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April 17, 1989

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'89 APR 19 A9:59

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
VERMONT YANKEE NUCLEAR	)	Docket No. 50-271-OLA
POWER CORPORATION	)	(Spent Fuel Pool Amendment)
(Vermont Yankee Nuclear Power	)	
Station)	)	

MOTION TO DEFER SUPPLEMENTAL BRIEFS AND  
ORAL ARGUMENT, AND FOR ALTERNATIVE RELIEF

I. INTRODUCTION

In its Memorandum and Order dated April 7, 1989, the Appeal Board requested the NRC staff to file a supplemental brief limited to a discussion of the Limerick decision, its relevance to the instant case, and the related arguments of the intervenors. On April 12, 1989, the Nuclear Regulatory Commission filed a "Petition for Rehearing and Suggestion for Rehearing En Banc" with the United States Court of Appeals for the Third Circuit. In its petition, the Commission specifically argues that its responsibility for considering reactor safety features such as accident mitigation alternatives is determined by the Atomic Energy Act, not the National Environmental Policy Act (NEPA). The Commission's determination to seek rehearing of the Limerick decision has a direct and immediate effect on the request from the Appeal Board to brief the impact of that decision on the Vermont Yankee proceeding. The

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Staff believes that it is inappropriate and potentially wasteful to address at this time the effect of the Limerick decision on the Vermont Yankee proceeding assuming such decision remains unchanged, when a request for further consideration is pending before the Third Circuit Court of Appeals. A number of key issues (e.g. the impact of the Commission's Severe Accident Policy Statement on the consideration of environmental issues and the relationship of the Atomic Energy Act and National Environmental Policy Act) will not be clarified until the Court of Appeals acts on the Commission's request.

Similarly, the Appeal Board scheduled oral argument on the Vermont Yankee referral for Wednesday, May 3, 1989. The Staff believes that such argument should be heard at that time only if issues related to the Limerick decision are deferred for consideration at a later date.

## II. THE MOTION

Wherefore, the Staff requests the Appeal Board to extend the time for the Staff to address the Limerick decision and to postpone the scheduled oral argument until such time as the Third Circuit acts on the Commission's request for rehearing. Alternatively, if the Appeal Board would prefer that the Staff address in a supplemental brief matters other than the Limerick decision raised in New England Coalition on Nuclear Pollution's brief, such as the basis provided by the Livermore report, the Staff requests a period of at least seven (7) working days to provide such a response and that oral argument be deferred accordingly. Should the Appeal Board deny the Staff's motion for alternative relief, the Staff has

no objection to the Appeal Board's conducting oral argument as scheduled. <sup>1/</sup>

Respectfully submitted,

*Ann P. Hodgdon*  
Ann P. Hodgdon  
Counsel for NRC Staff

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<sup>1/</sup> The Staff telephoned counsel for the other parties to the referral. The licensee's counsel was unavailable and NECNP's counsel indicated that NECNP would prefer to see the Motion before taking a position.



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(Vermont Yankee Nuclear Power  
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Docket No. 50-271-OLA  
(Spent Fuel Pool Amendment)

OFFICE OF GENERAL COUNSEL  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "MOTION TO DEFER SUPPLEMENTAL BRIEFS AND ORAL ARGUMENT, AND FOR ALTERNATIVE RELIEF" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, and also, handcarried to the Licensing Appeal Board on this 17th day of April, 1989:

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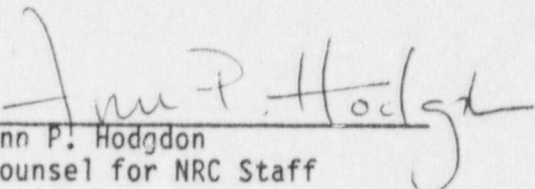
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