

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-3
YANKEE, LLC AND ENTERGY	)	
NUCLEAR OPERATIONS, INC.	)	July 6, 2015
	)	
(Vermont Yankee Nuclear Power Station)	)	

**STATE OF VERMONT’S MOTION FOR  
LEAVE TO FILE A NEW CONTENTION  
INCLUDING THE PROPOSED NEW CONTENTION  
AND TO ADD ADDITIONAL BASES AND SUPPORT  
TO EXISTING CONTENTIONS I, III, AND IV**

**INTRODUCTION**

Pursuant to 10 C.F.R. § 2.309(c)(1) the State of Vermont (“State”) submits a new contention and moves to supplement the bases and support for existing Contentions I, III, and IV in the above-captioned proceeding. On June 23, 2015, the U.S. Nuclear Regulatory Commission (“NRC”) Staff (“Staff”) issued an exemption requested by Entergy Nuclear Operations, Inc. (“Entergy”) that eliminates requirements of 10 C.F.R. §§ 50.75(h)(1)(iv) and 50.82(a)(8)(i)(A). In its request for a license amendment (“LAR”) filed on September 14, 2014,<sup>1</sup> Entergy asserted that the proposed LAR involves “administrative changes to the license that will be consistent with the NRC’s regulations at 10 CFR 50.75(h)” and “[t]he proposed amendment is confined to

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<sup>1</sup> Entergy License Amendment Request (“LAR”)(September 4, 2015)(ML14254A405).

administrative changes for providing consistency with existing regulations.”<sup>2</sup> These assertions are no longer accurate and the analyses which rely upon these assertions are no longer valid now that Staff has granted Entergy’s request to be exempted from provisions of 10 C.F.R. §§ 50.75(h)(1)(iv) and 50.82(a)(8)(i)(A); provisions that are critical to the protection of public health, safety and the environment, and formed the basis for the State’s Petition to Intervene.

### **THE STATE’S REQUEST COMPLIES WITH 10 C.F.R. § 2.309(c)(1)**

The State’s motion should be granted because it meets all three requirements of 10 C.F.R. § 2.309(c)(1):

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

The granted exemptions were not previously available as they only became effective June 23, 2015. The information that underlies this new Contention and the new bases was published in the Federal Register on June 23, 2015.<sup>3</sup> Although Entergy filed its request for the exemptions months ago, and the request and its implications were a focus of the State’s Petition to Intervene, the request was not actually granted until after all briefing in this matter was complete and the Board had set the matter for oral argument. While both Entergy and Staff have emphasized in

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<sup>2</sup> LAR, Attachment 1 at 7-8.

<sup>3</sup> 80 Fed. Reg. 35992-35995 (June 23, 2015).

their Answers that the LAR “does [not] even mention, the Exemption”<sup>4</sup> and “[t]here is no mention of the Exemption Request in the LAR”,<sup>5</sup> the State has maintained that the exemption request is inextricably connected to the LAR throughout this proceeding.

Additionally, the grant of the exemption request provides information that “is materially different from information previously available.”<sup>6</sup> As discussed in more detail in the Contention below, the grant of the exemption creates a markedly different factual picture than the one presented in the LAR. For example, the comparison chart provided with the LAR, which purports to show the similarity between the proposed license amendment and the provisions of 10 C.F.R. § 50.75(h), is objectively incorrect since Entergy is now exempted from some of the most important requirements of § 50.75(h).<sup>7</sup> Entergy’s assertion that the regulations as exempted are comparable to the proposed license condition is no longer valid.

Finally, the State’s motion is timely under 10 C.F.R. § 2.309(c)(2)(ii), and in fact occurred within 10 days of the Federal Register notice, as calculated under 10 C.F.R. § 2.306(a). In sum, all the requirements of 10 C.F.R. § 2.309(c)(1) are met and the Board should grant the State leave to file the new Contention and new Bases as detailed below.

