

November 22, 2005 (4:00pm)

UNITED STATES
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

VERMONT DEPARTMENT OF PUBLIC SERVICE MOTION
TO COMPEL PRODUCTION OF CERTAIN NRC STAFF DOCUMENTS (III)

I. INTRODUCTION

Pursuant to 10 C.F.R. §2.323 the Vermont Department of Public Service (DPS) moves the Board to direct the NRC Staff (Staff) to produce certain documents the existence of which was disclosed on the September 29 and October 31, 2005 Deliberative Process Logs (DPL). A copy of the DPLs is attached as Tab C with an asterisk along side each document as to which this Motion to Compel is directed. The documents, based on their limited description in the DPL, do not qualify for a deliberative process privilege. These documents, with the exception of five documents discussed in more detail below, merely represent ongoing work by NRC Staff personnel on issues which are directly relevant to the current proceeding.¹ Contrary to the very limited type of documents to which the deliberative process privilege applies - non-factual material which reveals the decision-making process of the NRC - these documents appear to contain substantial factual information and none involve any decision-making process because

¹ There is no issue that the documents are relevant to the proceeding since they all appear on a disclosure made by the Staff in this proceeding pursuant to 10 C.F.R. §§2.336(b) and (d).

none are shown to be among the documents that will be used by those who will be making the decisions for the Staff. Thus, DPS requests the Board order the production of the documents at issue and establish a principle for use of the deliberative process privilege that will require the NRC Staff to produce all similar documents that are relevant to this proceeding.

II. COMPLIANCE WITH 10 CFR § 2.323

Prior to filing this motion, DPS and Staff conducted both oral and written communications in an effort to resolve their differences. Copies of the written communications, are attached as Tab A. The Certification of counsel required by § 2.323(b) is attached as Tab B.

There is also a requirement of § 2.323(a) that all motions must be filed within 10 days after “the occurrence or circumstance from which the motion arises.” Because it is possible the 10 days could be deemed to run from the date of Staff disclosures to which objection is raised, which in this case would be 10 days after September 29 and October 31, 2005, when Staff produced the DPLs at issue here, DPS and Staff have reached an agreement, reflected in the correspondence previously provided to the Board as part of its Motion to Compel dated August 31, 2005, that Staff will not raise an issue of timeliness of this pleading provided it is filed, as it is, within five (5) business days of Staff’s written response to DPS’s objection to the DPL.² Staff responded to DPS’s objections by a letter dated and received on November 17, 2005.

III. ARGUMENT

DPS has previously presented its arguments on the timeliness of the Motion to Compel, even assuming the Staff chooses to unilaterally abrogate the agreement it reached with DPS,

² Also pursuant to agreement between DPS and Staff, the objections to the DPL had to be filed, as they were, within 10 days of its production. The objection to the DPLs was filed by letters dated October 3 and November 3, 2005.

based on the principal that the event that triggers the ten days is not the filing of the DPL but the unsuccessful completion of a timely initiated process to seek an amicable resolution of the dispute. DPS has also previously briefed the issue of why it is inappropriate to apply the deliberative process designation to documents that relate to the adequacy of information submitted by the applicant and the need for additional information because such documents are not part of a deliberative process but are generated outside that process and are not reviewed by or used by those deliberating on the ultimate decisions. See DPS Motion to Compel (August 31, 2005). Because most of the documents at issue here are of the same type and character, DPS incorporates by reference those arguments in support of this Motion to Compel.³

There are five documents, designated 15-30, 32, 33, 35, 36, and included in the October 31, 2005 DPL, for which it is possible that the deliberative process is applicable. There is no way to know, from the information provided by the Staff, if the deliberative process privilege applies because it is not apparent that any high ranking agency official actually used, or would use, the documents to inform that official's decision-making. Nonetheless, even if the documents did qualify for the deliberative process privilege, there is a compelling need for their production at this time that outweighs any need for keeping the documents confidential.

In Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82- 82, 16 NRC 1144 (1982) the Board held:

In determining the need of a litigant seeking the production of documents covered by the executive privilege, an objective balancing test is employed, weighing the importance of the

³ DPS proposed to the new Staff counsel that we avoid filing additional Motions to Compel until the Board had ruled on the pending motion and agree that production of other contested documents be governed by the Board's decision. Staff counsel rejected the proposal.

documents to the party seeking their production and the availability elsewhere of the information contained in the documents against the government interest in secrecy.

Id. at 1164-65. In The Matter of Duke Energy Corp (Catawba Nuclear Station, 1 and 2) Docket No's. 50-413-OLA, 50-414-OLA (ASLBP No. 03-815-03-OLA, (10/6/04)) the Board held:

in the discovery phase of a proceeding the need-to-know "indispensability" standard is effectively defined by the discovery standard. As we note in another Memorandum and Order issued today, this is appropriate in light of the purposes of discovery, including that of providing a means for parties to prepare their cases for hearing in an efficient and meaningful manner, which minimizes surprise at the hearing as well as the expenditure of additional time at that point to address concerns that may arise based on a party's presentation of evidence that it has failed to disclose earlier to an opposing party.

Id. at 2 (footnotes omitted).

The five documents at issue all relate to what is essentially a late-filed counter contention of Staff and Entergy. The probability risk analysis discussed in those documents has only arisen as a result of the ACRS intense scrutiny of the previous Staff/Entergy position regarding containment overpressure credit. Once it became apparent that ACRS might reject the Staff/Entergy position, which has now occurred (see ACRS Letter dated September 20, 2005, Tab D to this Motion)⁴, Staff changed their approach and proposed a risk-informed, probabilistic risk analyses in accordance with Regulatory Guide 1.174 as a way to avoid the consequences of an ACRS recommendation against granting t containment overpressure credit at the level and for the time proposed by Entergy. The staff requested Entergy to provide this risk

⁴ The ACRS Letter of September 20, 2005, concerned a generic issue of revision to Regulatory Guide 1.82. However, it's implications are clear. If the strictures of this letter are applied to Entergy's request for containment overpressure credit for NPSH adequacy, the ACRS would recommend against granting Entergy such credit.

informed analysis, and Entergy provided it in two parts⁵. These types of analyses are extremely complex. The current schedule, to which DPS is firmly committed, requires Summary Judgment motions to be filed by November 21 and responses within 20 days, the final SER to be filed on February 24, 2006, witnesses to be identified by March 6 and prefiled testimony to be filed by April 25.

The Staff has disclosed that the documents at issue relate to an extremely important issue: “the possibility of imposing a license condition requiring the Applicant to submit a confirmatory risk-informed evaluation of its proposed credit for containment overpressure”. Letter Zorn to Roisman (11/17/05) included in Tab A. Apparently a final decision will not be reached on this important question until the final SER and, if the Staff prevails on its claim for a deliberative process privilege for these documents, the reasoning and all the issues surrounding adoption of this new and hitherto untested position will also not be revealed until that time. This position goes to the very heart of the principal contention offered by DPS in this proceeding and represents a central strategy apparently being pursued by the Staff to convert the question of whether containment overpressure may be relied upon into the entirely different question. The new question is whether the change in core damage frequency (CDF) from crediting containment overpressure or not crediting containment overpressure is so small that containment overpressure can be granted on a risk-informed basis.. This is an entirely different regulatory standard. When the application was filed Entergy asserted that containment overpressure was essential to allow it to demonstrate that it met critical safety requirements. Thus, this potential new strategy could

⁵ One portion was provided in Supplement 38 on October 21, 2005, and the other in Supplement 39 on October 26, 2005.

drastically alter the nature of the issues in this case and the hearing. Allowing DPS to be privy to the Staff process for formulating its position on these matters, assuming the documents at issue have risen to the level of the agency where such deliberations are actually occurring, will enable DPS to “keep up” on the issue and will avoid delaying the hearings, a delay which DPS wishes to avoid.

