

October 26, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
 )  
ENTERGY NUCLEAR VERMONT YANKEE, LLC )  
AND ENTERGY NUCLEAR OPERATIONS, INC. ) Docket No. 50-271-LA-3  
 )  
(Vermont Yankee Nuclear Power Station) )

NRC STAFF MOTION TO VACATE LBP-15-24

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(a), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) hereby files a motion to vacate the Atomic Safety and Licensing Board's (Board) Memorandum and Order (Granting Petition to Intervene and Hearing Request), LBP-15-24, 82 NRC \_\_\_\_ (Aug. 31, 2015) (slip op.) (LBP-15-24). On September 22, 2015, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, Entergy or the licensee) moved to withdraw its September 4, 2014 license amendment request (LAR)<sup>1</sup> for the Vermont Yankee Nuclear Power Station (Vermont Yankee or VY).<sup>2</sup> As discussed below, LBP-15-24 is moot because the Board granted Entergy's motion to withdraw the LAR without prejudice and terminated the license amendment proceeding. Thus, there is no outstanding controversy, rendering any proposed appellate challenge to LBP-15-24 moot.<sup>3</sup> For these

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<sup>1</sup> Letter from Christopher Wamser, Entergy, to NRC, Proposed Change No. 310 - Deletion of Renewed Facility Operating License Conditions Related to Decommissioning Trust Provisions, Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Sept. 4, 2014) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14254A405) (LAR).

<sup>2</sup> Entergy's Motion to Withdraw its September 4, 2014 License Amendment Request, at 1 (Sept. 22, 2015) (ADAMS Accession No. ML15265A583) (Motion to Withdraw).

<sup>3</sup> See, e.g., *Private Fuel Storage, L.L.C.*, (Independent Spent Fuel Storage Installation), CLI-05-22, 62 NRC 542, 544 (2005) (Staff appeal is moot when there is no outstanding controversy).

reasons, and as discussed more fully below, the Staff respectfully requests that the Commission follow its customary practice in such situations and vacate LBP-15-24.<sup>4</sup>

### BACKGROUND

On September 4, 2014, Entergy submitted to the NRC its LAR seeking, pursuant to 10 C.F.R. § 50.75(h)(4)-(5), to delete from the VY operating license all of its conditions related to the VY decommissioning trust fund (DTF)<sup>5</sup> so that the Commission's regulations related to DTFs at 10 C.F.R. § 50.75(h)(1)-(3) would apply to VY instead of these preexisting license conditions.<sup>6</sup> Separately, on January 6, 2015, Entergy submitted to the NRC an exemption request pursuant to 10 C.F.R. § 50.12, seeking exemptions for VY from three provisions of the Commission's regulations.<sup>7</sup> On January 12, 2015, pursuant to 10 C.F.R. § 50.82(a)(1)(i) and (ii), Entergy certified to the NRC that VY had permanently ceased operations and that fuel had been permanently removed from the VY reactor vessel and placed in the VY spent fuel pool.<sup>8</sup>

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<sup>4</sup> See, e.g., *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-10, 78 NRC 563, 569 (2013); *San Onofre*, CLI-13-9, 78 NRC 551, 558 (2013); *PFS*, CLI-05-22, 62 NRC at 544. In accordance with 10 C.F.R. § 2.323(b), the Staff made a sincere effort to consult with the parties on this motion. Entergy does not oppose this motion. Vermont opposes this motion and stated during consultation that it intends to file a response to the Staff's motion.

<sup>5</sup> See Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), Docket No. 50-271, Renewed Facility Operating License, Renewed Operating License No. DPR-28, at 7-8 (Mar. 21, 2011) (ADAMS Accession No. ML052720265) (providing "Decommissioning Trust" license conditions at 3.J).

