

March 2, 2006

NOTE TO COMMISSIONERS' ASSISTANTS

OCM/NJD

cc Rick Croteau  
cc Roger Davis  
\_\_\_ Brooke Poole  
\_\_\_ Bill Orders  
X Mohammed Shuaibi  
\_\_\_ Nancy Fragoyannis  
\_\_\_ Pat Castleman  
\_\_\_ Julie Olivier  
\_\_\_ Robert McOsker  
\_\_\_ Clare Kasputys  
\_\_\_ Jeanne Lopatto  
\_\_\_ Vicki Bolling  
\_\_\_ Linda Herr  
\_\_\_ Kia Jackson  
\_\_\_ Susan Abrahams

OCM/EXM

cc Heather Astwood  
\_\_\_ Dave Cummings  
X James Beall  
\_\_\_ David Brown  
\_\_\_ Linda Lewis  
\_\_\_ Antoinette Waller  
\_\_\_ Dwight Walker

OCM/GBJ

cc Josh Batkin  
\_\_\_ Angela Coggins  
X Terry Reis  
\_\_\_ Greg Hatchett  
\_\_\_ Jackie Raines  
\_\_\_ Carolyn Harves

OCM/JSM

cc Spiros Droggitis  
\_\_\_ John Thoma  
\_\_\_ Kate Barber Nolan  
X Dave Skeen  
\_\_\_ Mike Cheok  
\_\_\_ Lorna Kipfer  
\_\_\_ Tojuana Fortune

OCM/PBL

cc Josie Piccone  
\_\_\_ Cathy Marco  
x Doug Coe  
\_\_\_ Rebecca Tadesse  
\_\_\_ Vicki Ibarra  
\_\_\_ Laurette Moorin

FROM: William M. Dean **/RA/**  
Assistant for Operations, OEDO

SUBJECT: TALKING POINTS REGARDING THE ISSUANCE OF VERMONT YANKEE  
EXTENDED POWER UPRATE AMENDMENT

On March 1, 2006, the enclosed was provided to each Commissioner Assistant's office.  
The talking points were developed based on a request from the Chairman's office.

Enclosure: As stated

cc: L. Reyes, EDO (w/enclosure)  
M. Virgilio, DEDMRS (w/o enclosure)  
W. Kane, DEDR (w/enclosure)  
J. Silber, DEDIA (w/o enclosure)  
W. Dean, AO (w/enclosure)  
T. Bergman, OEDO (w/o enclosure)  
U. Shoop, OEDO (w/enclosure)  
J. Gray, OGC (w/enclosure)

SECY (w/enclosure)  
OGC (w/enclosure)  
OCA (w/o enclosure)  
OPA (w/o enclosure)  
OIP (w/o enclosure)  
OIS (w/o enclosure)  
CFO (w/o enclosure)  
EDO R/F (w/enclosure)

## **INTERNAL USE ONLY**

- 1 -

### **TALKING POINTS REGARDING ISSUANCE OF VERMONT YANKEE EXTENDED POWER UPRATE AMENDMENT**

#### **TALKING POINTS - SCHEDULE DELAY**

1. NRC staff is completing its evaluation of the power uprate amendment for the Vermont Yankee extended power uprate. Due to the significance of this action, the Executive Director for Operations and the Deputy Executive Director for Reactor and Preparedness Programs are reviewing the safety evaluation (SE) report. In as much as the SE addresses numerous subjects and is over 300 pages in length, it is expected that the review will be completed by about March 2, 2006.
2. The Commission is aware of the OEDO review.

#### **TALKING POINTS - UPRATE APPROVAL**

- 1) The NRC staff has approved Entergy's request for a 20% power uprate at Vermont Yankee.
- 2) The extended power uprate (EPU) increases the maximum authorized power level from 1593 megawatts thermal (MWt) to 1912 MWt. This represents an increase of approximately 100 megawatts electric.
- 3) The amendment issued by the staff is effective immediately. It is expected that Entergy will soon start to incrementally increase the Vermont Yankee power output and perform the test program necessary to achieve the new power level. The NRC staff will be closely monitoring the power ascension process.
- 4) In general, the NRC's goal is to complete EPU reviews within 1 year from receipt of the licensee's application. However, the Vermont Yankee EPU review took nearly two and a half years to complete.
- 5) The NRC's Vermont Yankee EPU safety evaluation will be available through the NRC's ADAMS electronic document database by entering accession number ML060050028 on this Web page: <http://adamswebsearch.nrc.gov/dologin.htm>. The letter approving the power uprate is available by entering ML060050022 at the same address.