As the Board observed in Long Island Lighting, allowing disclosure of allegedly deliberative process information may be “appropriate in light of the purposes of discovery, including that of providing a means for parties to prepare their cases for hearing in an efficient and meaningful manner, which minimizes surprise at the hearing as well as the expenditure of additional time at that point to address concerns that may arise based on a party’s presentation of evidence that it has failed to disclose earlier to an opposing party”. Id. at 2. The minor risk to the Staff of disclosing the thoughts of some Staff engineers and managers regarding the extent to which Entergy’s risk-informed analysis is inadequate to justify the use of containment overpressure and the possible need for a post-licensing supplemental risk analysis⁶, is substantially out-weighed by the benefits to the hearing process of bringing into the daylight these considerations as they arise to enable all parties an opportunity to integrate the information into their own positions in the case. A full airing of the reasoning of individual staff members at this time will also reduce the possibility that Staff will be urging the Board to allow a critical analysis essential to Staff approval of the proposed uprate - i.e. a comprehensive probabilistic risk assessment - to occur after the conclusion of the hearings when the parties and Board cannot

⁶ To date Staff statements of its need to keep the documents at issue confidential have been conclusory allegations bereft of any reasoning or analysis to support those conclusions.

effectively participate or fulfill their oversight responsibilities. Rather, the issue of whether a more comprehensive analysis is required can be fully aired during the hearings allowing the Board to determine whether Entergy has met its burden of proof with its current risk-informed analysis.

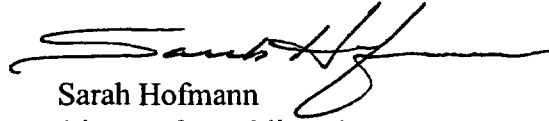
To date DPS, and apparently Entergy, have not seen any of the Staff review and considerations of the probabilistic risk analyses done by Entergy and thus are in no position to critically analyze the Staff's position. In order to comply with the current schedule and properly prepare its case, DPS, and presumably Entergy also, must promptly have the maximum amount of relevant information from the Staff regarding probabilistic risk analyses for this license amendment. The parties cannot wait until the final SER or until a final position has been taken by the Staff on license conditions before it sees the analyses and reasoning of those who are considering this "fix" to the containment overpressure issue. DPS needs the relevant information regarding the Staff analyses now if it is to carry out its responsibilities to meet the existing hearing schedule and, more importantly, to represent the interests of the citizens of Vermont. Like any late filed issue or evidence, the party who is seeing the information for the first time is placed at a distinct disadvantage. That disadvantage can be prevented by disclosure of the identified documents, and all similar documents, that the Staff seeks to withhold under the deliberative process privilege.

IV. CONCLUSION

For the reasons stated we urge the Board to order Staff to produce these documents and to withdraw the claim of a deliberative process privilege for all similar documents where the document reflects issue of concern to Staff or areas of potential inquiry identified by Staff.

Alternatively, we request the Board direct Staff to produce these and all similar documents for *in camera* inspection and on the basis of that inspection order production of all documents which do not meet the criteria discussed above.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Sarah Hofmann', with a stylized, flowing script.

Sarah Hofmann
Director for Public Advocacy
Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05602-2601

Anthony Z. Roisman
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768

Dated this 22nd day of November 2005 at Montpelier, Vermont.

TAB A

**Written Communications Between Staff and DPS
re 9/29/05 and 10/31/05 Deliberative Process Logs**

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October 3, 2005

Sherwin Turk, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: VYUprate - Docket No. 50-271 (ASLBP No. 04-832-02-OLA)

Dear Sherwin:

This letter identifies documents on the NRC Staff's September 29, 2005 Deliberative Process Log (DPL) which DPS believes should have been produced. The documents are identified on the attached copy of the DPL by bolding the document number.

We believe the scope of the deliberative process privilege is narrow and does not include documents that do not disclose the deliberative process leading to a policy decision by the NRC Staff and does not include facts contained in documents. As best as we can determine, from the limited disclosures made in the DPL, none of the documents identified above meet the narrow criteria for application of the deliberative process privilege. In a couple of cases, the documents contained material that we do not seek - internal staff scheduling procedures or drafts of the safety evaluation report - but also contain other material such as draft RAI questions, or staff analyses of the answers received to such questions, that we do seek. In those cases, we ask the Staff to

redacted the material which we do not seek and produce only the information we do seek. Those are documents numbered 14-22, 14-24 and 14-30.

Consistent with my previous agreement with Ms. Poole and notwithstanding your letter to me and our subsequent conversation, it remains our position that the Staff has agreed that the time for filing a motion with the ASLB regarding the failure to produce the identified documents will be extended until a reasonable time following a response to this letter from the Staff. Ms. Poole had suggested the Staff respond in writing to similar letters and her responses were substantive. In some instances, Ms. Poole concluded that some of the requested information could be produced. I understand you do not wish to expend substantial time in answering this letter or in further reviewing documents on the DPL. We do not insist that the Staff engage in any particular process to respond to this letter but do insist that we receive a written response to the letter by either mail or e-mail. Only with a written response can we accurately count the 5 business days following such a response that will determine when our motion, if any, will be due to the Board. I also propose, but do not insist, the Staff provide its response to this letter request within the next two weeks. If your response will be after that time, I would appreciate receiving some communication from you regarding the date on which the Staff will be responding.

Since technically an "agreement" between us as to a filing deadline set by the Regulations is ineffective, I will, as agreed by Ms. Poole on behalf of the Staff, advise the ASLB that the Staff will not oppose any motion with regard to these documents that we file based on timeliness other than the failure to meet the new deadlines to which Staff and DPS have previously agreed.

As we discussed on the phone last week, if you wish DPS to consider a new agreement with the Staff regarding how to handle any objections we raise to the DPL and compliance with the requirements of 10 CFR § 2.323 please put it in writing and send it to me by e-mail.

Thank you for consideration of our request.

Sincerely,

Anthony Z. Roisman

cc: Sara Hofmann, Esq.

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November 3, 2005

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Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: VYUprate - Docket No. 50-271 (ASLBP No. 04-832-02-OLA)

Dear Sherwin:

This letter identifies documents on the NRC Staff's October 31, 2005 Deliberative Process Log (DPL) which DPS believes should have been produced. The documents are the following: 15-, 05, 06, 07, 30, 32, 33, 35, 36, 40, 41, 42 and 43 as identified on the 15th DPL.

We believe the scope of the deliberative process privilege is narrow and does not include documents that do not disclose the deliberative process leading to a policy decision by the NRC Staff and does not include facts contained in documents. In addition, even if the document qualifies for the deliberative process privilege, it must be disclosed where there is a compelling need for its disclosure. As best as we can determine, from the limited disclosures made in the DPL, the documents identified above either fail to meet the narrow criteria for application of the deliberative process privilege and/or their disclosure is necessary.

The documents for which there is no evidence that they are part of the deliberative process are 15-05, 06, 07. The documents for which it appears that there is at least an argument that they may be part of the deliberative process are 15-30, 32, 33, 35, 36, 40, 41, 42 and 43. As to these latter documents, they could not be said to qualify as deliberative process documents unless the Staff filed an affidavit of a high ranking Staff employee who would be the person or one of the persons making the final decision regarding the Staff position on the SER. The affidavit would have to aver that the documents are ones which that person would review in making a decision on the final SER. If that occurred and the ASLB, after reviewing the documents agreed they met the criteria for the deliberative process privilege, we would agree the documents could only be produced if a compelling need were shown by DPS for the documents.

Assuming such a showing could be made with regard to documents 15-30, 32, 33, 35, 36, DPS has a compelling need for seeing those documents at this time. The documents all relate to what is essentially a late-filed counter contention of Staff and Entergy. The probability analysis discussed in those documents has only arisen as a result of the ACRS intense scrutiny of the previous Staff/Entergy position regarding containment overpressure credit. Once it became apparent that ACRS might reject that position, which has now occurred (see Letter from ACRS dated September 20, 2005), Staff and Entergy changed their approach dramatically and introduced probabilistic analyses as a way to avoid the consequences of an ACRS refusal to accept containment overpressure credit at the level and for the time proposed by Entergy. As you know these analyses are extremely complex. The current hearing schedule, to which DPS is firmly committed, requires Summary Judgment motions to be filed by November 21 and responses within 20 days, the final SER to be filed on February 24, 2006, witnesses to be identified by March 6 and prefled testimony to be filed by April 25. To date DPS has not been able to see any of the underlying probabilistic analyses done by the Staff or Entergy and thus is in no position to critically analyze the draft conclusions which have surfaced for the first time in the draft SER. In order to comply with the current schedule and properly prepare its case, DPS must promptly have the maximum amount of relevant information from the Staff regarding probabilistic analyses for this license amendment. DPS cannot wait until the final SER or until a final position has been taken by the Staff on license conditions before it sees the analyses and reasoning of those who are considering this "fix" to the containment overpressure credit issue. DPS must have the relevant information regarding the Staff analyses now if it is to carry out its responsibilities to meet the existing hearing schedule and, more importantly, to represent the interests of the citizens of Vermont. Like any late filed issue or evidence, the party who is seeing the information for the first time is placed at a distinct disadvantage. That disadvantage can be prevented by disclosure of the identified documents that the Staff seeks to withhold under the deliberative process privilege.