<sup>6</sup> LAR at 1. The VY DTF license conditions were imposed as part of the NRC order approving the transfer of the VY operating license to Entergy on May 17, 2002. See Order Approving Transfer of License for Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and Approving Conforming Amendment (TAC No. MB3154) at Enclosure 1, p. 4-6, Enclosure 2, p. 8, Enclosure 3, p. 7-8 (May 17, 2002) (ADAMS Accession No. ML020390198) (VY License Transfer Order). Shortly thereafter, on December 24, 2002, the Commission issued a final rule promulgating similar regulatory requirements at 10 C.F.R. §§ 50.75(h)(1)-(4). See Decommissioning Trust Provisions, 67 Fed. Reg. 78,332 (Dec. 24, 2002) (Final rule).

<sup>7</sup> Letter from Christopher Wamser, Entergy, to NRC, Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Jan. 6, 2015) (ADAMS Accession No. ML15013A171) (Exemption Request).

<sup>8</sup> Letter from Christopher Wamser, Entergy, to NRC, Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel, Vermont Yankee Nuclear Power Station, Docket No. 50-271, License No. DPR-28 (Jan. 12, 2015) (ADAMS Accession No. ML15013A426).

On February 17, 2015, the NRC published in the *Federal Register* a notice of opportunity to request a hearing and petition for leave to intervene on the LAR.<sup>9</sup> On April 20, 2015, Vermont filed a Hearing Request proffering four contentions.<sup>10</sup> An Atomic Safety and Licensing Board was established to rule on the Hearing Request.<sup>11</sup> The Staff and Entergy opposed the admission of all four proffered contentions because Vermont's contentions sought to litigate matters beyond the limited scope of the proceeding, challenged NRC regulations without a 10 C.F.R. § 2.335(b) petition for waiver, and did not meet the NRC's contention admissibility standards under 10 C.F.R. § 2.309(f)(1).<sup>12</sup> On June 17, 2015, the NRC granted the Exemption Request.<sup>13</sup> Subsequently, on July 6, 2015, after the April 20, 2015 deadline for filing intervention petitions in this proceeding, Vermont filed a motion seeking the admission of a new proposed Contention V in light of the NRC's grant of the Exemption Request and to submit additional bases for its existing contentions.<sup>14</sup> The Staff and Entergy opposed this motion because Vermont's motion did not meet the contention admissibility standards in 10 C.F.R.

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<sup>9</sup> Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 80 Fed. Reg. 8,355, 8,356 (Feb. 17, 2015).

<sup>10</sup> See State of Vermont's Petition for Leave to Intervene and Hearing Request (Apr. 20, 2015) (Hearing Request) (available as a package at ADAMS Accession No. ML15110A484).

<sup>11</sup> Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board, 80 Fed. Reg. 26,301, 26,301-02 (May 7, 2015).

<sup>12</sup> See NRC Staff Answer to State of Vermont Petition for Leave to Intervene and Hearing Request (May 15, 2015) (ADAMS Accession No. ML15135A523) (Staff Answer); Entergy's Answer Opposing State of Vermont's Petition for Leave to Intervene and Hearing Request (May 15, 2015) (ADAMS Accession No. ML15135A498) (Entergy Answer). See also The State of Vermont's Reply to NRC Staff and Entergy Answers to Petition for Leave to Intervene and Hearing Request (May 22, 2015) (ADAMS Accession No. ML15142A902) (Vermont Reply).

<sup>13</sup> See Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station, 80 Fed. Reg. 35,992 (June 23, 2015).

<sup>14</sup> 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, at 1-2 (July 6, 2015) (ADAMS Accession No. ML15187A350) (Vermont New Contention).

