSON: Let me -- all right.

25 There are two things that distinguish that

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1 case I think.

2 One is that the Commission had not
3 approved the exemption. I mean we have a more, maybe
4 it's an unusual situation, I'm not sure exactly in
5 what circumstances the Commission must approve an
6 exemption. In some circumstances, the staff is
7 authorized to grant an exemption without explicit
8 Commission approval.

9 Here we have Commission approval and also,
10 the actual facts in Private Fuel Storage are kind of
11 very favorable to the petitioner, frankly. I mean in
12 that instance, there was an ongoing adjudication in
13 front of a Licensing Board.

14 The applicant's compliance with a
15 particular regulation was being challenged by the
16 petitioner and the staff said, well, we'll handle
17 that. We'll just grant an exemption from the
18 regulation, end of story.

19 And the Commission unanimously said no,
20 you can't do that. That's really not fair. That just
21 totally undercuts the whole adjudicatory process.

22 Now the ruling may go beyond that
23 particular circumstance but it's not clear to me
24 exactly where it does go, but it seems to me that, as
25 a practical matter, when the Commission approves an

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1 exemption and the Commission has the opportunity to
2 reconsider its approval of that exemption, then, you
3 know, is the Licensing Board supposed to be rethinking
4 what the Commission does as far as the exemption goes?
5 It seems a little backwards to me. What's your
6 response to that?

7 MR. KISICKI: Well, the Board shouldn't be
8 reading much into the Commission's granting an
9 exemption because the Commission showed that there was
10 little process behind their granting of it.

11 And this Motion for Reconsideration
12 outlines the Commission failed to, you know, engage in
13 a NEPA review as required under Federal law.

14 And, you know, the fact that an exemption
15 hasn't been issued by the NRC staff at this point is
16 evidence that it means the staff is considering the
17 things laid issues in front of the Commission that
18 have merit with respect to the exemption request.

19 CHAIR RYERSON: Mr. Kisicki, Judge Ryerson
20 again.

21 You have, in fact, made these same
22 arguments to the Commission which is currently
23 presumably considering them, is that not correct?

24 MR. KISICKI: Correct.

25 CHAIR RYERSON: Yes, and -- okay.

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1 Well, we've gone on for almost half an
2 hour, do you have anything further at this point? We
3 may give you an opportunity at the end to say another
4 word or two, Mr. Kisicki.

5 MR. KISICKI: I appreciate that and I
6 think I am okay for now.

7 CHAIR RYERSON: Okay.

8 MR. KISICKI: Thank you.

9 CHAIR RYERSON: Thank you.

10 Let's turn next to Entergy. Mr. Kuyler,
11 do you want to comment?

12 MR. KUYLER: Yes, thank you, Your Honor.

13 Before I get started, I should also
14 mention we have a couple of technical folks from
15 Entergy in the room with me as well, like the NRC
16 staff.

17 In terms of commenting on the discussion
18 so far, I would like to point out that, you know,
19 under the Notice of Opportunity for Hearing and under
20 the regulations, the issue presented to the Board is
21 whether the proposed decommissioning emergency plan
22 and the AL scheme are adequate under the regulations
23 as exempted.

24 And that includes questions like, you
25 know, does the License Amendment Request provide for

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1 adequate equipment, facilities, organizational
2 staffing, whether actions to mitigate consequences are
3 identified, whether there are periodic drills and
4 exercises for on site emergency planning, et cetera.
5 And I think we've briefed this in our answer.

6 So, contrary to what the State says on
7 page two of its reply, it's not that there's nothing
8 left for the NRC or the Board to consider in this
9 proceeding, there is quite a bit of substance that
10 could be challenged. But the State hasn't challenged
11 any of those things.

12 Almost the entirety of contention two, as
13 far as we can tell, challenges the exemption request
14 and not the License Amendment Request.

15 Even the statement of the contention
16 itself is that the exemption request and License
17 Amendment Request taken together are not a challenge
18 to the LAR alone.

19 So, when the State says that Entergy's
20 License Amendment Request, if approved along with the
21 predicate requested exemption fails to meet the
22 regulations.

