

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of: )

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

(Vermont Yankee Nuclear Power Station) )

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Docket No. 50-271-LA-3

September 17, 2015

**JOINT MOTION ON MANDATORY DISCLOSURES AND SCHEDULE**

In accordance with 10 C.F.R. § 2.323(a), the Atomic Safety and Licensing Board's (Board's) September 3, 2015 Order (Scheduling Conference Call and Establishing Hearing Procedures), and the September 10, 2015 conference call with the Board, the parties<sup>1</sup> provide the proposals outlined below regarding mandatory disclosures and schedules in this proceeding related to Contentions I and V.

Also, Entergy wishes to notify the Board that as a result of the Board's August 31, 2015 Memorandum and Order Granting Petition to Intervene and Hearing Request (LBP-15-24), Entergy has considered various options with regard to the challenged license amendment request (LAR), including amending or withdrawing the LAR. Entergy has decided to withdraw the LAR and currently plans to make the necessary filings early next week. Pending action on the withdrawal, the parties respectfully request that the Board issue an Order on this Joint Motion, including deferral of initial mandatory disclosures until November 2, 2015, with the State

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<sup>1</sup> The parties are Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Entergy), the U.S. Nuclear Regulatory Commission Staff (NRC Staff), and the State of Vermont (State).

reserving all rights regarding the timing and scope of any disclosures (and all other issues) based on the filings that Entergy intends to make regarding withdrawal of its LAR.

<b>Latest Entergy Proposal</b>	<b>NRC Staff Response</b>	<b>State's Response</b>
<p>If the identical relevant e-mail, including sender recipients and blind carbon-copy (bcc) recipients, exists in multiple locations, each party may produce only one copy of that e-mail. If the e-mail exists in both sender and recipient e-mail folders, the party may produce the sender's copy of the e-mail. If a chain or string of e-mails exists, the party need only produce the last e-mail in the chain or string, provided that it includes all of the previous e-mails and recipients (including all known bcc recipients) of the chain or string.</p>	<p>Agree.</p>	<p>Agree.</p>
<p>To the extent reasonably practicable, each party will provide electronic copies of documents in a word-searchable, PDF format.</p>	<p>Agree.</p>	<p>Agree.</p>
<p>A party need not identify or produce any document that already has been served on the other parties to this proceeding, including e-mails sent by one party to the other parties in this proceeding regarding this proceeding.</p>	<p>Agree.</p>	<p>Agree.</p>
<p>In connection with the NRC Staff's submittal of the hearing file, the NRC Staff will identify all documents available via the NRC's</p>	<p>Agree.</p>	<p>Agree.</p>

<p>website or the NRC Agencywide Documents Access and Management System (ADAMS), as required by 10 C.F.R. §§ 2.336(b) and 2.1203. The parties shall not otherwise be required to identify or produce docketed correspondence or other documents that the party has verified to be available via the NRC’s website or via a search of Vermont Yankee Docket No. 50-271 in ADAMS.</p>		
<p>The parties need not identify or produce press clippings, including web clippings, unless they plan to rely on them at hearing.</p>	<p>Agree.</p>	<p>Agree.</p>
<p>The parties need not produce publicly-available documents. Each party, however, will produce as part of its disclosures a log identifying publicly-available documents upon which the party may rely at hearing and indicating the location of such documents, either through ADAMS Accession Number, web address, or other clearly-specified publicly-available location.</p> <p>Entergy does not agree with adding “cost-free” to the above provision because the parties should not be required to purchase publicly-available documents for the other parties.</p>	<p>Agree.</p>	<p>Agree, <i>provided that</i> “cost-free” is added to each instance where the phrase “publicly-available” appears.</p>
<p>The parties have agreed to waive portions of the requirements in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to</p>	<p>Agree.</p>	<p>Agree.</p>

<p>produce privilege logs to the extent that the parties agree not to include in their privilege logs any privileged documents or communications that include only that party's attorneys or directly relate to communications or comments on legal filings that are part of this proceeding. The parties will still produce as part of their disclosures lists of any documents withheld as containing sensitive unclassified non-safeguards information ("SUNSI"), including, but not limited to, proprietary, confidential commercial, and security-related information.</p>		
<p>Initial disclosures by all parties and the NRC Staff prepared hearing file related to both contentions are due November 2, 2015. Monthly updates are due on the first business day of every month beginning December 1, 2015.</p> <p>The parties have reviewed and generally agree with the Board's proposed schedule set forth in the Board's September 3, 2015 Order. The parties, however, would like to clarify that the trigger for the hearing schedule for Contention I would be either the NRC Staff issuance of the results of its environmental review or the issuance of the initial decision on Contention V, whichever is later. This is necessary because it is possible that the NRC Staff will issue its environmental review before the issuance of the initial</p>	<p>Agree.</p>	<p>Agree, <i>provided that</i> the Board adopts a mandatory disclosure deadline that is no later than November 2, 2015. In the event that this deadline is tied to a future event, such as the resolution of Contention V as Entergy proposes, the State opposes any delay of the briefing of Contention V.</p> <p>Also, the State understands that Entergy now intends to make filings early next week seeking to withdraw its LAR. The State was amenable to an extension for initial disclosures until November 2, 2015 when it was assumed that the proceeding was going forward. The State continues to assent to November 2, 2015 on that basis, but reserves all rights regarding the timing and scope of any disclosures (and all other issues) based on the filings that Entergy intends</p>