§§ 2.309(c) and 2.309(f)(1).<sup>15</sup> The Board held an oral argument on Vermont's Hearing Request on July 7, 2015.<sup>16</sup>

On August 31, 2015, the Board granted Vermont's Hearing Request and issued LBP-15-24,<sup>17</sup> which found that Vermont had standing and admitted Vermont's Contention I<sup>18</sup> and Contention V.<sup>19</sup> The Board's decision in LBP-15-24 dealt with numerous complex issues regarding, *inter alia*, the NRC's regulations governing decommissioning trust funds, the relationship between Entergy's LAR and Exemption Request, Entergy's compliance with NRC regulations, unforeseen costs related to groundwater remediation and indefinite storage of spent fuel, and the proper scope of the license amendment proceeding.<sup>20</sup>

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<sup>15</sup> See NRC Staff's Answer to the State of Vermont's Motion for Leave to File New and Amended Contentions (July 31, 2015) (ADAMS Accession No. ML15212A281) (Staff Answer to New Contention); Entergy's Answer Opposing State of Vermont's New Contention V and Additional Bases for Pending Contentions I, III, and IV (July 31, 2015) (ADAMS Accession No. ML15212A825) (Entergy Answer to New Contention). See also State of Vermont's Reply in Support of Motion for Leave to File a New Contention and Add Bases and Support to Existing Contentions (Aug. 7, 2015) (ADAMS Accession No. ML15219A712) (Vermont Reply to New Contention).

<sup>16</sup> Transcript of Teleconference in the Matter of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) (July 7, 2015) (ADAMS Accession No. ML15190A150) (Tr.).

<sup>17</sup> *Vermont Yankee*, LBP-15-24, 82 NRC at \_\_\_ (slip op. at 1).

<sup>18</sup> Contention I, as explained by the Board, addresses "the necessity of a 30-day notice requirement in light of the specific factual issues that Vermont's petition alleges will reduce the fund to such an extent that the plant cannot be maintained in a safe condition, *i.e.*, (1) the six line items from the [VY post-shutdown decommissioning activities report (PSDAR)] that Vermont alleges to be non-decommissioning costs, (2) the legal costs associated with Entergy's reduction in emergency planning, and (3) the potential for unforeseen costs associated with radionuclide releases and indefinite storage of spent fuel." *Vermont Yankee*, LBP-15-24, 82 NRC at \_\_\_ (slip op. at 28-29) (footnotes omitted).

<sup>19</sup> The primary issue in Contention V, as described by the Board, is "whether an LAR is 'in accordance with the provisions of paragraph (h) of [10 C.F.R. § 50.75]' where a plant is already exempt from two provisions of 10 C.F.R. § 50.75(h)(1)(iv)." *Vermont Yankee*, LBP-15-24, 82 NRC at \_\_\_ (slip op. at 44) (quoting 10 C.F.R. § 50.75(h)(5)) (footnotes omitted).

<sup>20</sup> See *generally id.* The parties vigorously debated these issues, including the proper scope of this license amendment proceeding in multiple pleadings and during oral argument. See *supra* notes 10, 12, 14-16.

On September 22, 2015, Entergy filed a motion seeking to withdraw the LAR, without conditions, and to dismiss the proceeding without prejudice.<sup>21</sup> Entergy filed an unopposed motion to extend the time to appeal LBP-15-24 on the same day.<sup>22</sup> The Commission granted Entergy's motion for extension on September 24, 2015, providing that any party may appeal LBP-15-24 within ten days after the Board's ruling on Entergy's Motion to Withdraw.<sup>23</sup> On October 2, 2015, the NRC Staff filed an answer in support of Entergy's Motion to Withdraw;<sup>24</sup> Vermont opposed Entergy's Motion to Withdraw.<sup>25</sup> On October 15, 2015, the Board granted Entergy's Motion to Withdraw the LAR without prejudice and terminated the license amendment proceeding.<sup>26</sup> Consistent with pertinent case law as described below,<sup>27</sup> the Staff submits the instant motion to vacate LBP-15-24, instead of a petition for review under 10 C.F.R. § 2.311(b).

#### LEGAL STANDARDS

Unreviewed Board decisions do not create binding legal precedent.<sup>28</sup> Moreover, established Supreme Court and NRC precedent provides that unreviewed judgments are vacated when their appellate review is unavailable because of mootness.<sup>29</sup> Indeed, it is the

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<sup>21</sup> Motion to Withdraw at 1.

<sup>22</sup> Entergy Unopposed Motion to Extend the Time to Appeal LBP-15-24 (Sept. 22, 2015) (ADAMS Accession No. ML15265A586).