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<sup>4</sup> Entergy’s Answer Opposing State of Vermont’s Petition for Leave To Intervene and Hearing Request at 3 (“Entergy Answer”)(May 15, 2015)(ML15135A498).

<sup>5</sup> NRC Staff Answer to State of Vermont Petition for Leave to Intervene and Hearing Request at 16 (“Staff Answer”)(May 15, 2015)(ML15135A523).

<sup>6</sup> 10 C.F.R. 2.309(c)(2)(ii).

<sup>7</sup> See LAR Attachment 1 at 4.

## **NEW CONTENTION**

### **CONTENTION V**

**THE LICENSE AMENDMENT REQUEST SHOULD BE DENIED BECAUSE IT IS NO LONGER ACCURATE WITHIN THE MEANING OF 10 C.F.R. §§ 50.9 AND 50.90, DOES NOT MEET THE REQUIREMENTS OF 10 C.F.R. § 50.75(h)(5), AND BECAUSE ENTERGY IS NO LONGER IN COMPLIANCE WITH OTHER PROVISIONS OF 10 C.F.R. §§ 50.75(h) AND 50.82(a)(8)(i)(A)**

### **BASES AND ADDITIONAL BASIS**

1. 10 C.F.R. § 50.9(a) requires that an application for a license amendment “shall be complete and accurate in all material respects.” The LAR now on file in this proceeding is not accurate in all material respects.

2. Similarly, 10 C.F.R. § 50.90 requires that an application for a license amendment “fully describ[e] the changes desired.” The LAR now on file in this proceeding does not fully describe the changes desired in all material respects.

3. “If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment *shall* be in accordance with the provisions of paragraph (h) of this section.”<sup>8</sup>

4. Entergy asserts that the LAR, if approved, will be in compliance with the terms of 10 C.F.R. § 50.75(h). However, in light of the recently approved exemption granted to Entergy, the LAR will no longer be in compliance with all the provisions of that section, but rather has been exempted from them.

5. The LAR also asserts that “Entergy Nuclear Operations, Inc. (ENO) has elected to

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<sup>8</sup> 10 C.F.R. 50.75(h)(5) (emphasis added).

subject its decommissioning trust agreement to the regulatory requirements for decommissioning trust funds that are specified in 10 CFR 50.75(h).”<sup>9</sup> This statement is also no longer true.

6. In particular, Entergy is not required to provide notice “at least 30 working days before the date of the intended disbursement or payment,” and withdrawals are no longer “restricted to decommissioning expenses” now that the exemption request has been granted.<sup>10</sup>

7. Entergy is also now exempted from the requirements of 10 C.F.R. §50.82(a)(8)(i)(A). It is no longer required to restrict withdrawals from the decommissioning fund to decommissioning activities under the exemption to NRC regulations.

8. Thus, contrary to assertions in the LAR, Entergy’s proposed amendment, if granted, would no longer provide compliance with the provisions of 10 C.F.R. §§ 50.75(h) or 50.82(a)(8)(i)(A). To grant the LAR in these circumstances would violate the requirement of 10 C.F.R. 50.75(h)(5) that amendments “shall be in accordance with the provisions of paragraph (h) of this section.”

9. The statements in the LAR do not meet the requirements of 10 C.F.R. §§ 50.9(a) or 50.90. The potential health, safety, and environmental hazards created by the proposed LAR would have been made even clearer if Entergy had admitted that it had not “elected to subject its decommissioning trust agreement to the regulatory requirements for decommissioning trust funds that are specified in 10 CFR 50.75(h)” in its initial filing.<sup>11</sup>

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<sup>9</sup> LAR Attachment 1 at 1.

<sup>10</sup> 10 C.F.R. § 50.75(h)(1)(iv); *see* LAR Attachment 1 at 4. To be clear, it is the State’s position that other legal requirements—for instance, the 2002 Master Trust Agreement Entergy signed when it bought the plant—continue to restrict Entergy’s ability to withdraw funds for non-decommissioning expenses, but Entergy appears to believe it is not under any such restrictions.