<p>decision on Contention V. Accordingly, the “ER” in Table 2 should be “ER/ID” and the “BD” in Table 3 should be “BD/ID.” The parties request that the Board modify Tables 2 and 3 of the Board’s September 3, 2015 Order as indicated in Appendix A of this filing.</p> <p>The parties also would like to modify the briefing schedule for Contention V so that it does not overlap with the parties’ briefing of any appeals of LBP-15-24 under 10 C.F.R. § 2.311. Any such appeals currently must be filed by September 25, 2015, with answers opposing the appeal due by October 20, 2015. Therefore, the parties request that the briefing schedule for Contention V begin following the appeal deadline if no appeal is filed, or submission of any appeal answers if an appeal is filed, but in no event later than October 20, 2015. The parties request that the Board modify Table 1 of the Board’s September 3, 2015 Order as indicated in Appendix A of this filing.</p>		<p>to make regarding withdrawal of its LAR.</p>
<p><i>Entergy’s preferred alternative to the above agreement on scheduling:</i></p> <p>The Board concluded on page 2 of the September 3, 2015 Order that “[a]n initial decision on Contention V will be issued before the Board addresses Contention I.” Therefore, the disclosures on Contention I may be deferred</p>	<p>The NRC Staff agrees with Entergy’s preferred alternative of first conducting mandatory disclosures related to Contention V and, only after an initial decision on Contention V that does not obviate the need for a hearing on Contention I, conducting mandatory disclosures related to Contention I. This approach would be consistent</p>	<p>Disagree. The Board granted the State a hearing for two of its contentions. In these instances, directly applicable NRC regulations require that initial disclosures be made “within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party.” 10</p>

<p>until after the issuance of the initial decision on Contention V. Specifically, initial disclosures by all parties and the NRC Staff prepared hearing file related to Contention I are due 30 days after the issuance of the initial decision on Contention V. Monthly updates are due on the first business day of every month thereafter.</p> <p><i>Entergy supports this proposal for the following reasons:</i></p> <ul style="list-style-type: none"> <li>• The proposal is consistent with the Board’s plan to bifurcate the resolution of the two admitted contentions. The Board stated that “Contention V will be addressed first and be decided based on legal briefs and oral argument. An initial decision on Contention V will be issued before the Board addresses Contention I.” <i>See</i> September 3, 2015 Order, at 2. It is logical to likewise bifurcate the disclosure requirements.</li> <li>• The proposal also is consistent with the Board’s statement that resolution of Contention V may resolve Contention I. Specifically, the Board stated that it “recognizes that a decision on the legal question presented in Contention V may obviate the need for a hearing on the closely related factual matters raised in Contention I.”</li> </ul>	<p>with the Board’s September 3, 2015 Order and LBP-15-24 and would allow the parties to devote their resources to the potentially dispositive issue of Contention V.</p> <p>The NRC Staff does not view this bifurcation of disclosures along with the bifurcation of the hearing to be a departure from the regulations or an exemption or a stay, but, rather, an appropriate exercise of the Board’s authority under the circumstances and pursuant to 10 C.F.R. § 2.319.</p>	<p>C.F.R. § 3.336(a). As noted during the September 10, 2015 conference call, the State would prefer to keep that date. Nevertheless, to accommodate the other parties’ requests, the State has agreed to significant concessions on the timing of both initial disclosures and briefing. The State cannot, however, agree to a proposal that pushes the initial disclosure deadline to an undefined date that will fall many months after disclosures are due under the regulations.</p> <p>While the State accepts the Board’s decision to postpone a hearing on Contention I until Contention V has been resolved, the Board did not exempt the parties from the regulatory requirement of providing initial disclosures within 30 days of the granting of a petition to intervene. 10 C.F.R. § 3.336(a). Such an exemption is inappropriate given that these rules, including the deadline for initial disclosures, were revisited and affirmed in an extensive rulemaking process just 3 years ago. <i>See</i> 77 Fed. Reg. 46562 (Aug. 3, 2012).</p> <p>To move the date for initial disclosures beyond what the State has agreed to—and thus <i>over the State’s objection</i>—would effectively exempt Entergy and NRC Staff from regulatory requirements, without any showing that, for instance, the criteria of 10 C.F.R. § 50.12 are met. It would also in effect grant a</p>
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<p>LBP-15-24, at 44-45. Requiring mandatory disclosures for a contention that would be obviated could result in significant unnecessary effort and expense.</p> <ul style="list-style-type: none"> <li>• The proposal also does not harm the parties. All of the parties would receive the disclosures from the other parties with sufficient time to prepare for any hearing on Contention I.</li> <li>• Contrary to the State’s view, no exemption would be needed to implement Entergy’s proposal. 10 C.F.R. § 2.336(a) specifically allows the Board to make this change without an exemption under 10 C.F.R. § 50.12.</li> </ul>		<p>stay of Contention I altogether without the required showing for a stay. The Board should not allow such a departure from the regulations, particularly when: (1) the State has already agreed to provide the parties with more than twice the usual time for initial disclosures; (2) any burden is minimal because this matter concerns only two contentions, and only one contention that has a significant factual component; (3) all parties are represented and have the resources to prepare these disclosures in a timely fashion; and (4) most importantly, any delay beyond November 2, 2015 would create significant delays in proceeding with Contention I.</p> <p>On this last point, it bears emphasis that initial disclosures serve a number of important purposes, particularly in a Subpart L proceeding like this one where no other discovery is allowed. For instance, the State intends to present several expert witnesses at the hearing on Contention I, and the State would be prejudiced in its preparation of those witnesses by not having the other parties’ initial disclosures.</p> <p>Indeed, if the Board were to grant Entergy’s requested delay of initial disclosures, the entire schedule for Contention I—and maybe Contention V as well—would no longer work. For instance, the schedule for Contention I calls</p>
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		<p>for summary disposition motions within 30 days of the initial decision on Contention V. That is the exact same deadline Entergy proposes for initial disclosures. Thus, parties would be expected to file for summary disposition without having ever seen the other parties' initial disclosures.</p> <p>Entergy's proposed delay of initial disclosures also improperly denies the State of any disclosures that may be relevant to Contention V. Although the State agrees with the Board that Contention V is a legal issue, there may still be potentially relevant documents within Entergy's possession that should be disclosed before the briefing on Contention V is completed.</p> <p>In summary, although the State would prefer that all initial disclosures and briefing go forward as rapidly as possible and on the normal schedule called for under the regulations, the State is willing to accommodate the majority of the significant schedule changes proposed by Entergy. But delaying initial disclosures beyond November 2 is unacceptable, and the State respectfully requests that the Board reject that proposal.</p>
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**APPENDIX A**