<sup>23</sup> See unpublished Order of the Secretary (Granting Request for Extension) (Sept. 24, 2015) (ADAMS Accession No. ML15267A839).

<sup>24</sup> NRC Staff's Answer to Entergy's Motion to Withdraw at 1 (Oct. 2, 2015) (ADAMS Accession No. ML15275A322).

<sup>25</sup> State of Vermont's Response to Entergy's Motion to Withdraw (Oct. 2, 2105) (ADAMS Accession No. ML 15275A438).

<sup>26</sup> *Vermont Yankee*, LBP-15-28, 82 NRC at \_\_\_ (slip op. at 1).

<sup>27</sup> See, e.g., *San Onofre*, CLI-13-9, 78 NRC 551 (2013); *PFS*, CLI-05-22, 62 NRC 542 (2005).

<sup>28</sup> *San Onofre*, CLI-13-9, 78 NRC at 558 (citing *PFS*, CLI-05-22, 62 NRC 542, 544 (2005); *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 343 n.3 (1998)).

<sup>29</sup> See *United States v. Munsingwear, Inc.*, 340 US 36, 39-40 (1950) (applying its "established practice" to vacate a judgment in a civil case where review is prevented because the case has become moot). See, e.g., *San Onofre*, CLI-13-10, 78 NRC 563 (2013) (vacating the Board's decision on a Petition

Commission's customary and prudent course of action to vacate Board orders when appellate review is cut short by mootness.<sup>30</sup> Moreover, where unreviewed Board rulings involve complex questions and vigorously disputed interpretations of agency provisions, the Commission may choose as a policy matter to vacate them, thereby eliminating any future confusion and dispute over their meaning or effect.<sup>31</sup>

Generally, a case will be moot when the issues are no longer live, or the parties lack a cognizable interest in the outcome.<sup>32</sup> The possibility that an issue might arise in the future is not grounds to continue with an appeal in a proceeding where no live controversy remains between the litigants.<sup>33</sup> Nevertheless, the Commission has recognized an exception to the mootness doctrine, where a case is capable of repetition, yet evading review—i.e., if the challenged action were too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again.<sup>34</sup>

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to Intervene and Request for Hearing as moot after granting the licensee's motion to withdraw its license amendment request, without prejudice, and dismissing the pending appeal); *San Onofre*, CLI-13-9, 78 NRC 551 (2013) (vacating the Board's decision regarding circumstances under which the plant would be permitted to restart when the proceeding became moot upon permanent shut down of the plant); *PFS*, CLI-05-22, 62 NRC 542 (2005) (vacating a Board's redaction order where compliance with the order rendered the order moot and providing guidance on redaction orders); *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114 (1998) (granting of motion to withdraw application and terminate proceeding renders moot all remaining issues) (LES); *Rochester Gas and Elec. Corp.* (Sterling Power Project, Nuclear Unit No. 1) ALAB-596, 11 NRC 867, 868-69 (1980) (vacating a Board order where applicant's decision to abandon a construction project mooted intervenor's challenges to the project).

<sup>30</sup> See, e.g., *San Onofre*, CLI-13-10, 78 NRC at 569; *San Onofre*, CLI-13-9, 78 NRC at 558; *PFS*, CLI-05-22, 62 NRC at 544. Vacatur does not reflect on the soundness of the Board's decision. *San Onofre*, CLI-13-10, 78 NRC at 569 (citing *San Onofre*, CLI-13-9, 78 NRC at 559 n.31).

<sup>31</sup> *LES*, CLI-98-5, 47 NRC at 114; *Kerr-McGee Chem. Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 15 (1996) (vacating unreviewed Board decision because it involved complex questions and vigorously disputed interpretations of agency provisions for disposal of byproduct material). See also *San Onofre*, CLI-13-9, 78 NRC at 559 (finding vacatur particularly appropriate where the litigants vigorously disputed, among other things, the proper scope of the Board's review).