<sup>11</sup> LAR Attachment 1 at 1.

10. The elimination of the 30-day notice requirement results in the removal of a crucial opportunity for NRC and the public to prevent diversion of decommissioning funds to non-decommissioning purposes when viewed from the perspective of Entergy's exemption from the requirements of §§ 50.75(h) and 50.82(a)(8). The 30-day notice provision was a critical part of the agreement reached between Entergy and the State as detailed in the 2002 Master Trust Agreement and as embodied in the operating license for Vermont Yankee.<sup>12</sup>

11. The State should not be deprived of the right to protect its interests in whatever forums that are available—a protection it cannot effectively implement without the 30 days advanced notice of a proposed improper withdrawal from the decommissioning fund.

12. Entergy cannot meet the requirements of 10 C.F.R. §50.75(h)(1)(iv), or the purposes therefore, with the exemptions in place. The provision allows substitution of the regulatory requirement for the license provisions only when they are substantially identical. As Entergy noted in its LAR, the exchange between the license provisions and the regulations can occur only if “[t]he provisions in 10 CFR 50.75(h) include substantially similar decommissioning trust requirements as those found in VY OL License Condition 3.J.” That is not true for the LAR and thus Entergy does not meet the pre-condition for invoking the authority in §50.75(h)(1)(iv) to substitute the regulation for the license condition.<sup>13</sup>

13. The bases for Contentions I and III are incorporated herein by reference and considered reproduced in their entirety at this point.

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<sup>12</sup> See Entergy Nuclear Vermont Yankee, LLC Master Decommissioning Trust Agreement for Vermont Yankee Nuclear Power Station at 9 (July 31, 2002).

### **Additional Basis Also Applicable to Contentions I, III, and IV**

14. The above bases also support the State's pending Contentions I, III, and IV. The grant of the exemption also provides, in addition to the bases asserted above, an additional basis for admission of the State's previous Contentions I, III and IV. The Staff's granting of the exemption makes clear that, if this LAR is granted, Entergy will no longer be subject to any requirement of providing 30-day notice for withdrawals from the decommissioning trust fund not only for decommissioning expenses, but also for spent fuel management expenses—a situation neither envisioned nor analyzed by the 2002 rule that Entergy and Staff rely upon for this LAR. In short, even if Entergy is relieved of its regulatory obligations to give 30-day notice and to use decommissioning funds solely for decommissioning purposes, it is still bound by the terms of its license—terms which will remain in effect and enforceable unless the requested amendment is granted.

### **SUPPORTING EVIDENCE**

1. Vermont incorporates by reference, as if fully set forth here, all the Supporting Evidence for Contentions I, III, and IV.
2. 80 Fed. Reg. 35992-35995 (June 23, 2015).
3. Entergy License Amendment Request (September 4, 2014).

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<sup>13</sup> See also 10 C.F.R. § 50.75(h)(5).

## **CONCLUSION**

For the reasons stated above, the Board should grant the State's Motion for Leave, should admit new Contention V, and should allow amendment of the Bases and Support for Contentions I, III, and IV.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Montpelier, Vermont  
this Sixth day of July, 2015



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**CERTIFICATE OF CONSULTATION**

Pursuant to 10 C.F.R. § 2.323(b), I hereby certify that counsel of the State have made a sincere effort to contact other parties in the proceeding and resolve the issues raised in the motion, and that these efforts to resolve the issues have been unsuccessful. On July 6, 2015, the State held a conference call to consult with representatives of Entergy and Staff regarding the motion. Counsel for Entergy and Staff both oppose the admission of the State's new contention and the amendment of the bases and support for Contentions I, III, and IV.

/Signed (electronically) by/  
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Dated at Montpelier, Vermont  
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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the forgoing the State of Vermont's Motion for Leave to File a New Contention Including the Proposed New Contention and to Add Additional Bases, have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding, this Sixth day of July, 2015.

/Signed (electronically) by/  
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Dated at Montpelier, Vermont  
this Sixth day of July, 2015