23 So, our understanding is that the NRC will
24 not issue the exemption until it is satisfied that the
25 requirements that Commission has set forth in its

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1 precedent are met and that includes the various action
2 analyses that go into it.

3 So, all of the questions of whether spent
4 fuel accident evaluations are adequate, they need to
5 be shown to be adequate before the exemption is
6 granted. So, those are issues for the exemption
7 request, not the License Amendment Request.

8 And I think, you know, when we get to the
9 question that the Board asked this morning, I think
10 the State has effectively conceded this fundamental
11 issue.

12 On page nine of its original petition the
13 State says the LAR meets the requirements of Section
14 50.54(q) (4) only in the event Entergy is exempted from
15 material requirements of Part 50 Appendix E.

16 So, our --

17 CHAIR RYERSON: Mr. Kuyler, Judge Ryerson
18 here.

19 I sort of agree with you, they probably
20 meant to say if at all only if, but I think we're --
21 well, I see you make a point and we've noticed that as
22 well. But that's clearly, at least in my view, not
23 the same thing they're saying at page seven of their
24 reply brief.

25 So, I would not be inclined to estop them

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1 from the argument on page seven of the reply brief by
2 th reason of this statement on page nine of the
3 petition.

4 But I do want to ask you to a little
5 directly address, you know, the argument that the
6 State has made that, put aside the exemption, as you
7 say the question, if we put aside the exemptions and
8 assume that the Commission will reaffirm, assume for
9 purposes of argument that the Commission totally
10 reaffirms the granting of those exemptions, then as
11 you say, the Board's job is to look at whether the
12 License Amendment complies with the NRC regulations as
13 exempted.

14 But that's Mr. Kisicki's argument on page
15 seven of the reply is that even if those exemptions
16 are, in effect, affirmed, there is still a violation
17 or a potential violation has been adequately made out
18 that 50.54(q)(4), I think is the cite, is not
19 satisfied.

20 And, you know, we have three declarations
21 from people who have certainly certain qualifications.
22 We have the representation of counsel that they would,
23 in fact, sign an affidavit to the effect of their
24 statements.

25 And so, what's your response to that? I

1 mean are those -- is there a much more slender
2 admissible contention here in contention two even
3 putting aside the exemptions?

4 MR. KUYLER: Well, just to preface this,
5 as I mentioned, Your Honor, the statement of the
6 contention itself ties the two things together. So,
7 we would have to hunt through the bases for the
8 contention to try to glean out something that is a
9 challenge to the License Amendment Request and not the
10 exemption request. And I don't think that Mr. Kisicki
11 has identified anything of that nature in this
12 morning.

13 You know, we did brief some of this
14 information in our answer starting at page 25. There
15 are statements in the expert declarations in certain
16 areas that do raise issues related to the LAR.

17 For example, the State claims that Entergy
18 must comply with all the requirements of Part 50
19 Appendix E in order for NRC to approve the LAR. And,
20 again, I think we've pointed out that that's actually
21 a challenge to the exemption request which must be
22 granted before the License Amendment Request is
23 granted.

24 There are also some of the statements of
25 Ms. Bornamin (phonetic) ***9:33:28*** talking about

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1 implementing procedures that the State has not had the
2 opportunity to look at implementing procedures.

3 They've identified no regulatory
4 requirement that those implementing procedures be
5 presented as part of the License Amendment Request
6 review. So, we don't think that raises a material
7 issue or a genuine dispute.

8 There are certain statements by Mr.
9 Leshinskie that, you know, for example, the License
10 Amendment Request should reflect the arrangements
11 between Entergy and Vermont regarding emergency
12 notifications.

13 But they haven't identified any deficiency
14 in the application in that regard. The application,
15 as we pointed out, describes the communication
16 channels, et cetera and so they haven't raised a
17 material issue or any admissible issue with adequate
18 expert opinion support that identifies those portions
19 of the application that they are actually disputing.

20 JUDGE WARDWELL: Yes, Judge Wardwell.

21 I'd like to go back to page seven of
22 Vermont's reply where they mentioned those additional
23 accident scenarios.

24 To what degree were those accident
25 scenarios evaluated as part of the exemption requests,

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1 Mr. Kuyler?

