

May 11, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO VERMONT'S NOTICE OF SUPPLEMENTAL AUTHORITY

The U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer to the "State of Vermont's Notice of Supplemental Authority" filed by the State of Vermont, through the Vermont Department of Public Service (Vermont) on May 4, 2015.<sup>1</sup> While the Staff does not object to Vermont providing notice to the Atomic Safety and Licensing Board (Board) and the participants of potentially relevant documents in the above-captioned proceeding, such notice should not serve as an opportunity for Vermont to make new arguments or submit without leave of the Board a sur-reply regarding the substance or merits of its pending petition for leave to intervene before the Board.<sup>2</sup>

Vermont's Notice of Supplemental Authority informs the Board and the participants of the availability of a draft environmental assessment (EA) and a draft finding of no significant impact (FONSI)<sup>3</sup> related to an exemption request regarding emergency planning (EP)<sup>4</sup> at the

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<sup>1</sup> State of Vermont's Notice of Supplemental Authority (May 4, 2015) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15124A845) (Notice).

<sup>2</sup> See State of Vermont's Petition for Leave to Intervene, and Hearing Request (Feb. 9, 2015) (ADAMS Accession No. ML15040A726); The State of Vermont's Reply to NRC Staff and Entergy Answers to Petition for Leave to Intervene and Hearing Request (Mar. 17, 2015) (ADAMS Accession No. ML15076A546).

<sup>3</sup> See Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station, 80 Fed. Reg. 24,291 (Apr. 30, 2015).

Vermont Yankee Nuclear Power Station (VY). However, Vermont's Notice of Supplemental Authority then goes on to argue that the publication of this draft EA and FONSI supports the admissibility of Vermont's contentions submitted earlier in this proceeding.<sup>5</sup> Specifically, from pages 3 to 4 of its Notice, Vermont attempts to add to its arguments in support of its previously-filed proposed Contentions 1 and 2.

The Staff objects to the filing of these additional substantive arguments or the filing of a sur-reply outside of the Commission's procedures. In order to amend its contentions based on allegedly new and materially different information, Vermont would have had to have filed a motion under 10 C.F.R. § 2.309(c), which, in turn, would have had to have demonstrated "good cause" and satisfied the contention admissibility requirements of 10 C.F.R. § 2.309(f).<sup>6</sup> Additionally, a sur-reply regarding a petition to intervene is not permitted by the Commission's regulations.<sup>7</sup> Therefore, at the very least, a participant would have to first request leave of the presiding officer in order to file such a sur-reply. Since Vermont has not satisfied these requirements, the Board should disregard the new arguments that Vermont makes in its Notice.

Vermont's new arguments or sur-reply also appear to be based on a misunderstanding of the NRC's exemption process and the roles of the Commission and the Staff under that process. For the purpose of attempting to clarify this misunderstanding, the following is provided. On November 14, 2014, the Staff sent SECY-14-0125 to the Commission stating that it had reviewed the technical basis for the VY EP Exemption Request and that it was requesting

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<sup>4</sup> See Letter from Christopher J. Wamser, Site Vice President, Entergy, to the NRC, Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR 50, Appendix E, Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Mar. 14, 2014) (ADAMS Accession No. ML14080A141) (VY EP Exemption Request).

<sup>5</sup> Notice at 3 ("The NRC Staff's issuance of the Draft EA and FONSI impacts this Board's review in this proceeding in two ways . . .").

<sup>6</sup> 10 C.F.R. § 2.309(c)(1), (4).

<sup>7</sup> 10 C.F.R. § 2.309(i)(3).

the Commission's approval to "process and grant, as appropriate" the request.<sup>8</sup> On March 2, 2015, the Commission approved the Staff's recommendation to grant the VY EP Exemption Request and stated that "[t]he Commission continues to support the current practice of approving appropriately justified exemptions from certain emergency planning requirements while plants are transitioning to decommissioning based on site-specific evaluations."<sup>9</sup> As the Board noted, "the exemptions haven't technically issued yet, but [the] Commission has approved them conceptually . . . ."<sup>10</sup>

Accordingly, the Board should disregard the new arguments or sur-reply presented in Vermont's Notice of Supplemental Authority.

Respectfully submitted,

**/Signed (electronically) by/**

Jeremy L. Wachutka  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15-D21  
Washington, DC 20555-0001  
Telephone: (301) 415-1571  
E-mail: Jeremy.Wachutka@nrc.gov

Dated at Rockville, Maryland  
this 11th day of May, 2015

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<sup>8</sup> SECY-14-0125, *Request by Entergy Nuclear Operations, Inc., for Exemptions from Certain Emergency Planning Requirements*, at 1-2, 4 (Nov. 14, 2014) (ADAMS Accession No. ML14227A711).

<sup>9</sup> SRM-SECY-14-0125, *Request by Entergy Nuclear Operations, Inc., for Exemptions from Certain Emergency Planning Requirements* (Mar. 2, 2015) (ADAMS Accession No. ML15061A516).

<sup>10</sup> Transcript of Teleconference in the Matter of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), at 9:14-15 (Apr. 8, 2015) (ADAMS Accession No. ML15104A384).

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO VERMONT'S NOTICE OF SUPPLEMENTAL AUTHORITY," dated May 11, 2015, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 11th day of May, 2015.

**/Signed (electronically) by/**

Jeremy L. Wachutka  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15-D21  
Washington, DC 20555-0001  
Telephone: (301) 415-1571  
E-mail: Jeremy.Wachutka@nrc.gov

Dated at Rockville, Maryland  
this 11th day of May, 2015