Consistent with my previous agreement with Ms. Poole and notwithstanding your letter to me and our subsequent conversation, it remains our position that the Staff has agreed that the time for filing a motion with the ASLB regarding the failure to produce the identified documents will be extended until a reasonable time following a response to this letter from the Staff. Ms. Poole had suggested the Staff respond in writing to similar letters and her responses were substantive. In some instances, Ms. Poole concluded that some of the requested information could be produced. I understand you do not wish to expend substantial time in answering this letter or in further reviewing documents on the DPL. We do not insist that the Staff engage in any particular

process to respond to this letter but do insist that we receive a written response to the letter by either mail or e-mail. Only with a written response can we accurately count the 5 business days following such a response that will determine when our motion, if any, will be due to the Board. Because DPS needs to see the documents related to probabilistic analyses as soon as possible, and since the Staff position on these matters has been consistent and unyielding since you became the lead staff counsel, I believe there is no reason why you cannot provide us with a written response to this letter within 7 days. Assuming, as expected, the Staff rejects our request for documents 15-30, 32, 33, 35, 36, we will promptly file a Motion to Compel with the ASLB.

Since technically an "agreement" between us as to a filing deadline set by the Regulations is ineffective, I will, as agreed by Ms. Poole on behalf of the Staff, advise the ASLB that the Staff will not oppose any motion with regard to these documents that we file based on timeliness other than the failure to meet the new deadlines to which Staff and DPS have previously agreed.

As we discussed previously, if you wish DPS to consider a new agreement with the Staff regarding how to handle any objections we raise to the DPL and compliance with the requirements of 10 CFR § 2.323 please put it in writing and send it to me by e-mail.

Thank you for consideration of our request.

Sincerely,

Anthony Z. Roisman

cc: Sara Hofmann, Esq.

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November 14, 2005

Sherwin Turk, Esq.
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Washington, D.C. 20555-0001

Re: VYUprate - Docket No. 50-271 (ASLBP No. 04-832-02-OLA)

Dear Sherwin:

By letter dated October 3, 2005 and e-mailed to you on that day I identified documents on the NRC Staff's September 29, 2005 Deliberative Process Log (DPL) which DPS believes should have been produced. It has been more than a month and I have not received a written response from the Staff to this request nor have I received a request from the Staff for more time to respond. As you know, Ms. Poole agreed, on behalf of the Staff, that responses to letters filed by DPS regarding DPL documents would be filed within 14 days of receipt of the request.

By letter dated November 3, 2005, I identified documents on the NRC Staff's October 31, 2005 Deliberative Process Log (DPL) which DPS believes should have been produced. With regard to these documents I identified five of those documents (15-30, 32, 33, 35, 36) for which there was some urgency for DPS to see the documents and asked that you respond to me within 7 days as to those five documents. I have not received any response to that letter or that specific

request to modify the agreed upon procedures for Staff responses.

If I do not have a response, on the merits and in writing from you regarding these matters by November 17th, I will file a motion to compel regarding the disputed documents with the Board and explain to them that the absence of a response from the Staff is due to the Staff's failure to abide by a valid agreement reached between Staff counsel and DPS counsel. As indicated in my letter to you of September 28, 2005, we have a clear agreement in place that the Department will continue to abide by and will expect the Staff to abide by, unless and until a new agreement is reached between the Staff and the Department.

Finally, the Department would like to see more of a good faith effort on the Staff's part to resolve these disputes short of filing motions to compel. We want the necessary information to do our jobs, not ongoing procedural litigation. On October 18, 2005, in a phone call with you, Jason Zorn, Sarah Hofmann and me, we proposed three alternatives to resolve the disputes over our requests for information contained in the deliberative process logs. To date, we have not heard back from you as to your satisfaction with any of the three alternatives or a proposal of your own. Please let me know if you would like to explore further any of the DPS alternatives or would like us to consider a Staff proposal. These conversations, should they occur, should not delay your response to this letter nor our actions based upon that response or the absence of such a response.

Sincerely,

Anthony Z. Roisman

cc: Sarah Hofmann, Esq.

5 H



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 15, 2005

STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE
NRC DIVISION
NOV 18 9 20 AM '05

Anthony Z. Roisman, Esq.
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84 East Thetford Road
Lyme, NH 03768

In the Matter of
Entergy Nuclear Vermont Yankee, LLC, *et al.*
(Vermont Yankee Nuclear Power Station)
Docket No. 50-271-OLA (Extended Power Uprate)

Dear Mr. Roisman:

I am writing in response to your letter of November 14, 2005, concerning the NRC Staff's monthly (now bi-weekly) updates of the hearing file in this proceeding. In particular, you refer to (a) two requests you have submitted on behalf of the Vermont Department of Public Service ("DPS"), dated October 3 and November 3, 2005, for the production of documents identified on the Staff's pre-decisional deliberative process privilege logs, and (b) a previous agreement you had reached with Brooke Poole, Esq., on behalf of the Staff, pertaining to procedures for handling your requests for documents and an extension of time for DPS to file any motions to compel. A response to the specific document requests contained in your letters of October 3 and November 3, 2005, will be provided by the Staff in a separate letter.

I have previously expressed my views concerning your former agreement with the Staff, in my letter to you dated September 23, 2005. Therein, I expressed my belief that the agreement you reached with Ms. Poole, as you described it, would provide you with an unduly extended time limit for filing any motions to compel – and I clearly informed you that the Staff would not adhere to that agreement in the future. In this regard, I stated as follows:

[W]hile I am ready and willing to discuss any request for documents in advance of your filing a motion to compel, henceforth any extensions of time for the filing of a motion to compel should be discussed with me on a case-by-case basis. In the absence of any agreement for such an extension on a case-by-case basis, you should not assume that the Staff consents to an extension of the time for the filing of a motion to compel.

In our subsequent telephone conversation, I further explained that your interpretation of the agreement you had reached with Ms. Poole could constitute an unauthorized and improper extension of the Licensing Board's mandatory filing requirements in this proceeding – and, further, that this procedure would impose an excessive burden on the Staff, by requiring the Staff to re-review each document that you may request, after having previously reviewed it to determine if the privilege applies and determining that it should be withheld and identified on the privilege log.

Anthony Z. Roisman, Esq.
November 15, 2005
Page 2

Your letter of November 14, like your letters of October 3 and November 3, 2005, cited therein, fails to recognize that my letter of September 23 effectively terminated any previous agreement that may have existed between DPS and the Staff relating to your document requests and the time in which DPS is required to file any motions to compel. In light of my clear disavowal of any such previous agreement, I see no basis for your repeated insistence that such an agreement continues to exist. Instead, as indicated in my letter of September 23, while I am ready and willing to discuss specific document requests with you, any request for an extension of time should be discussed with me on a case-by-case basis.

In your letters and in your pending motions to compel, you have repeatedly requested and/or sought to compel the production of privileged documents, based upon what appears to be an incorrect and unfounded interpretation of the deliberative process privilege. Our disagreement as to the applicability and scope of the deliberative process privilege is recounted in my letter of September 23, in which I stated as follows:

In our telephone discussion of September 16, you stated your view that the pre-decisional deliberative process privilege does not begin to apply until the Staff has concluded its effort to gather information and has commenced to "deliberate" on whether to grant the application." You were unable to cite any legal authority for that view, and I am not aware of any valid basis for it. In fact, the deliberative process includes various steps, including deliberations as to the sufficiency of the information contained in the application, and the need for further information in order to reach a final regulatory decision. Your interpretation would render the privilege meaningless; further, your request for so many internal NRC Staff communications, without showing any reason why the documents should be disclosed, represents a fundamental and unfounded challenge to the deliberative process privilege.

Given this fundamental disagreement as to the proper scope and applicability of the deliberative process privilege, I see no reason for DPS and the Staff to engage in repeated argument. The issue raised in your requests is not whether the documents were properly described in the privilege log, but whether they are properly protected from disclosure under the privilege. That issue, as well as whether DPS has identified any compelling need to obtain the documents, is now pending before the Licensing Board, in connection with your first and second motions to compel. I do not believe further argument between us would serve any useful purpose.