#### **TALKING POINTS - NO SIGNIFICANT HAZARDS CONSIDERATION & HEARING**

- 1) On January 11, 2006, the NRC staff published a "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards

**INTERNAL USE ONLY**

- 2 -

Consideration Determination" in the *Federal Register* (71 FR 1774) related to the Vermont Yankee extended power uprate (EPU) amendment request.

- 2) The Notice provided the NRC's staff's proposed determination that the Vermont Yankee EPU amendment request involves no significant hazards consideration (NSHC). Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.
- 3) The Notice provided a 30-day period for public comment on the proposed NSHC determination (comment period ended on February 10, 2006). Public comments were received.
- 4) The NRC had previously published a Notice in the *Federal Register* (July 1, 2004) which provided an opportunity to request a hearing. On August 30, 2004, the Vermont Department of Public Service (DPS) and the New England Coalition (NEC) filed requests for hearing in connection with the proposed amendment. On November 22, 2004, the Atomic Safety and Licensing Board (ASLB) granted those hearing requests. By Order dated December 16, 2004, the ASLB issued its decision to conduct the hearing using the procedures in 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for NRC Adjudications."
- 5) In accordance with the NRC's regulations in 10 CFR 50.91, if a final determination is made that the proposed amendment involves no significant hazards consideration, the NRC may issue the amendment and make it immediately effective, notwithstanding submission of adverse comments or a request for hearing. In that event, any required hearing would be completed after issuance of the amendment; however, if a final determination is made that the proposed amendment involves a significant hazards consideration, the amendment would not be issued prior to completion of the hearing.
- 6) The Commission's regulations in 10 CFR 2.1202 state that:

During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter which is the subject of hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing is provided.

In addition, 10 CFR 2.1202 states that the NRC staff's actions on the matter is effective upon issuance by the staff, except, among other things, in matters that involve significant hazards considerations as defined in 10 CFR 50.92.
- 7) The NRC staff has completed its evaluation of the Vermont Yankee EPU amendment as discussed in staff's safety evaluation. Based on its evaluation, the staff has made a

## **INTERNAL USE ONLY**

- 3 -

final determination that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a significant reduction in a margin of safety. The staff's final no significant hazards consideration determination is shown in Section 8.0 of the safety evaluation.

- 8) On February 1, 2005, the ASLB issued its "Initial Scheduling Order." The Order set forth limits for filing of motions and testimony, and time frames for certain other activities in the proceeding related to the proposed VYNPS EPU amendment. However, the ASLB has not yet determined the hearing schedule. It is expected it would start sometime in the summer of 2006 (possibly July/August timeframe).

### **TALKING POINTS FOR ACRS LETTER**

- 1) The Advisory Committee on Reactor Safeguards (ACRS) issued a letter on January 4, 2006, to NRC Chairman Diaz that provided its recommendations regarding the proposed Vermont Yankee EPU.
- 2) The ACRS is a independent statutory committee that advises the NRC staff and the Commission and is structured to provide a forum where experts representing many technical perspectives can provide advice that is factored into the NRC's decision-making process.

## **Additional Talking Points to Support Discussion of the VY Extended Power Uprate**

1. A statement to the effect that Federal regulations allow the staff to proceed with amendments for which aspects are in litigation with supporting bullets explaining why the staff is allowed to proceed and what the staff must do to ensure safety before approving such an amendment.

For issues that are under adjudication, Federal regulations allow the staff to take action including but not limited to issuing its approval, denial or imposing conditions on its approval of the application if the staff makes the requisite safety findings. Further, in accordance with Section 189 of the Atomic Energy Act, the regulations state that the action taken by the staff with regard to reactor license amendments is effective on issuance, notwithstanding the pendency of any hearing requests, except, among other things, when the license amendment involves a significant hazards consideration. The staff concluded that a significant hazards consideration did not exist for the Vermont Yankee power uprate.

To reach a no significant hazards consideration determination under the regulations the staff had to determine that the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

To approve the amendment the staff needed to perform an evaluation of the amendment request and conclude that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public, and (4) issuance of the amendment is in accordance with 10 CFR Part 51 and all Commission regulations have been satisfied.

2. A confirmation that the staff has met requirements of Item 3 (environmental and safety) and has concluded that it is acceptable to issue the amendment.

The staff performed an evaluation of the licensee's submittals and performed inspections during the review of the proposed amendment. Based on their evaluation they concluded that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public, and (4) issuance of the amendment is in accordance with 10 CFR Part 51 and all Commission regulations have been satisfied. Therefore, the staff found the proposed action acceptable and issued approval for the amendment based on their findings. The safety evaluation, which can be found in ADAMS, contains details of the staff's review, the staff's consideration of public comments on the staff's proposed no significant hazards consideration finding, and the basis for the staff's finding that the amendment is acceptable.

3. A statement that for extended power uprates, the ACRS also conducts reviews independent of the staff, has done so for this case, and has independently recommended approving the amendment.