2 MR. KUYLER: Your Honor, there was a short
3 discussion of some of those scenarios in the cover
4 information for the exemption request as background
5 information.

6 But the fundamental question of the
7 adequacy of the accident analysis must be evaluated by
8 the NRC staff and found to be acceptable before they
9 can relax the off site emergency planning requirements
10 in the exemption request.

11 JUDGE WARDWELL: Where is that codified or
12 stipulated either in rules or in directions associated
13 with the exemption itself? Is it worded that way in
14 the exemption or is there a regulation that requires
15 that or what would be the basis?

16 MR. KUYLER: I don't think there's a
17 single regulation that says that. But certainly in
18 SECY-14-0125 in general, in order for the staff to
19 exempt Entergy from the requirements for off site
20 emergency planning that are in the regulations, they
21 have -- I guess the regulatory requirement would be
22 50.12. They have to find that the public health and
23 safety are still adequately protected, et cetera.

24 And so, the NRC cannot grant the
25 exemptions until they find the accident analyses

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1 adequate.

2 CHAIR RYERSON: Any other questions from
3 other Board Members for Mr. Kuyler?

4 JUDGE KENNEDY: I have nothing.

5 CHAIR RYERSON: Judge Wardwell?

6 JUDGE WARDWELL: I'm fine.

7 CHAIR RYERSON: All right, thank you, Mr.
8 Kuyler.

9 Let's turn -- will it be Ms. Young? Will
10 you be speaking for the staff?

11 MS. YOUNG: Yes, I will.

12 CHAIR RYERSON: If you would like to
13 address the same issue that we've been talking about,
14 we would appreciate it.

15 MS. YOUNG: Well, the staff generally
16 agrees with statements by Entergy in terms of the
17 scope of the contention which, at bottom, challenges
18 whether the exemption was adequate.

19 I note for the Board, in the SECY paper
20 that has the chart address which regulatory provisions
21 would not be no longer imposed on Entergy.

22 For example, Appendix E Section 4.1, the
23 requirement to have planning associated with hostile
24 action would be removed.

25 There was an analysis in terms of the time

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1 it would take adiabatic heating in the beyond design
2 basis accident situation for to occur, the ten hour
3 period that's reflected in draft staff guidance that
4 Entergy relied on to submit its exemption request.
5 That's referred to on page two of the enclosure.

6 So, basically, there were analyses that
7 considered what the credible beyond design basis
8 accidents were. The License Amendment Application
9 also referenced, I believe, the fuel handling accident
10 analysis previously done by Entergy that was the
11 subject of another amendment. And the staff pointed
12 that out in its pleading. The page number I'll have
13 to get for you later, yes, probably around page 34 of
14 its pleading.

15 So, basically, you have a contention which
16 challenges the system of the exemption and the
17 amendment proposed by Entergy basically seeks to
18 implement the exemptions when granted and would revise
19 in terms of any delta between what was approved in the
20 exemption and what's requested in the License
21 Amendment would advise the initiating condition for
22 emergency -- only to remaining emergency action levels
23 which are notification of unusual event and alert.

24 And when looking at the contention, the
25 information provided by the State of Vermont, however,

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1 their focus is so squarely on the adequacy of the
2 exemption and analyses that support the wisdom of the
3 exemption, that they have very little information, if
4 any, that challenges those specific changes that go
5 beyond the parameters of the exemption itself.

6 CHAIR RYERSON: Okay. Thank you, Ms.
7 Young.

8 Board Members, any questions for the
9 staff?

10 JUDGE KENNEDY: This is Judge Kennedy. I
11 have nothing to add.

12 CHAIR RYERSON: Thank you.

13 JUDGE WARDWELL: I have nothing.

14 CHAIR RYERSON: All right. Mr. Kisicki,
15 I think I promised you the last word, if you want it.
16 I do think we pretty much understand the issues.
17 I'll, you know, give you a minute or two if there's
18 anything you would like to wrap up with.

19 MR. KISICKI: Thank you, I would.

20 This issue that surrounds the LAR in front
21 of the Board right now is of vital importance to the
22 citizens in Vermont.