<sup>32</sup> *San Onofre*, CLI-13-9, 78 NRC at 557 (citing *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 200 (1993) (citations omitted)).

<sup>33</sup> *San Onofre*, CLI-13-10, 78 NRC at 568 (citing *San Onofre*, CLI-13-9, 78 NRC at 557-58).

<sup>34</sup> *San Onofre*, CLI-13-9, 78 NRC at 558 n.26 (citing *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 185 (1993) (citations omitted)). See also

## DISCUSSION

As noted above, this case arises from Entergy's LAR seeking to delete from the VY operating license all of its conditions related to the VY DTF<sup>35</sup> so that the Commission's regulations related to DTFs at 10 C.F.R. § 50.75(h)(1)-(3) would apply to VY instead of these preexisting license conditions. The Board's decision in LBP-15-24, granted Vermont's Hearing Request and admitted two contentions.<sup>36</sup> However, Entergy's withdrawal of its license amendment request has made Commission review of LBP-15-24 moot. Indeed, the Board granted Entergy's motion to withdraw the LAR without prejudice and terminated the license amendment proceeding; therefore, there is no remaining controversy with respect to Entergy's LAR. Commission case law provides that an appeal of a Board decision is moot when there "is no outstanding controversy for the Commission to resolve on appeal."<sup>37</sup> Because LBP-15-24 is moot, the Staff is not submitting a petition for review of LBP-15-24.<sup>38</sup>

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*San Onofre*, CLI-13-10, 78 NRC at 568 n.34 (citing *Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3)*, ALAB-560, 10 NRC 265, 400 (1979)). The Supreme Court has held that where mootness results from settlement, the losing party has voluntarily forfeited his legal remedy by ordinary processes of appeal or certiorari, thereby surrendering his claim to equitable remedy of vacatur. *US Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994). However, *Bancorp* is inapplicable here because the instant case involves withdrawal of a license amendment request, not voluntary settlement between the parties. Moreover, the Staff is the party requesting vacatur, not Entergy, who requested the withdrawal. Further, the Commission has previously upheld vacatur in cases involving withdrawal of license applications. See, e.g., *San Onofre*, CLI-13-10, 78 NRC 563 (2013); *LES*, CLI-98-5, 47 NRC 113 (1998). In any event, the Commission has previously determined that it is not bound by judicial practice and need not follow the *Bancorp* ruling. *Kerr-McGee*, CLI-96-2, 43 NRC at 15.

<sup>35</sup> See Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), Docket No. 50-271, Renewed Facility Operating License, Renewed Operating License No. DPR-28, at 7-8 (Mar. 21, 2011) (ADAMS Accession No. ML052720265) (providing "Decommissioning Trust" license conditions at 3.J).

<sup>36</sup> *Vermont Yankee*, LBP-15-24, 82 NRC at \_\_\_ (slip op. at 1).

<sup>37</sup> *PFS*, CLI-05-22, 62 NRC at 544.

<sup>38</sup> The Commission has previously determined that the timing of when a controversy ends, whether it is during the pendency of an appeal before the Commission or during the brief period in which petitions for review could have been filed, should not determine the outcome of vacatur. *San Onofre*, CLI-13-9, 78 NRC at 558 (vacating a Board decision where the Staff had not filed an appeal because the controversy ended during the period in which petitions for review could have been filed).

The Commission has recognized an exception to the mootness doctrine, where a case may not be moot if it is capable of repetition, yet evading review—i.e., if the challenged action were too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again.<sup>39</sup> However, this exception is inapplicable to the instant proceeding because there is no reasonable expectation that Entergy will submit another license amendment similar to the September 4, 2014, LAR.<sup>40</sup> Indeed, Entergy has stated, on the record, that it “currently has no plans to reinitiate this license amendment proceeding at a future date.”<sup>41</sup> Moreover, any future challenge to a licensee's request to seek a similar license amendment pursuant to 10 C.F.R. § 50.75(h)(4)-(5) would not evade future review because any such request, by Entergy or any other licensee, would trigger an opportunity for a member of the public to request a hearing.<sup>42</sup>

