

September 21, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR VERMONT YANKEE,)	Docket No. 50-271-OLA
LLC and ENTERGY NUCLEAR)	
OPERATIONS, INC.)	ASLBP No. 04-832-02-OLA
)	
(Vermont Yankee Nuclear Power Station))	

NRC STAFF'S ANSWER TO
VERMONT DEPARTMENT OF PUBLIC SERVICE'S
"REQUEST FOR ORAL ARGUMENT OR, ALTERNATIVELY,
FOR LEAVE TO FILE A REQUEST TO FILE A REPLY BRIEF"

On September 15, 2005, the Vermont Department of Public Service ("DPS") filed a "Request for Oral Argument or, Alternatively, for Leave to File a Request to File a Reply Brief" ("Request"). Therein, DPS requested that the Licensing Board hold an oral argument on DPS's "Motion to Compel Production of Certain NRC Staff Documents" ("Discovery Motion"), filed on August 31, 2005, or in the alternative, that DPS be permitted to file a request to reply to the NRC Staff's ("Staff") September 12, 2005 response to DPS's Discovery Motion.¹ For the reasons set forth below, the Staff opposes DPS's Request, absent any showing of good cause in support thereof or any reason to believe that either of those measures are necessary for the Licensing Board's resolution of DPS's Discovery Motion.

In its Request, DPS asserts that the Staff, in its Answer to DPS's Discovery Motion, "made several arguments that warrant a response," and that it should be allowed to respond to the Staff (orally or in a written reply), and to "answer any questions the Board may have." Request at 1. DPS altogether fails to indicate, however, which statements in the Staff's Answer it seeks to address, or why it believes a response is required. Moreover, DPS fails to address

¹ "NRC Staff's Answer to Vermont Department of Public Service's Motion to Compel" ("Answer"), dated September 12, 2005.

the requirements of 10 C.F.R. § 2.323(a), which explicitly states that “a motion must . . . state with particularity the grounds and the relief sought.” No such showing has been provided by DPS in support of its request for oral argument or for leave to file a request to file a reply.

Further, DPS has not provided any indication of the specific matters it seeks to address in oral argument, or why oral argument on its Discovery Motion is warranted. To the contrary, DPS has had an opportunity to present any arguments it believes to be appropriate in its Discovery Motion. The Staff responded to those arguments in its Answer of September 12, 2005. DPS has shown no reason to believe that it should be permitted to present any supplemental argument in support of its Discovery Motion. Further, any arguments which DPS now seeks to present should have been presented in its Discovery Motion, and DPS has not shown any reason to believe that it reasonably could not have done so.

Finally, DPS has provided no basis for the Board to consider its request for leave to file a request to reply to the Staff’s Answer. If DPS should elect to file a request for leave to reply, that request would have to be considered on its own merits. No showing of the merits of any such request has been made by DPS here, sufficient to warrant that the its present Request be granted.²

² It should be noted that the Commission’s Rules of Practice disfavor the filing of replies except upon a showing of compelling circumstances:

The moving party has no right to reply, except as permitted by . . . the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks to reply.

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that DPS's request for oral argument or, alternatively, for leave to file a request to reply, should be denied.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC staff

Dated at Rockville, Maryland
this 21st day of September 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO VERMONT DEPARTMENT OF PUBLIC SERVICE'S "REQUEST FOR ORAL ARGUMENT OR, ALTERNATIVELY, FOR LEAVE TO FILE A REQUEST TO FILE A REPLY BRIEF," 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 (*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (**), this 21st day of September, 2005.

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