Finally, I do not agree with your suggestion that there has not been "a good faith effort on the Staff's part to resolve these disputes short of filing motions to compel." Like DPS, the Staff "wants . . . to do our jobs, not [to engage in] ongoing procedural litigation." Unfortunately, when I invited your suggestions as to how to resolve this dispute, the only "alternatives" you suggested would essentially require the Staff to waive the privilege (e.g., you suggested that the State's expert should be allowed to see all of the documents withheld under the deliberative

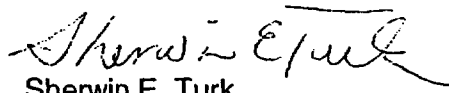
Anthony Z. Roisman, Esq.
November 15, 2005
Page 3

process privilege, and the State would then move to compel only those documents which it found to be of particular interest). I would not describe that as a "good faith" suggestion.

The Staff recognizes that DPS has a valid interest in the proper conduct and outcome of this proceeding. At the same time, the Staff has an interest in protecting its ability to engage in open and unfettered deliberations, in order to assure the reliability of the agency's decision-making process. Consistent with these principles, the Staff has properly compiled and regularly updated the hearing file for use by the parties and the Licensing Board in this proceeding, in accordance with the Commission's regulations in 10 C.F.R. § 2.336(b)(1)-(4). Further, in accordance with 10 C.F.R. § 2.336(b)(5) and well-established legal precedent, the Staff has compiled its privilege logs and identified therein those documents which it believes should be withheld as privileged. I regret that you do not agree with the Staff's view of the scope and applicability of the deliberative process privilege in this proceeding.

Please do not hesitate to contact me in the future if there are specific documents which you believe should be produced. As I stated in my letter of September 23, I remain ready and willing to discuss any request for specific documents which DPS may have. I do not believe, however, that repeated arguments over the general scope and applicability of the deliberative process privilege, or the existence of a former agreement which has now been terminated, would constitute a productive use of our time or serve to expedite the Staff's consideration of any specific document requests which you may have.

Sincerely,


Sherwin E. Turk
Counsel for NRC Staff

cc: Sarah Hofmann, Esq.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

FILE COPY

November 17, 2005

STATE OF VERMONT
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RECEIVED
NOV 21 9 31 AM '05

Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm, P.C.
84 East Thetford Road
Lyme, NH 03768

In the Matter of
Entergy Nuclear Vermont Yankee, LLC, *et al.*
(Vermont Yankee Nuclear Power Station)
Docket No. 50-271-OLA (Extended Power Uprate)

Dear Mr. Roisman:

I am writing in response to your letters, written on behalf of the Vermont Department of Public Service ("DPS"), to Sherwin Turk, dated October 3 and November 3, 2005, requesting production of certain documents listed, respectively, in the NRC Staff's September 29 and October 31, 2005, deliberative process privilege logs. In response to your requests, we have re-examined the Staff's determination to withhold the requested documents, and have determined that they were properly withheld and no showing has been made which would warrant their release at this time. Accordingly, the documents will continue to be withheld as originally determined. Each of your document requests is addressed, *seriatim*, below.¹

Letter Request of October 3, 2005.

In your letter of October 3, 2005, you did not indicate any reason why you believe that the deliberative process privilege does not apply to the documents you requested, other than making a generalized assertion that "none of the documents identified above meet the narrow criteria for application of the deliberative process privilege." Further, you did not state any reason – much less a compelling reason – why DPS needs to obtain the requested documents apart from stating that they contain information "that we do seek." Such generalized statements fail to demonstrate that the deliberative process privilege either does not apply or should be waived to permit the release of the requested documents. Nonetheless, the Staff has undertaken to reevaluate the eleven documents listed in your letter, and has determined that they will continue to be withheld, for the reasons set forth below.

¹ The general assertions presented in your letters, such as the Staff's alleged obligation to adhere to a previous agreement which has since been terminated, were addressed in the Staff's letters to you of September 23 and November 15, 2005, and are not addressed herein. Similarly, your assertion that the Staff is obliged to file the affidavit of a high ranking Staff employee either upon filing the privilege log or in response to your informal request, was addressed in the Staff's October 21, 2005, response to the Licensing Board's Order of September 30, 2005, and is not addressed herein.

1. Document 14-01: This document contains the preliminary results of a Staff member's revised risk evaluation of the credit for containment overpressure at the Vermont Yankee boiling water reactor (BWR) Mark 1 plant, as requested by an ACRS Subcommittee on July 29, 2005, and the author's opinion regarding the risk-related acceptability of such a credit under RG 1.174. Because the document contains the writer's opinions, and because the facts contained in the document are inextricably intertwined with such opinions, this document is part of the deliberative process. Further, the document is pre-decisional insofar as the author's evaluation and recommendations may be part of the process by which the agency is considering the extended power uprate (EPU) application filed by Entergy Nuclear Vermont Yankee, LLC, *et al* ("Applicant") and/or potential revisions to a generic NRC regulatory guide.

2. Document 14-02. This is an E-mail between Staff members in which one Staff member, after completing his analysis of large break loss-of-coolant-accident (LBLOCA) calculations, conveys his opinion regarding the acceptability of the Applicant's calculations. Thus, the document contains Staff deliberations that are predecisional to the Commission's decision regarding the Applicant's proposal.

3. Documents 14-07, 14-22, 14-23, 14-24, 14-31, and 14-41. These documents contain discussions of a variety of subjects associated with the EPU application, and contain the Staff's analysis, opinions, and recommendations regarding either the Applicant's responses to previous requests for additional information ("RAIs"), or the formulation of new RAIs to address the Staff's concerns. Such deliberations among the Staff concerning what information is or is not significant or necessary in their review and to reach a decision on the EPU application is exactly the kind of communication to which the privilege applies. Moreover, such communications are necessarily predecisional to the Commission's decision regarding the Applicant's proposal.

4. Document 14-08. This document contains the results of an agency inspector's inspection of Erosion-Corrosion/Flow-Accelerated-Corrosion Monitoring Program activities conducted from July 25 through July 29, 2005. The contents of the report represent the inspector's recommendations pursuant to his findings and are part of the deliberative process by which the Commission will ultimately decide whether to grant or deny the Applicant's EPU proposal.

5. Document 14-30. This document covers a variety of topics, including the Staff's discussion of procedural aspects of completing the draft safety evaluation; the need to obtain additional information from the Applicant to complete the Staff's review (open items); the overall status of the EPU review; and the potential impact of the ACRS's letter concerning RG 1.82 (which at the time of the communication had not been released). The document contains the Staff's pre-decisional deliberations over continuing issues associated with the Commission's ultimate decision on the Applicant's proposal and is thus privileged.

6. Document 14-43. This document contains a Staff's member's response to a request for a summary of the status of his portion of the review. It consists of his opinions and recommendations on a variety of issues (including the minimum critical power ratio, linear heat generation rate, shutdown margin, and reactivity void coefficient), all arising out of the Applicant's responses to Staff RAIs. This predecisional deliberative document is privileged and has properly been withheld, for the reasons described above with respect to items 1 through 5.

Letter Request of November 3, 2005.

Your letter of November 3, 2005, seeks the disclosure of twelve documents; these can be grouped into four categories, as set forth below. Within each category, we describe the documents, as well as the Staff's justification for continuing to withhold them.

1. Documents 15-05, 15-06, and 15-07. These three documents (all part of a chain of E-mails regarding the same topic), contain detailed back-and-forth deliberations between Staff members concerning the formulation of additional RAIs to the Applicant to enable the Staff to complete its review of the EPU application. You have asserted, without explanation, that no privilege applies to these particular documents; further, you have made no showing that DPS has any particular need for the documents. In fact, each of the documents contains ongoing deliberations by members of the Staff, concerning the application and the information necessary to permit the Staff to reach a determination on the EPU application; further, they are all pre-decisional in nature. Thus, the documents were properly withheld as privileged.

2. Documents 15-40, 15-41, 15-42, 15-43. These four documents (a chain of E-mail messages regarding the same topic) concern the Staff's deliberations over the wording and scope of the transient testing license condition that was ultimately presented to and agreed upon with the Applicant. You have suggested that, although the deliberative process privilege may apply to these documents, the Staff is obliged to satisfy some additional burden to support an assertion of the privilege; however, you have not suggested any compelling reason why DPS should have access to the documents. The final version of the license condition is available in the hearing file for these proceedings. (ADAMS No. ML052630053). Absent any showing that DPS has a compelling need to obtain the requested documents, they will continue to be withheld under the pre-decisional deliberative process privilege.