The Commission's customary practice is to vacate Board orders when appellate review is cut short by mootness.<sup>43</sup> Because appellate review of LBP-15-24 has become unavailable due to mootness, the Commission should vacate LBP-15-24. This practice is consistent with the *Policy on Conduct of Adjudicatory Proceedings*, which states that the hearing process must

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<sup>39</sup> *San Onofre*, CLI-13-9, 78 NRC at 558 n.26; *San Onofre*, CLI-13-10, 78 NRC at 568 n.35.

<sup>40</sup> Additionally, the challenged action (Entergy's LAR) was not too short in duration to be litigated because it did not involve a short-term action that expired by its own force before the underlying basis for the action could be adjudicated. See *Advanced Medical Systems, Inc.*, CLI-93-8, 37 NRC at 187. In *Davis Besse*, an antitrust proceeding, the Appeal Board noted that the discontinuance of past illegal practices does not necessarily render moot a controversy over an injunction against similar future actions. ALAB-560, 10 NRC at 400. Because the instant case did not involve such enforcement issues and there has been no finding of past illegal practices, *Davis Besse* is inapplicable here. As the Staff argued below, to the extent Vermont is concerned about Entergy's usage or future use of the DTF for non-decommissioning expenses in this proceeding, such challenges should be raised in a 10 C.F.R. § 2.206 petition. See, e.g., Staff Answer at 29 n.135, 36, 47-48.

<sup>41</sup> Entergy's Motion to Withdraw at 5.

<sup>42</sup> See *San Onofre*, CLI-13-10, 78 NRC at 568 n.35 (noting that a different licensee's request would not evade future review because it would be required to request a license amendment which would trigger a hearing opportunity). If Entergy were to re-file its LAR, it would trigger an opportunity for a member of the public to request a hearing. See Atomic Energy Act of 1954, as amended, § 189a, 42 U.S.C. § 2239(a)(1)(A).

<sup>43</sup> *San Onofre*, CLI-13-10, 78 NRC at 569; *San Onofre*, CLI-13-9, 78 NRC at 558; *PFS*, CLI-05-22, 62 NRC at 544.



be focused on genuine issues and real disputes to ensure the efficient conduct of proceedings.<sup>44</sup> Moreover, vacatur is particularly appropriate here, given the complexity of the issues raised in LBP-15-24.<sup>45</sup> Accordingly, the Staff respectfully requests that the Commission follow its customary practice by vacating the Board's decision in LBP-15-24.<sup>46</sup>

CONCLUSION

For the reasons outlined above, the Staff respectfully requests that the Commission vacate LBP-15-24.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland  
this 26th day of October, 2015

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<sup>44</sup> See *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998).

<sup>45</sup> See, e.g., *San Onofre*, CLI-13-9, 78 NRC at 559; *Kerr-McGee*, CLI-96-2, 43 NRC at 15. See *supra* note 18 and accompanying text (noting that the Staff, Entergy, and Vermont vigorously debated numerous complex issues in pleadings filed with the Board and during oral argument regarding the NRC's decommissioning trust fund regulations, the relationship between Entergy's LAR and Exemption Request, Entergy's compliance with NRC regulations, unforeseen costs related to groundwater remediation and indefinite storage of spent fuel, and the proper scope of the license amendment proceeding).

<sup>46</sup> *San Onofre*, CLI-13-10, 78 NRC at 569; *San Onofre*, CLI-13-9, 78 NRC at 558; *PFS*, CLI-05-22, 62 NRC at 544.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ENERGY NUCLEAR VERMONT YANKEE, LLC )  
AND ENERGY NUCLEAR OPERATIONS, INC. ) Docket No. 50-271-LA-3  
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(Vermont Yankee Nuclear Power Station) )

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF MOTION TO VACATE LBP-15-24," dated October 26, 2015, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 26th day of October, 2015.

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 26th day of October, 2015