

December 18, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO STATE OF VERMONT'S SUBMISSION OF ADDITIONAL
INFORMATION AND REQUEST TO FILE SUPPLEMENTAL BRIEFING
ADDRESSING NEW INFORMATION AND ARGUMENT RAISED AT ORAL ARGUMENT

Pursuant to 10 C.F.R. § 2.323(c), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer in opposition to the motion submitted by the State of Vermont, through the Vermont Department of Public Service (Vermont), for leave to file supplemental briefing and additional information (Motion).¹ As explained below, the Motion should be denied (1) because it is based on a mischaracterization of the Staff's references to correspondence between the Federal Emergency Management Agency (FEMA) and the NRC (the FEMA Letter)² as "new arguments," (2) because it is untimely, and (3) because Vermont filed the Motion without prior consultation with opposing parties as is required by the Commission's rules of practice.

First, Vermont's Motion should be denied because it mischaracterizes as "new arguments" the Staff's references to the FEMA Letter.³ On the contrary, the Staff referred to the

¹ State of Vermont's Submission of Additional Information and Request to File Supplemental [sic] Briefing Addressing New Information and Argument Raised at Oral Argument (Dec. 12, 2014) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14346A152) (Motion). Although not explicitly styled as a motion, Vermont's pleading is in substance a motion.

² Letter from Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, FEMA, to Joseph Anderson, Office of Nuclear Security and Incident Response, NRC (Aug. 19, 2014) (ADAMS Accession No. ML14233A593) (FEMA Letter).

³ See Motion at 1.

FEMA Letter at the December 1, 2014 oral argument in this proceeding specifically in response to the Atomic Safety and Licensing Board (Board) scheduling order, which stated that the Board was interested in the “[r]egulatory responsibility for evaluating interfaces with State and local governments, and for reviewing whether State and local emergency plans are adequate and capable of being implemented.”⁴ In anticipation of the oral argument, the Staff researched this topic and found that FEMA has the responsibility to make findings as to whether state and local governments’ offsite emergency plans are adequate and can be implemented.⁵ The Staff’s research also identified the FEMA Letter as being responsive to the Board’s request with respect to the license amendment request at issue in this proceeding.⁶ Specifically, the FEMA Letter stated that FEMA had determined that Entergy’s requested staffing changes had been approved by the States of Massachusetts, New Hampshire, and Vermont and that the changes would not significantly affect these States’ offsite emergency plans.⁷ Therefore, the Staff presented these findings, including the FEMA Letter, at the oral argument as responses to the Board’s scheduling order and not as new Staff arguments.⁸

After the Staff had presented this information at the oral argument, Judge Kennedy asked counsel for Vermont to comment on the Staff statement that, according to the FEMA

⁴ Notice and Order (Scheduling and Providing Instructions for Oral Argument), at 2 (Nov. 12, 2014) (unpublished) (ADAMS Accession No. ML14316A336). *See also* Transcript of Teleconference in the Matter of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), at 14:1-18 (Dec. 1, 2014) (ADAMS Accession No. ML14337A666) (Tr.) (stating that the oral argument was “on whether Vermont’s hearing request should be granted” and that the parties should be prepared to include in their presentations “six topics” including “the regulatory responsibility for evaluating the interface between licensees and state and local governments, and for reviewing whether state and local emergency plans are adequate and capable of being implemented”).

⁵ *See* Tr. at 70:3-6.

⁶ *See* Letter from Christopher J. Wamser, Site Vice President, Entergy, to the NRC, Proposed Changes to the Vermont Yankee Emergency Plan, Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Mar. 24, 2014) (ADAMS Accession No. ML14085A257) (LAR).

⁷ *See* Tr. at 71; FEMA Letter at 1.

⁸ *See* Tr. at 69-71.

Letter, Vermont had approved the license amendment request's change in staffing.⁹ Counsel for Vermont responded that Vermont had not indicated to FEMA that it had approved the staffing reduction.¹⁰ Chairman Hawkens then turned this question to the Staff.¹¹ The Staff responded that the FEMA Letter contradicted the counsel for Vermont's assertion.¹² Next, Chairman Hawkens asked the Staff whether the FEMA Letter had been part of its pleading and the Staff responded that it had not, but that it was being provided in response to the Board's question.¹³

During the oral argument, the Staff also represented to the Board that the FEMA Letter was a non-public document.¹⁴ After the oral argument, the Staff determined that the FEMA Letter did not contain any information that would preclude it from being made public and, thus, made it publicly available. The Staff informed the Board of this change in the availability of the FEMA Letter from non-public to public as part of its December 8, 2014 filing.¹⁵ Besides stating that the FEMA Letter had been made publicly available, the Staff made no arguments regarding the FEMA Letter's relevance to the admissibility of Vermont's Hearing Request.¹⁶

⁹ Tr. at 94:13-18.