3. Document 15-30. This document consists of the Safety Programs Section of the Probabilistic Safety Assessment Branch's input to the Draft SER concerning the Staff's risk evaluation of the Vermont Yankee EPU application. With respect to this document, you have asserted that although it may in fact be privileged, DPS has a compelling need for the document because you believe that it may contain "underlying probabilistic [risk] analyses done by the Staff or Entergy . . .," therefore making it important for you to "critically analyze the draft conclusions . . . in the SER." However, Section 2.13 of the Draft SER, which the Staff has previously made available to you (ADAMS No. ML 053010167), contains the final version of the Staff's preliminary risk evaluation. Any probabilistic risk analyses conducted by the Staff relevant to your contentions are contained in that document; in contrast, any prior drafts of the calculations were either replicated in or superseded by the Draft SER. Thus, since the information you seek is already available to you, a compelling need for the requested document has not been demonstrated.


4. Documents 15-31, 15-33, 15-35, and 15-36. These documents consist of a series of E-mails between Staff members regarding the possibility of imposing a license condition requiring the Applicant to submit a confirmatory risk-informed evaluation of its proposed credit for containment overpressure. In these documents, the Staff recommends language for a license condition to ensure that the Applicant conducts the appropriate evaluation. Again, you have asserted that although these documents may in fact be privileged,

DPS has a compelling need for them because you believe that they may contain "underlying probabilistic [risk] analyses done by the Staff or Entergy . . .," therefore making them important for you to "critically analyze the draft conclusions . . . in the SER." In fact, none of these documents contains a probabilistic risk analysis, but rather consist of deliberations between Staff members and management over the decision whether to propose a license condition regarding the Applicant's future obligation to conduct such an analysis. Therefore, the documents were properly withheld as privileged, and you have not shown a compelling need for these privileged documents.

As stated in our letter to you of November 15, 2005, the Staff recognizes that DPS has a valid interest in the proper conduct and outcome of this adjudicatory proceeding. As the Commission has frequently stated, however, the proper focus of licensing proceedings is on an Applicant's proposal -- not the NRC Staff's internal deliberation over the proposal. Thus, while we can appreciate your interest in perusing the Staff's internal discussions over various issues arising during the Staff's review, we are also cognizant of the need for unfettered and open deliberations among members of the Staff, in order to assure the integrity of the agency's decision-making process.

Please feel free to contact me, at (301) 415-8350, or Sherwin Turk at (301) 415-1533, if you have any additional questions or concerns that you would like to discuss.

Sincerely,

A handwritten signature in black ink that reads "Sherwin E. Turk, for". The signature is written in a cursive, flowing style.

Jason C. Zorn
Counsel for NRC Staff

cc: Sara Hofmann, Esq.

TAB B

Certificate of Counsel

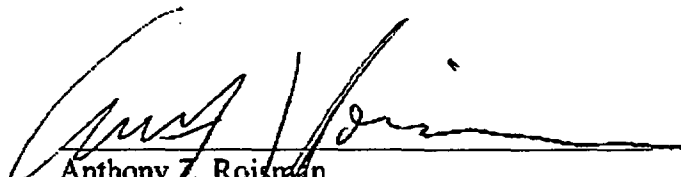
**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATION OF COUNSEL

Pursuant to 10 CFR §2.323(b) the undersigned counsel certifies that he has made a sincere effort to convince NRC Staff that certain documents which it has withheld from disclosure as deliberative process documents should be produced. Staff has not been willing to accept the arguments advanced by undersigned counsel but also has not provided undersigned counsel with any persuasive reasons or legal precedents sufficient to convince him that the position of DPS is in error. Thus, the good faith efforts of Staff and undersigned counsel to resolve this matter without involvement of the Board have failed.


Anthony Z. Roisman
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768

November 21, 2005

TAB C

NRC Staff Deliberative Process Log of 9/29/05 and 10/31/05

ENCLOSURE 3**VERMONT YANKEE EPU HEARING FILE AND MANDATORY DISCLOSURES
PRIVILEGE LOG - DELIBERATIVE PROCESS
SUPPLEMENT 14 - September 29, 2005**

Certain documents otherwise subject to inclusion in the hearing file and mandatory disclosures for this proceeding have been determined by the NRC Staff to contain information subject to withholding from public disclosure as predecisional, deliberative information. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents, withheld under the "deliberative process" privilege.

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-01	ML052500332	Stutzke M A, NRC/NRR	E-mail, Stutzke, NRR, to Ennis, NRR, Re: VY EPU Containment Overpressure Credit.	9/2/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of preliminary results of risk evaluation of containment overpressure credit	2
14-02	ML052450441	Ward L W, NRC/NRR	E-mail, Ward, NRR, to Lobel, NRR, Re: BY EPU LBLOCA Calc.	9/2/2005	E-Mail	Lobel R M, NRC/NRR	Contains NRC staff analysis of LBLOCA mass and energy release calculations	2
14-03	ML052500337	Abdullahi Z, NRC/NRR	E-mail, Abdullahi, NRR, to Gehin, ORNL, Re: VY EPU GE Audit.	9/8/2005	E-Mail	Gehin J C, Oak Ridge National Lab (ORNL)	Contains discussion of internal NRC staff auditing procedures	4

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-04	ML052550202	Ennis, NRC/NRR	Email, Ennis, NRR, Abdullahi, NRR, re: VY EPU Conference Call	9/8/2005	Email	Abdullahi Z, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-05	ML052560046	Wang A B, NRC/NRR	E-mail Wang, NRR, to Ennis, NRR, Re: VY EPU Conference Call.	9/9/2005	E-Mail	Ennis R B, NRC/NRR	Contains discussion of internal NRC staff auditing procedures	2
14-06	ML052560045	Abdullahi Z, Akstulewicz F M, NRC/NRR	E-mail Ennis, NRR, to Abdullahi and Akstulewicz, NRR, Re: VY EPU Conference Call.	9/12/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-07	ML052570529	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Ennis, NRR, Re: VY EPU Supplement 32.	9/12/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff analysis of responses to requests for additional information	3

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-08	ML052580571	Burns T F, NRC/RGN- I/DRS/PSB2	Erosion- Corrosion/Flow- Accelerated- Corrosion Monitoring Activities for Power Uprate Inspection Feeder for Vermont Yankee, Inspection Report 05000271/20050 04	9/12/2005	Memoranda	Anderson C J, NRC/RGN- I/DRP/PB5	Contains NRC staff's analysis and preliminary recommendations resulting from inspection of Erosion- Corrosion/Flow- Accelerated- Corrosion Monitoring Activities	8
14-09	ML052570534	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Abdullahi, NRR, Et. Al., Re: VY EPU Schedule	9/13/2005	E-Mail	Abdullahi Z, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	4
14-10	ML052570530	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Jones, NRR, Re: VY EPU Supplement 32	9/13/2005	E-Mail	Jones S R, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	4

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-11	ML052570507	Ennis R B, NRC/NRR	E-mail, Ennis, RGN-I, to Sienel, NRR, Re: VY EPU Review.	9/13/2005	E-Mail	Sienel B E, NRC/RGN-I	Contains NRC staff discussion of contents of draft safety evaluation	2
14-12	ML052570536	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Ennis, NRR, Re: VY EPU Supplement 32.	9/13/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	3
14-13	ML052570547	Lobel R M, NRC/NRR	E-mail, Lobel, NRR, to Ennis, NRR, Re: VY EPU Schedule.	9/13/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	3
14-14	ML052570544	Pal A N, NRC/NRR	E-mail, Pal, NRR, to Ennis, NRR, Re: VY EPU Schedule.	9/13/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-15	ML052570518	Sienel B E, NRC/RGN-I	E-mail, Sienel, RGN-I, to Ennis, NRR, Re: VY EPU Review.	9/13/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation	2

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-16	ML052590139	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Ready, NRR, Et. AL., Re: VY EPU Conference Call.	9/14/2005	E-Mail	Jones S R, Reddy D K, Tatum J E, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-17	ML052570537	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Reddy, NRR, Re: VY EPU SBO RAI	9/14/2005	E-Mail	Reddy D K, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation	2
14-18	ML052590099	Razzaque M M, NRC/NRR	E-mail, Razzaque, NRR, to Ennis, NRR, Re: VY EPU Supplement 32	9/14/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion regarding internal review practices and contents of draft safety evaluation	3
14-19	ML052570525	Devender R K, NRC/NRR	E-mail, Reddy, NRR, to Ennis, NRR, Re: VY EPU SBO RAIs	9/14/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion regarding internal review practices and contents of draft safety evaluation	2

