

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR VERMONT	)	Docket No. 50-271-LA-2
YANKEE, LLC AND ENTERGY	)	
NUCLEAR OPERATIONS, INC.	)	May 4, 2015
	)	
(Vermont Yankee Nuclear Power Station)	)	

**STATE OF VERMONT’S NOTICE OF SUPPLEMENTAL AUTHORITY**

NOW COMES the State of Vermont (“State”), through the Vermont Department of Public Service, with the following supplement to its supporting evidence in the above-captioned proceeding currently before the Atomic Safety and Licensing Board (“ASLB” or “Board”). On April 30, 2015, the Nuclear Regulatory Commission (“NRC” or “Commission”) published a notice of issuance of a Draft Environmental Assessment (“EA”) and Finding of No Significant Impact (“FONSI”)<sup>1</sup> in the Federal Register<sup>2</sup>. The Draft EA and FONSI provide additional supporting evidence for Contentions One and Two of the State’s Petition for Leave to Intervene and Hearing Request submitted and currently under review in this proceeding, and are attached as Attachment 1.

On March 14, 2014, Entergy Nuclear Operations, Inc. (“Entergy”) filed a request for exemptions from portions of 10 CFR §§ 50.47(b), 50.47(c)(2) and Part 50, Appendix E, and filed a directly-related license amendment request (“LAR”) on June 12, 2014 seeking revisions to the

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<sup>1</sup> See Letter from James Kim, NRC Project Manager, to Entergy Nuclear Operations, Inc. Site Vice President (Apr. 24, 2015)( NRC Agencywide Document Access Management System [ADAMS] Accession No. ML15103A419) (attached as Attachment 1).

<sup>2</sup> See 80 FR 24291.

Vermont Yankee Nuclear Power Station (“VY”) site emergency plan and Emergency Action Level scheme.<sup>3</sup> On November 14, 2014, the NRC Staff recommended that the Commission approve Entergy’s exemptions request.<sup>4</sup>

The State filed a Petition for Leave to Intervene and Hearing Request (“Petition”) in response to the LAR on February 9, 2015.<sup>5</sup> The State’s Petition contains two contentions: One, the LAR is not ready for review because the directly related exemption request has not been approved by the NRC; and Two, the LAR increases the risk to public health and safety in the event that the directly related exemption request is approved. On March 2, 2015, the NRC approved the NRC Staff’s recommendation to grant the exemptions request.<sup>6</sup> Entergy and NRC Staff each filed answers opposing the State’s Petition on March 6, 2015.<sup>7</sup> The State then filed a petition for reconsideration of the NRC’s approval of the exemptions request at the Commission on March 12, 2015 , and a reply to NRC Staff and Entergy answers to the State’s Petition at the Board on March 17, 2015.<sup>8</sup>

Both Entergy and NRC Staff argue in their answers that Contention One of the State’s Petition is moot because on March 2 the NRC approved the NRC Staff’s recommendation that

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<sup>3</sup> See Letter from Christopher Wamser, Entergy Site Vice President, to NRC Document Control Desk (Mar. 14, 2014)(BVY 14-009)(ML14080A141); Letter from Christopher Wamser, Entergy Site Vice President, to NRC Document Control Desk (June 12, 2014)(BVY 14-033)(ML14168A302).

<sup>4</sup> See Policy Issue (Notation Vote) from Mark A. Satorius, Executive Director for Operations to the Commissioners (Nov. 14, 2014)(SECY-14-0125)(ML14227A711).

<sup>5</sup> See State of Vermont’s Petition for Leave to Intervene and Hearing Request (Feb. 9, 2015)(ML15040A723).

<sup>6</sup> See Commission Voting Record re Request by Entergy Nuclear Operations, Inc., for Exemptions From Certain Emergency Planning Requirements (March 2, 2015)(ML15062A135); Memorandum from Annette L. Vietti-Cook to Mark A. Satorius re Staff Requirements – SECY 14-0125 (March 2, 2015)(ML15061A516).