¹⁰ Tr. at 94:25 – 95:7.

¹¹ Tr. at 95:22-24.

¹² Tr. at 96:3-6.

¹³ Tr. at 96:7-10.

¹⁴ Tr. at 96:14-15.

¹⁵ See NRC Staff Answer to Atomic Safety and Licensing Board Question Asked During December 1, 2014 Contention Admissibility Oral Argument, at 3 (Dec. 8, 2014) (ADAMS Accession No. ML14342A336) (Staff Answer to Board Question).

¹⁶ In fact, the Staff has never stated that the FEMA Letter was necessary to its argument that Vermont's Hearing Request should be denied. Vermont's Hearing Request seeks to require the Vermont Yankee Nuclear Power Station (Vermont Yankee) to maintain its Emergency Response Data System (ERDS) until all of that facility's spent fuel is in dry storage. Tr. at 21-22. The Staff maintains that, regardless of the FEMA Letter, this request is outside the scope of the license amendment request, see LAR at Attachment 4, 8 (merely stating as support for the requested staffing reductions that ERDS will not be operational after Vermont Yankee is permanently defueled), and that it is a challenge to the Commission's regulations at 10 C.F.R. Part 50, Appendix E, Section VI, see Tr. at 79-80; Staff Answer to

Taken together, all of the Staff's references to the FEMA Letter were factual statements made in response to the Board's scheduling order and questions. None of these references constitute "new arguments" as Vermont's Motion claims. Therefore, Vermont's assertion that its Motion is necessary to supplement the record in response to allegedly new Staff arguments regarding the FEMA Letter fails and, as a result, the Motion should be denied.

Second, Vermont's Motion should be denied because it is untimely. According to 10 C.F.R. § 2.323(a)(2), "[a]ll motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises." The occurrence from which Vermont's Motion arises is the Staff's citing to and quoting from the FEMA Letter during the December 1 oral argument.¹⁷ However, Vermont's Motion was filed on December 12, 2014, which is more than ten days after this occurrence. Furthermore, Vermont's Motion seeks to add to the record a July 1, 2014 email exchange between the Vermont Division of Emergency Management & Homeland Security and Entergy.¹⁸ However, this email exchange was available prior to Vermont's Hearing Request, which was dated September 22, 2014.¹⁹ If Vermont had wished to use this email exchange for the proposition that Entergy had not adequately consulted with Vermont regarding its license amendment request, Vermont could have done so in its initial hearing request. For these reasons, Vermont's Motion is untimely and, therefore, should be denied.

Board Question, at 2-3 (demonstrating that this regulation means that the ERDS requirement is not applicable to nuclear power facilities that are permanently defueled).

¹⁷ See State of Vermont's Proposed Reply to NRC Staff Answer to Atomic Safety and Licensing Board Question Asked During December 1, 2014 Contention Admissibility Oral Argument, at 1 (Dec. 12, 2014) (ADAMS Accession No. ML 14346A150) (Exhibit B).

¹⁸ See Motion at 1; Email from Erica Bornemann, VDEMHS Planning Section Chief, to Michael McKenney, Entergy Vermont Yankee Emergency Preparedness Manager (Jul. 1, 2014) (ADAMS Accession No. ML14346A151) (Exhibit A).

¹⁹ Vermont Department of Public Service Notice of Intention to Participate, Petition to Intervene, and Hearing Request (dated Sept. 22, 2014; filed via the NRC's E-Filing System on Sept. 24, 2014) (ADAMS Accession No. ML14267A523).

Finally, Vermont's Motion should be rejected because Vermont failed to consult with the parties to the proceeding prior to filing the Motion. The rule governing motion practice in NRC proceedings provides, "[a] motion must be rejected if it does not include a certification by the attorney . . . of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion . . ." ²⁰ Vermont's Motion did not include such a certification. In fact, counsel for the Staff was never contacted by counsel for Vermont regarding the Motion. Accordingly, Vermont's Motion should be denied.

In conclusion, Vermont's Motion should be denied because (1) it is premised on the Staff's references to the FEMA Letter being "new arguments" when they were, in fact, responses to Board questions, (2) it is untimely, and (3) Vermont did not consult as is required prior to filing the Motion.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 18th day of December, 2014

²⁰ 10 C.F.R. § 2.323(b).

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR VERMONT)
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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO STATE OF VERMONT'S SUBMISSION OF ADDITIONAL INFORMATION AND REQUEST TO FILE SUPPLEMENTAL BRIEFING ADDRESSING NEW INFORMATION AND ARGUMENT RAISED AT ORAL ARGUMENT," dated December 18, 2014, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 18th day of December, 2014.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 18th day of December, 2014