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-20	ML052570517	Reddy D K, NRC/NRR	E-mail, Reddy, NRR, to Jones, NRR, Re: VY EPU SBO RAIs.	9/14/2005	E-Mail	Jones S R, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation	4
14-21	ML052590136	Tatum J E, NRC/NRR	E-mail, Tatum, NRR, to Ennis, NRR, Re: VY EPU Conference Call.	9/14/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-22	ML052620316	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Razzaque, NRR, Re: VY EPU Supplement 32.	9/15/2005	E-Mail	Razzaque M M, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation and draft requests for additional information	5
14-23	ML052620313	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Lyons, NRR, Re: VY EPU Issues.	9/15/2005	E-Mail	Lyons J E, NRC/NRR	Contains NRC staff analysis of responses to requests for additional information regarding condensate and feedwater system	4

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-24	ML052620321	Razzaque M M, NRC/NRR	E-mail, Razzaque, NRR, to Ennis, Re: VY EPU Supplement 32.	9/15/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation and draft requests for additional information	2
14-25	ML052590108	Reddy D K, NRC/NRR	E-mail, Reddy, NRR, to Ennis, NRR, Re: VY EPU SBO Input.	9/15/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation	2
14-26	ML052590060	Reddy D K, NRC/NRR	E-mail, Reddy, NRR, to Pal, NRR, Re: VY EPU SBO Input.	9/15/2005	E-Mail	Pal A N, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation	3
14-27	ML052590121	Scarbrough T G, NRC/NRR	E-mail, Scarbrough, NRR, to Ennis, NRR, Re: VY EPU Supplement 33.	9/15/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-28	ML052590132	Scarborough T G, NRC/NRR	E-mail, Scarborough, NRR, to Ennis, NRR, Re: VY EPU Supplement 33.	9/15/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2
14-29	ML052660070	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Scarborough, NRR, Et. Al., Re: VY EPU Supplement 33.	9/15/2005	E-Mail	Scarborough T G, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2
14-30	ML052640132	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Imbro, NRR, Re: VY EPU GE Review.	9/16/2005	E-Mail	Imbro E V, NRC/NRR	Contains NRC staff discussion of contents of draft safety evaluation and draft requests for additional information	4
14-31	ML052640165	Grimes C I, NRC/NRR	E-mail, Grimes, NRR, to Mayfield and Marsh, NRR, Re: VY EPU Steam Dryer.	9/16/2005	E-Mail	Marsh L B, Mayfield M E, NRC/NRR	Contains NRC staff analysis of responses to requests for information regarding steam dryer review	4

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-32	ML052640148	Imbro E V, NRC/NRR	E-mail, Imbro, NRR, to Ennis, NRR, Re: VY EPU Review.	9/16/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of internal NRC staff scheduling practices and contents of draft safety evaluation	4
14-33	ML052640150	Imbro E V, NRC/NRR	E-mail, Imbro, NRR, to Ennis, NRR, Re: VY EPU Review.	9/16/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of internal NRC staff scheduling practices and contents of draft safety evaluation	4
14-34	ML052620274	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Reddy, NRR, Re: VY EPU Conference Call.	9/16/2005	E-Mail	Jones S, Reddy D, Tatum J, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-35	ML052620295	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Roberts, NRR, Et. Al., Re: VY EPU Review.	9/16/2005	E-Mail	Roberts D J, NRC/NRR	Contains NRC staff discussion of draft safety evaluation and internal NRC staff scheduling practices	4

PRIVILEGE LOG - DELIBERATIVE PROCESS

SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-36	ML052640135	Abdullahi Z, NRC/NRR	E-mail, Abdullahi, NRR, to Ennis, NRR, Re: VY EPU GE Conference call.	9/18/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of draft safety evaluation and internal NRC staff scheduling practices	2
14-37	ML052640141	Alexion T W, NRC/NRR	E-mail, Alexion, NRR, to Ennis, NRR, Re: VY EPU Testing.	9/19/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2
14-38	ML052640122	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Marsh, NRR, Re: VY EPU Steam Conference Calls.	9/19/2005	E-Mail	Marsh T B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-39	ML052640155	Marsh L B, NRC/NRR	E-mail, Marsh, NRR, to Alexion, NRR, Re: VY EPU Testing.	9/19/2005	E-Mail	Alexion T W, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2

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SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-40	ML052640143	Marsh L B, NRC/NRR	E-mail, Marsh, NRR, to Ennis, NRR, Re: VY EPU Conference Calls.	9/19/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-41	ML052640138	Marsh L B, NRC/NRR	E-mail, Marsh, NRR, to Ennis, NRR, Re: VY EPU Supplement 34.	9/19/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff discussion of responses to requests for additional information regarding steam dryer load	2
14-42	ML052640160	Thatcher D F, NRC/NRR	E-mail, Thatcher, NRR, to Alexion, NRR, Re: VY EPU Testing.	9/19/2005	E-Mail	Alexion T W, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2
14-43	ML052640415	Akstulewicz F M, NRC/NRR	E-mail Akstulewicz, NRR, to Holden, NRR, Et. Al., Re: VY EPU SRXB Status.	9/20/2005	E-Mail	Holden C F, NRC/NRR	Contains NRC staff analysis of responses to requests for additional information	3

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SUPPLEMENT 14 - 09/29/05

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-44	ML052640419	Jones S R, NRC/NRR	E-mail Jones, NRR, to Ennis, NRR, Et. Al., Re: VY EPU Conference Call.	9/20/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-45	ML052640424	Reddy D K, NRC/NRR	E-mail Reddy, NRR, to Ennis, NRR, Et. Al., Re: VY EPU Conference Call.	9/20/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	3
14-46	ML052640417	Tatum J E, NRC/NRR	E-mail Tatum, NRR, to Ennis, NRR, Et. Al., Re: VY EPU Conference Call.	9/20/2005	E-Mail	Ennis R B, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	2
14-47	ML052640432	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Reddy, NRR, Et. Al., Re: VY EPU Conference Call.	9/20/2005	E-Mail	Reddy D K, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	3

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
14-48	ML052640412	Marsh L B, NRC/NRR	E-mail Marsh, NRR, to Boger, NRR, Et. Al., Re: VY EPU SE Inputs.	9/21/2005	E-Mail	Boger B A, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	3
14-49	ML052650195	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Grimes, NRR, Re: VY EPU Communications.	9/21/2005	E-Mail	Grimes C I, NRC/NRR	Contains information regarding internal NRC staff scheduling practices	3
14-50	ML052650197	Grimes C I, NRC/NRR	E-mail, Grimes, NRR, to Scarborough, NRR, Et. Al., Re: VY EPU Communications.	9/21/2005	E-Mail	Scarborough T G, NRC/NRR	Contains NRC staff discussion regarding internal review practices	2
14-51	ML052650086	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Ennis, NRR, Re: VY EPU License Condition.	9/21/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC staff recommendations regarding content of draft safety evaluation	2

ENCLOSURE 3**VERMONT YANKEE EPU HEARING FILE AND MANDATORY DISCLOSURES
PRIVILEGE LOG - DELIBERATIVE PROCESS
SUPPLEMENT 15 - October 31, 2005**

Certain documents otherwise subject to inclusion in the hearing file and mandatory disclosures for this proceeding have been determined by the NRC Staff to contain information subject to withholding from public disclosure as predecisional, deliberative information. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents, withheld under the "deliberative process" privilege.

PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-01	ML052710076	Ennis R B, NRC/NRR	E-mail, Ennis, NRR to Akstulewicz, NRR, Re: VY EPU Conference Call.	9/22/2005	E-Mail	Akstulewicz F M, NRC/NRR	Contains information concerning NRC Staff scheduling practices	2
15-02	ML052650199	Grimes C I, NRC/NRR	E-mail, Grimes, NRR, to Ennis, NRR Re: VY EPU Communications.	9/22/2005	E-Mail	Ennis R B, NRC/NRR	Contains information concerning NRC Staff review practices (Redacted version will be made available in Supplement 16)	2
15-03	ML052710080	Kotzalas M A, NRC/NRR	E-mail, Kolzalas, NRR, to Ennis, NRR, Re: VY EPU SBO Input.	9/22/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff recommended input to draft SER regarding effect of EPU on station blackout	5