Extended power uprates are reviewed by the Advisory Committee on Reactor Safeguards (ACRS). The ACRS is an independent statutory committee that advises the Commission and is structured to provide a forum where experts representing many technical perspectives can provide advice that is factored into the NRC's decision-making process.

The ACRS reviewed the proposed Vermont Yankee power uprate amendment during the meetings held on November 15-16 and 29-30, and December 7, 2005.

The Advisory Committee on Reactor Safeguards (ACRS) issued a letter on January 4, 2006, to NRC Chairman Diaz that provided its recommendations regarding the proposed Vermont Yankee EPU. This letter recommended that the proposed power uprate amendment be granted.

4. Requirements on separation of functions or ex parte communications (e.g., Commissioners are barred from discussing substantive issues regarding the amendment that is pending in adjudication due to the Commission's role as an appellate body with respect to matters in litigation.)

When a proposed action is in the adjudicatory process, NRC staff and the other parties in the adjudicatory process are not allowed to advise or discuss the issues involved in the hearing process with the Commission. This allows the Commission to remain neutral in the event that a decision is appealed. There are only limited exceptions to this rule which are set forth in the regulations and they include information such as the status of the proceeding, NRC participation in matters pending before a court or another agency, the allocation of agency resources, and initiation of an investigation or enforcement proceeding.

5. A statement to the effect that aspects of this amendment are going to be litigated through the NRC's hearing process.

Following the publication of the Federal Register Notice, two petitioners, the Vermont Department of Public Service (DPS) and the New England Coalition (NEC) filed requests for hearing in connection with the proposed Vermont Yankee EPU amendment. The Atomic Safety and Licensing Board (ASLB) granted those hearing requests on November 22, 2004, and decided to conduct the hearing using the Informal Hearing Procedures for NRC Adjudications (10 CFR Part 2, Subpart L). The issues admitted are currently being processed in accordance with these procedures.

6. Status of hearing (only timing) and how results of the hearing could potentially affect the power uprate post staff approval.

The Atomic Safety and Licensing Board (ASLB) granted the hearing requests from the Vermont Department of Public Service (DPS) and the New England Coalition (NEC) on

November 22, 2004 and issued an initial scheduling order on February 1, 2005. This initial scheduling order provides limits for filing of motions and testimony, and time frames for certain other activities in the proceeding related to the proposed VYNPS EPU amendment. However, the ASLB has not yet determined the hearing schedule. It is expected it would start sometime in the summer or fall of 2006 (possibly in the July/August timeframe). As such, this proceeding is still in the pre-hearing activity phase.

At the conclusion of the hearing, the ASLB will make findings on the contentions that were litigated. If the ASLB finds for the licensee, then the next possible avenue for the interveners is to petition the Commission to review the decision. If the ASLB finds for the interveners, that decision may also be appealed to the Commission. It is expected that the initial decision will include direction to the NRC staff on what action, if any, must be taken.

## ROLLOUT PLAN FOR VERMONT YANKEE EPU AMENDMENT

Item	Action	Date	Responsibility (Note 1)
1	NRR Director sign amendment	3/2/06	NRR - Dyer
2	Complete ADAMS processing of amendment (Process for immediate release)	3/2/06	NRR - Secretaries
3	Email amendment package with public version of SE to internal stakeholders (VY Communications group, Wray, Hayden)	3/2/06	NRR - Ennis
4	Notify Entergy (Craig Nichols) that amendment has been issued and that hard copy will be sent by Fed Ex, provide copy electronically	3/2/06	NRR- Ennis
5	Notify Vermont DPS (Bill Sherman) that amendment has been issued and that hard copy will be sent by Fed Ex	3/2/06	NRR - Ennis
6	Notify Vermont, New Hampshire, and Massachusetts Congressional delegations that amendment has been issued	3/2/06	OCA - Shane
7	Notify New England Coalition (Ray Shadis) that amendment has been issued and that hard copy will be sent by Fed Ex	3/2/06	NRR - Ennis
8	Notify New Hampshire and Massachusetts Governor's Office that amendment has been issued	3/2/06	RI - Wray
9	Notify newspapers that amendment has been issued (Brattleboro Reformer, Rutland Herald, Sentinal, Vermont Guardian, David Gram - AP)	3/2/06	RI - Sheehan/Screnci
10	Issue press release	3/2/06	OPA - Hayden
11	Provide 13 hard copies of amendment to OGC to send via Fed Ex to ASLB and parties	3/2/06	NRR - Ennis
12	Send amendment to ASLB and parties via Fed Ex overnight delivery	3/2/06	OGC - Turk

### Notes

- 1)For Items 3 through 10 - responsible individuals should wait until they hear that previous action has been completed before initiating their required action.