23 Of all of the issues that the State has
24 been keeping tabs on with respect to the citizens,
25 particularly those near the plant, a reduction in the

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1 emergency planning zone is one of -- is very
2 significant to those people.

3 At this point, the State is putting
4 forward a contention as best it can because it seeks
5 -- it has raised concerns regarding the adequacy of
6 the LAR and to the extent that the LAR is related to
7 an exemption request.

8 What we're seeking is a hearing to discuss
9 those concerns and have this Board make a
10 determination with respect to those concerns on the
11 merits, and that's very important.

12 Now, the fact that the NRC staff and the
13 Board is asking questions about what's contained in
14 the exemption request shows two things.

15 One, it disadvantages the State because
16 there has been no processes that are forwarded to the
17 State with respect to the exemption request.

18 And, two, it shows that the LAR is linked
19 to the exemption request triggering a hearing right
20 and justified a hearing on both the exemption request
21 and the LAR.

22 If we look to the Private Fuel Storage
23 Tank, and Judge Ryerson, I know that you've posited
24 that it is distinguishable, I would have to
25 respectfully disagree.

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1 First off, the analysis that Private Fuel
2 Storage laid out regarding what the basis for
3 triggering a hearing right doesn't revolve around sort
4 of the procedural mechanics in where the case was
5 procedurally. It is clearly focused on one issue and
6 one issue alone, that is whether or not a License
7 Amendment Request is predicated on or linked to an
8 exemption request.

9 And it goes on to state that trying to use
10 an exemption request and sort of packing in analysis
11 with respect to safety concerns may cue an exemption
12 request and not an LAR is just a way to try to
13 circumvent a process with respect to the LAR.

14 That's what's going on in this case and
15 that's the discussion that the NRC staff having with
16 this.

17 But finally, the last thing I would state
18 is there is -- the State has raised a concern with
19 respect to the exemption request and that is that the
20 essentially the Commission failed to engaged in a NEPA
21 analysis as required under Federal law. And that is
22 a substantive issue with respect to the exemption
23 request.

24 But what that means is at this point, the
25 Board is in a position where it is not able to grant

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1 a License Amendment Request because the Commission
2 hasn't made a final determination as to the status of
3 the exemption request.

4 The LAR, therefore, is in violation of the
5 regulatory scheme as currently put forward. And until
6 there is some process that is put forward with respect
7 to the exemption request or the Commission makes clear
8 what its thinking on the exemption request, a
9 discussion of contention two on the LAR in general is
10 not ripe for review.

11 Thank you.

12 CHAIR RYERSON: Okay, thank you, Mr.
13 Kisicki.

14 Again, Board Members, any further
15 questions?

16 Okay, all right. Well, that really
17 concludes what we intended to cover today.

18 Our job, the Board's job now is to take
19 the information we have received both this morning and
20 in your written pleadings and reach a decision.

21 The Commission gives us some guidance on
22 when that should be done. Essentially, no later than
23 45 days from today which I think is May 26th or issue
24 a Notice if we need more time. I don't think we will
25 need more time than that.

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1 I don't know if anyone wishes to speculate
2 as to the likelihood that the Commission will act on
3 the petition in front of it before them, but we'll
4 have to, obviously, if that were to occur, we would
5 take that into account. Otherwise, we will just have
6 to proceed as best we see fit.

7 On behalf of the Board, I'd like to thank
8 all the counsel today for your presentations. You
9 gave very helpful and direct responses to the
10 questions that we have.

11 And, again, we are familiar with the
12 briefs. These were simply the questions that we
13 thought it would be helpful to have some oral argument
14 on.

15 We're certainly going to consider the full
16 range of your arguments as presented in your brief.

17 Any questions or comments from Judge
18 Wardwell? Judge Kennedy?

19 JUDGE KENNEDY: Judge Kennedy has nothing.

20 JUDGE WARDWELL: I have nothing more.

21 CHAIR RYERSON: Okay. Well, thank you
22 again and we stand adjourned.

23 (Whereupon, the above-entitled matter went
24 off the record at 9:45 a.m.)

25