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-04	ML052710041	Sekerak S P, NRC/NRR	E-mail, Sekerak, NRR, to Wu, NRR, Re: VY EPU Draft SER Input.	9/23/2005	E-Mail	Wu C, NRC/NRR	Contains NRC Staff recommended input to draft SER regarding effect of EPU on RPV supports, RPV internals and core support structures, and CRDM pressure boundary housing	11
* 15-05	ML052710044	Razzaque M M, NRC/NRR	E-mail, Razzaque, NRR, to Ennis, NRR, Re: VY EPU SRXB RAIs	9/26/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft RAIs concerning LBLOCAs, fuel storage, and RHR	3
* 15-06	ML052710043	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Razzaque, NRR, Re: VY EPU SRXB RAIs	9/27/2005	E-Mail	Razzaque M M, NRC/NRR	Contains NRC Staff discussion of draft RAIs concerning LBLOCAs, fuel storage, and RHR	3
* 15-07	ML052710045	Huang T L, NRC/NRR	E-mail, Huang, NRR, to Ennis, NRR, Re: VY EPU SRXB RAIs.	9/27/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft RAIs concerning LBLOCAs, fuel storage, and RHR	2

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-08	ML052720436	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Akstulewicz, NRR, Et. Al., Re: VY EPU SE Status.	9/28/2005	E-Mail	Akstulewicz F M, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	4
15-09	ML052720447	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Ennis, NRR, Re: VY EPU SE Status.	9/28/2005	E-Mail	Ennis R B, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	2
15-10	ML052720444	Kotzalas M A, NRC/NRR	E-mail, Kotzalas, NRR, to Ennis, NRR, Re: VY EPU SE Status.	9/28/2005	E-Mail	Ennis R B, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	2
15-11	ML052790699	Thatcher D F, NRC/NRR/DI PM/IPSB	Draft Safety Evaluation Power Ascension Testing for Vermont Yankee, Dated September 10, 2003.	9/29/2005	Memoranda Safety Evaluation	Roberts D J, NRC/NRR/DLP M/LPD2	Contains NRC Staff recommended input to draft SER regarding power ascension testing	18
15-12	ML052720443	Fischer D C, NRC/NRR	E-mail, Fischer, NRR, to Ennis, NRR, Re: VY EPU SE Status	9/29/2005	E-Mail	Ennis R B, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	2

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-13	ML052790091	Pal A N, NRC/NRR	E-mail, Pal, NRR, to Ennis, NRR, Re: VY EPU SE Status.	9/29/2005	E-Mail	Ennis R B, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	2
15-14	ML052790087	Pettis R L, NRC/NRR	E-mail, Pettis, NRR, to Ennis, NRR, Re: VY EPU SE Status	9/29/2005	E-Mail	Ennis R B, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	2
15-15	ML052730071	Jenkins R V, NRC/NRR/DE /EEiB	Vermont Yankee: Thermal Power Uprate - Station Blackout.	9/29/2005	Memoranda Safety Evaluation	Roberts D J, NRC/NRR/DLP M/LPD2	Contains NRC Staff recommended input to draft SER regarding station blackout	15
15-16	ML052790059	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Tatum, NRR, Re: VY EPU License Condition.	9/30/2005	E-Mail	Tatum J E, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding transient testing	2
15-17	ML052790061	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Tatum, NRR, Re: VY EPU License Condition.	9/30/2005	E-Mail	Tatum J E, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding transient testing	2

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-18	ML052790063	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Tatum, NRR, Re: VY EPU License Condition.	9/30/2005	E-Mail	Tatum J E, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding transient testing	2
15-19	ML052790064	Tatum J E, NRC/NRR	E-mail, Tatum, NRR, to Jones, NRR, Re: VY EPU License Condition.	9/30/2005	E-Mail	Jones S R, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding transient testing	2
15-20	ML052790068	Tatum J E, NRC/NRR	E-mail, Tatum, NRR, to Jones, NRR, Re: VY EPU License Condition.	9/30/2005	E-Mail	Jones J R, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding transient testing	2
15-21	ML052790066	Tatum J E, NRC/NRR	E-mail, Tatum, NRR, to Jones, NRR, Re: WY EPU License Condition.	9/30/2005	E-Mail	Jones S R, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding transient testing	2

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-22	ML052730335	Manoly K A, NRC/NRR/DE /EMEB	Safety Evaluation of Vermont Yankee Nuclear Power Station, License No. DPR-28 (Docket No. 50-271), Technical Specification Proposed Change No. 263, Extended Power Uprate.	9/30/2005	Memoranda Safety Evaluation	Roberts D J, NRC/NRR/DLP M/LPD1	Contains NRC Staff recommended input to draft SER regarding structural and pressure boundary integrity of various systems, effect of EPU on condensate and feedwater system, and performance of safety-related valves	40
15-23	ML052730219	Dennig R L, NRC/NRR/DS SA/SPSB	Safety Evaluation Report Input - Review of Containment Systems and Analysis for the Vermont Yankee Nuclear Power Station Extended Power Uprate (TAC MC0761)	9/30/2005	Memoranda	Roberts D J, NRC/NRR/DLP M/LPD1	Contains NRC Staff recommended input to draft SER regarding containment system safety	38

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-24	ML052710446	Jones S R, NRC/NRR/DS SA/SPLB	Vermont Yankee EPU SPLB-A BOP Input.	9/30/2005	Memoranda	Roberts D J, NRC/NRR/DLP M/LPD1	Contains NRC Staff recommended input to draft SER regarding balance of plant systems	28
15-25	ML052790105	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Scarborough, NRR, Re: VY EPU Steam Dryer License Conditions.	10/1/2005	E-Mail	Scarborough T G, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding potential adverse flow effects	11
15-26	ML052790121	Akstulewicz F M, NRC/NRR	E-mail, Akstulewicz, NRR, to Ennis, NRR, Re: VY EPU SLMCPR.	10/3/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding potential adverse flow effects	2
15-27	ML052790130	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Akstulewicz, NRR, Re: VY EPU SLMCPR.	10/3/2005	E-Mail	Akstulewicz F M, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding potential adverse flow effects	2

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-28	ML052790084	Scarborough T G, NRC/NRR	E-mail, Scarborough, NRR, to Ennis, NRR, Re: VY EPU License Conditions.	10/3/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding potential adverse flow effects	2
15-29	ML052790050	Scarborough T G, NRC/NRR	E-mail, Scarborough, NRR, to Ennis, NRR, Re: VY EPU License Conditions.	10/3/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding potential adverse flow effects	3
15-30	ML052770442	Rubin M P, NRC/NRR/DS SA/SPSB	Safety Evaluation Report Input Concerning the Risk Evaluation of the Vermont Yankee Nuclear Power Station Extended Power Uprate Application (TAC No. MC0761).	10/3/2005	Memoranda Safety Evaluation Report	Roberts D J, NRC/NRR/DLP M/LPD1	Contains NRC Staff recommended input to draft SER regarding risk evaluation	20

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-31	ML052790065	Roberts D J, NRC/NRR	E-mail, Roberts, NRR, to Marsh, NRR, Et. Al., Re: VY EPU License Condition.	10/4/2005	E-Mail	Marsh L B, NRC/NRR	Contains information concerning NRC Staff reviewing and scheduling practices	2
* 15-32	ML052790043	Sheron B W, NRC/NRR	E-mail, Sheron, NRR, to Ennis, NRR, Et. Al., Re: VY EPU License Conditions.	10/4/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding risk-informed evaluation of requested containment overpressure credit	2
* 15-33	ML052790132	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Stutzke, NRR, Re: VY EPU License Condition.	10/5/2005	E-Mail	Stutzke M A, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding risk-informed evaluation of requested containment overpressure credit	6

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-34	ML052790048	Marsh L B, NRC/NRR	E-mail, Marsh, NRR, Ennis, NRR, Et. AL., Re: VY EPU License Conditions.	10/5/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff evaluations and recommendations concerning press release concerning issuing of license conditions	3
15-35	ML052790038	Stutzke M A, NRC/NRR	E-mail, Stutzke, NRR, to Ennis, NRR, Re: VY EPU License Conditions.	10/5/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding risk- informed evaluation of requested containment overpressure credit	4
15-36	ML052790039	Stutzke M A, NRC/NRR	E-mail, Stutzke, NRR, to Ennis, NRR, Re: VY EPU License Conditions.	10/5/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff discussion of draft license condition regarding risk- informed evaluation of requested containment overpressure credit	3