**TABLE 1: Briefing Schedule for Contention V<sup>2</sup>**

CAB	Completion of any 10 C.F.R. § 2.311 Appeal Briefing for LBP-15-24 (CAB), which shall be September 25, 2015 if no appeal is filed, or October 20, 2015 if an appeal is filed, but in no event later than October 20, 2015.
CAB+25	All parties submit initial briefs on Contention V
CAB+50	All parties submit rebuttal briefs on Contention V
CAB+95	Board Decision (BD) on Contention V (if oral argument is not required)
BD	Board Decision on Contention V

**TABLE 2: Hearing Schedule for Contention I**  
**If no new or amended contentions are filed**

ER/ID	NRC Staff issues the results of its Environmental Review (ER) or issuance of the initial decision on Contention V (ID), whichever is later
ER/ID+30	Deadline for summary disposition motions
ER/ID+70	Vermont's direct testimony, statements of position, and exhibits
ER/ID+115	Entergy's and NRC Staff's rebuttal testimony, statements of position, and exhibits
ER/ID+160	Vermont's rebuttal testimony and exhibits
ER/ID+190	Evidentiary Hearing (Hrg)
Hrg+90	Initial Decision

**TABLE 3: Schedule for New and Amended Contentions**

ER	NRC Staff issues the results of its Environmental Review (ER)
ER+30	Deadline for new or amended contentions based on the ER
ER+55	Answers to new or amended contentions
ER+62	Replies to answers to new or amended contentions
ER+107	Board Decision on admission of any new or amended contentions (if oral argument is not required)
BD/ID	Board Decision on new or amended contentions or issuance of the initial decision on Contention V (ID), whichever is later
BD/ID +30	Deadline for summary disposition motions
BD/ID +70	Vermont's direct testimony, statements of position, and exhibits
BD/ID +115	Entergy's and NRC Staff's rebuttal testimony, statements of position, and exhibits
BD/ID +160	Vermont's rebuttal testimony and exhibits
BD/ID +190	Evidentiary Hearing (Hrg)
Hrg+90	Initial Decision

<sup>2</sup> The parties recognize that Vermont's agreement to this schedule is contingent on the Board not agreeing to defer disclosures for Contention I until resolution of Contention V, as proposed by Entergy and the NRC Staff.

## **CONCLUSION**

For the reasons discussed above, the parties request that the Board consider the above proposals for mandatory disclosures and hearing schedules.

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Executed in Accord with 10 C.F.R. § 2.304(d)

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*Counsel for NRC Staff*

Dated in Washington, D.C.  
this 17th day of September 2015

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:	)	
	)	
ENTERGY NUCLEAR VERMONT YANKEE, LLC	)	Docket No. 50-271-LA-3
AND ENTERGY NUCLEAR OPERATIONS, INC.	)	
(Vermont Yankee Nuclear Power Station)	)	September 17, 2015
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, a copy of the “Joint Motion on Mandatory Disclosures and Schedule” was filed through the Nuclear Regulatory Commission’s E-Filing system.

*Signed (electronically) by Stephen J. Burdick*

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