<sup>7</sup> NRC Staff’s Answer to State of Vermont’s Petition for Leave to Intervene and Hearing Request (Mar. 6, 2015) (ML15065A364); Entergy’s Answer Opposing Petition for Leave to Intervene and Hearing Request (Mar. 6, 2015)(ML15065A300).

<sup>8</sup> See State of Vermont’s Petition for Reconsideration of Commission Decision Approving Entergy’s Exemption Requests (Mar. 12, 2015)(attached to State’s Reply as Attachment A); State of Vermont’s Reply to NRC Staff and Entergy Answers to Petition to Leave to Intervene and Hearing Request (Mar. 17, 2015)(ML15076A546).

the exemptions request directly related to the LAR be granted.<sup>9</sup> More specifically, the NRC Staff states that “the Commission’s determination controls and the Board is bound by that determination.”<sup>10</sup> The Commission’s determination, however, was based on incomplete information. Entergy concedes in its answer that an EA and/or a FONSI were not available when the NRC approved the Staff recommendation to grant the exemptions request.<sup>11</sup>

The NRC Staff’s issuance of the Draft EA and FONSI impacts this Board’s review in this proceeding in two ways. First, the Draft EA and FONSI make clear that Contention One of the State’s Petition is not moot. Contrary to the NRC Staff’s assertions that the Board is bound by the Commission’s approval of Entergy’s exemptions request, issuance of the Draft EA and FONSI shows that the approval is not binding because it preceded any review under the National Environmental Policy Act (“NEPA”). Under NEPA, the Commission must consider the EA and FONSI – after public comments have been received pursuant to the Federal Register notice and reviewed – prior to approval of the exemptions request. NRC approval of the exemptions request on March 2 without consideration of its environmental impacts violated NEPA, as the State argued at length in its Petition for Reconsideration of Commission Decision Approving Entergy’s Exemption Requests.<sup>12</sup> Contention One therefore continues to be valid in this proceeding.

Second, the Draft EA and FONSI also support the State’s Contention Two. Both Entergy and NRC Staff have relied upon the Commission’s granting of requested exemptions as a

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<sup>9</sup> Entergy Answer at 16-17; NRC Staff Answer at 21-22.

<sup>10</sup> NRC Staff Answer at 21-22.

<sup>11</sup> Entergy Answer at 12-13, 17, FN 77.

<sup>12</sup> See State Petition for Reconsideration at 6-9.

prerequisite for this LAR,<sup>13</sup> and the Draft EA and FONSI recognize – as they must – that environmental review and public comment are required in analyzing the exemptions.

## CONCLUSION

As Entergy has made clear throughout this proceeding, “there is no question that the NRC will have to exempt Vermont Yankee from certain requirements of Appendix E before the LAR is granted.”<sup>14</sup> Entergy and NRC Staff claimed in their answers that the NRC had already granted those exemptions in its March 2 decision. The Draft EA and FONSI make clear that further environmental review – including public comment – is needed before those exemptions can be granted. For these and other reasons already articulated by the State, Entergy’s LAR cannot be issued at this time, and the Board should grant the State a hearing on both of its Contentions.

Dated at Montpelier, Vermont this 4th of May, 2015

Respectfully submitted,

/Signed (electronically) by/  
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<sup>13</sup> See, e.g., NRC Staff Answer at 29-31, 36-42; Entergy Answer at 19-25.

<sup>14</sup> Entergy Answer at 25 (citing LAR, Attach. 1 at 1 (“The proposed PDEP and Permanently Defueled EAL scheme are predicated on approval of requests for exemptions”)).

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the forgoing State of Vermont's Notice of Supplemental Authority, dated May 4, 2015, have been served upon the Electronic Information Exchange, the NRC's E-filing System, in the above-captioned proceeding, this 4th day of May, 2015.

/Signed (electronically) by/  
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Dated at Montpelier, Vermont  
this 4th day of May, 2015