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-37	ML052850136	Scarborough T G, NRC/NRR	E-mail, Scarborough, NRR, to Ennis, NRR, Re: VY EPU Inspections.	10/7/2005	E-Mail	Ennis R B, NRC/NRR	Contains NRC Staff recommended input to draft SER regarding inspection follow-up items	3
15-38	ML052850151	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Sienel and Knutson, RGN-I, Re: VY EPU Inspections.	10/8/2005	E-Mail	Knutson E C, Sienel B E, NRC/RGN-I	Contains NRC Staff recommended input to draft SER regarding inspection follow-up items	8
15-39	ML052850051	Akstulewicz F M, NRC/NRR/DS SA/SRXB	Safety Evaluation Input for Extended Power Uprate Vermont Yankee Nuclear Power Station (TAC No. MC0761) Section 2.8.7 and Revised Section 2.8.5.6.2.	10/11/2005	Memoranda Safety Evaluation	Roberts D J, NRC/NRR/DLP M/LPD1	Contains NRC Staff recommended input to draft SER regarding ECCS LOCA and Methods Evaluation	64

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-40	ML052900197	Ennis R B, NRC/NRR	E-mail, Ennis, NRR, to Reddy, NRR, Et. Al., Re: VY EPU Conference Call.	10/14/2005	E-Mail	Reddy D K, NRC/NRR	Contains NRC Staff analysis of licensee's proposed modification of draft license condition regarding transient testing	4
15-41	ML052900188	Jones S R, NRC/NRR	E-mail, Jones, NRR, to Reddy, NRR, Et. Al., Re: VY EPU License Condition.	10/14/2005	E-Mail	Reddy D K, NRC/NRR	Contains NRC Staff analysis of licensee's proposed modification of draft license condition regarding transient testing	3
15-42	ML052900185	Stutzke M A, NRC/NRR	E-mail, Stutzke, NRR, to Rubin, NRR, Re: VY EPU Containment Overpressure.	10/14/2005	E-Mail	Rubin M P, NRC/NRR	Contains NRC Staff analysis of licensee's evaluation of containment overpressure credit (Redacted version will be made available in Supplement 16)	3

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PDP No.	Accession Number	Author Name/ Affiliation:	Title/ Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
15-43	ML052900195	Tatum J E, NRC/NRR	E-mail,Tatum, NRR, to Reddy, NRR, Et. Al., Re: VY EPU Conference Call.	10/14/2005	E-Mail	Reddy D K, NRC/NRR	Contains NRC Staff analysis of licensee's proposed modification of draft license condition regarding transient testing	4

TAB D

ACRS Letter dated September 20, 2005

September 20, 2005

Mr. Luis A. Reyes
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT: PROPOSED REVISION 4 TO REGULATORY GUIDE 1.82, "WATER SOURCES FOR LONG-TERM RECIRCULATION COOLING FOLLOWING A LOSS-OF-COOLANT ACCIDENT"

Dear Mr. Reyes:

During the 525th meeting of the Advisory Committee on Reactor Safeguards, September 8-10, 2005, we reviewed the proposed Revision 4 to Regulatory Guide (RG) 1.82, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident," and the supporting Standard Review Plan (SRP) Section 6.2.2, "Containment Heat Removal Systems." The review focused mainly on the issue of granting containment overpressure credit for calculation of net positive suction head (NPSH) for emergency core cooling and containment heat removal system pumps. During our review, we had the benefit of presentations by and discussion with representatives of the NRC staff and members of the public. We also had the benefit of the documents referenced.

CONCLUSIONS AND RECOMMENDATIONS

1. Revision 4 to RG 1.82 should not be issued for public comment at this time and should be revised to improve clarity and reflect the following recommendation.
2. Containment overpressure credit to ensure sufficient NPSH for emergency core cooling and heat removal system pumps should only be selectively granted.

DISCUSSION

One purpose of the proposed Revision 4 to RG 1.82 is to make it consistent with current regulatory practice for crediting containment accident pressure in calculating available NPSH for boiling water reactor (BWR) and pressurized water reactor (PWR) systems. As a part of this effort, SRP Section 6.2.2 would also be revised to reference RG 1.82 rather than RG 1.1, "Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal System Pumps." RG 1.1 would be designated as applicable only to those plants for which it was used as the basis for the original license.

RG 1.82 was first issued in 1974 to provide guidance on the design of PWR sumps which serve as a source of water during the recirculation core cooling phase of postulated design-basis loss-of-coolant accidents (LOCAs). Three revisions to RG 1.82 have been issued, one in November 1985, another in May 1996, and the most recent in November 2003. These revisions have addressed issues associated with containment emergency sump performance, particularly debris blockage on the emergency core cooling system suction strainers and granting credit for containment overpressure in determining NPSH available for the emergency core cooling and containment heat removal pumps.

Even though containment overpressure credit had been granted on an ad hoc basis before RG 1.1 was issued in 1974, Revision 3 to RG 1.82 issued in November 2003 was the first version to provide explicit guidance for granting limited use of containment accident pressure for calculating available NPSH. This guidance conflicts with the original guidance in RG 1.1, still in effect, which states that no such credit should be used. Not granting credit preserves the independence of the performance of the ECCS and containment systems.

The proposed Revision 4 to RG 1.82 includes provisions that permit licensees to use either a conservative deterministic approach or a best estimate with uncertainty analysis to establish the amount of containment overpressure to be credited.

We previously stated our position on granting containment overpressure credit in our December 12, 1997 letter (i.e., "selectively granting credit for small amounts of overpressure for a few cases may be justified") and more recently in our letter dated September 30, 2003. In that letter we recommended issuing Revision 3 to RG 1.82. That RG included a provision to grant, only where necessary, some containment accident pressure credit for some operating reactors with the caveat that "this should be minimized to the extent possible."

The position that the overpressure should be conservatively calculated is the only explicit restriction on the use of overpressure credit given in the proposed revision of the RG. In addition, the guidance describing what factors to consider in conservatively calculating containment overpressure, in Sections 1.3.1 and 2.1.1 of the proposed RG is confusing.

We believe that additional restrictive guidance should be placed on the granting of overpressure credit. Before such credit can be granted, licensees should demonstrate that there are no practical alternative approaches that can eliminate the need for such credit. Such credit should be granted only for robust containments for which there are positive means for indication of containment integrity such as inerted and sub-atmospheric containments. The time intervals for which such credit is needed should be limited to a few hours, commensurate with the demonstrated capability of all associated equipment to perform its intended functions during this time period. The RG should be revised to include such restrictions before it is released for public comment.

Dr. William Shack did not participate in the Committee's deliberations regarding this matter.

Sincerely,

/RA/

Graham B. Wallis
Chairman

Even though containment overpressure credit had been granted on an ad hoc basis before RG 1.1 was issued in 1974, Revision 3 to RG 1.82 issued in November 2003 was the first version to provide explicit guidance for granting limited use of containment accident pressure for calculating available NPSH. This guidance conflicts with the original guidance in RG 1.1, still in effect, which states that no such credit should be used. Not granting credit preserves the independence of the performance of the ECCS and containment systems.

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We previously stated our position on granting containment overpressure credit in our December 12, 1997 letter (i.e., "selectively granting credit for small amounts of overpressure for a few cases may be justified") and more recently in our letter dated September 30, 2003. In that letter we recommended issuing Revision 3 to RG 1.82. That RG included a provision to grant, only where necessary, some containment accident pressure credit for some operating reactors with the caveat that "this should be minimized to the extent possible."

The position that the overpressure should be conservatively calculated is the only explicit restriction on the use of overpressure credit given in the proposed revision of the RG. In addition, the guidance describing what factors to consider in conservatively calculating containment overpressure, in Sections 1.3.1 and 2.1.1 of the proposed RG is confusing.

We believe that additional restrictive guidance should be placed on the granting of overpressure credit. Before such credit can be granted, licensees should demonstrate that there are no practical alternative approaches that can eliminate the need for such credit. Such credit should be granted only for robust containments for which there are positive means for indication of containment integrity such as inerted and sub-atmospheric containments. The time intervals for which such credit is needed should be limited to a few hours, commensurate with the demonstrated capability of all associated equipment to perform its intended functions during this time period. The RG should be revised to include such restrictions before it is released for public comment.

Dr. William Shack did not participate in the Committee's deliberations regarding this matter.

Sincerely,

Graham B. Wallis
Chairman

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DATE	09/20/05		09/20/05		09/20/05		/ /05		09/20/05	
									/ /05	

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the Vermont Department of Public Service Motion to Compel Production of Certain NRC Staff Documents (III) in the above captioned proceeding has been served on the following by electronic mail where indicated by an asterisk on this 22nd day of November, 2005, and will be mailed by deposit in the United States Mail, first class, postage prepaid, on the 23rd day of November, 2005.

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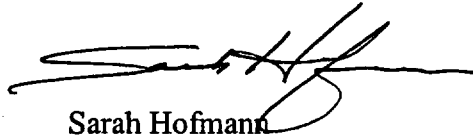
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