

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)

ENTERGY NUCLEAR VERMONT YANKEE, LLC)
AND ENTERGY NUCLEAR OPERATIONS, INC.)

(Vermont Yankee Nuclear Power Station))

Docket No. 50-271-LA-3

September 22, 2015

**ENTERGY’S UNOPPOSED MOTION TO EXTEND
THE TIME TO APPEAL LBP-15-24**

By way of background, Entergy Nuclear Operations, Inc. submitted a license amendment request (“LAR”) on September 4, 2014 seeking approval from the Nuclear Regulatory Commission (“NRC”) to delete certain conditions in the Vermont Yankee Nuclear Power Station (“Vermont Yankee”) operating license related to nuclear decommissioning trust funds, and instead comply with requirements in 10 C.F.R. § 50.75(h).¹ In response to a February 17, 2015 *Federal Register* notice,² the State of Vermont (“State”) filed a Petition for Leave to Intervene and Hearing Request challenging the LAR.³ The Atomic Safety and Licensing Board (“Board”)

¹ BVY 14-062, Letter from C. Wamser, Entergy, to NRC Document Control Desk, Proposed Change No. 310 – Deletion of Renewed Facility Operating License Conditions Related to Decommissioning Trust Provisions (Sept. 4, 2014) (“LAR”), available at ADAMS Accession No. ML14254A405.

² Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 80 Fed. Reg. 8355, 8359 (Feb. 17, 2015) (“Notice of Proposed Action”).

³ State of Vermont’s Petition for Leave to Intervene and Hearing Request (Apr. 20, 2015). The State also later filed a motion seeking to proffer a new contention and additional bases for pending contentions. See 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 (July 6, 2015).

issued LBP-15-24 on August 31, 2015 granting the hearing request and admitting two contentions.⁴

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (“Entergy”) disagree with the Board’s decision in LBP-15-24 and have been considering appealing LBP-15-24 to the Commission. The NRC Staff also could decide to appeal LBP-15-24. Such appeals are authorized by 10 C.F.R. § 2.311. Under 10 C.F.R. § 2.311(b), and the terms of LBP-15-24,⁵ Entergy and the NRC Staff have 25 days after the August 31, 2015 service of LBP-15-24 (until September 25, 2015) to appeal the Board’s decision.

Additionally, Entergy now has determined that maintaining the existing license conditions that would have been removed by the LAR represents a manageable administrative burden and is allowed by the NRC regulations.⁶ Therefore, Entergy submitted a motion to the Board earlier today seeking to withdraw the LAR pursuant to 10 C.F.R. § 2.107(a) (“Withdrawal Motion”).⁷

With this background, Entergy submits this unopposed Motion, pursuant to 10 C.F.R. §§ 2.307 and 2.323, to extend the time for Entergy and the NRC Staff to file appeals of LBP-15-24 with the Commission under 10 C.F.R. § 2.311, pending the outcome of the Withdrawal Motion. Specifically, Entergy requests that the Commission extend the deadline for such appeals until 10 days after the Board’s ruling on the Withdrawal Motion. For the reasons discussed below, Entergy has good cause under 10 C.F.R. § 2.307(a) to extend the deadline for the appeals.

⁴ See *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-15-24, 82 NRC __, __ (slip op.) (Aug. 31, 2015).

⁵ *Id.* at 45.

⁶ See 10 C.F.R. § 50.75(h)(5); see also Decommissioning Trust Provisions, 67 Fed. Reg. 78,332, 78,335 (Dec. 24, 2002) (“licensees will have the option of maintaining their existing license conditions or submitting to the new requirements”).

⁷ Entergy’s Motion to Withdraw Its September 4, 2014 License Amendment Request (Sept. 22, 2015).

As noted above, Entergy submitted the Withdrawal Motion to the Board earlier today seeking to withdraw the LAR that is the subject of LBP-15-24. Entergy anticipates that the Board will grant the withdrawal request,⁸ which would moot this proceeding⁹ and obviate the need for any appeal of LBP-15-24. This would save significant resources of the parties and the Commission. Nonetheless, uncertainty remains regarding the nature of the Board's ruling on the Withdrawal Motion and the Board may not rule on the Withdrawal Motion prior to September 25, 2015, the last day for Entergy and the NRC Staff to appeal LBP-15-24.¹⁰ Entergy desires to preserve any rights regarding appeals of LBP-15-24 until it has considered the outcome of the Withdrawal Motion. Extending the appeal deadline, rather than requiring Entergy and the NRC Staff to submit appeals under 10 C.F.R. § 2.311 that likely will be unnecessary, will preserve the resources of Entergy and the NRC Staff in preparing appeals, the resources of the State in responding to any appeals, and the resources of the Commission in considering any appeals.

For these reasons, good cause exists to extend the time for Entergy and the NRC Staff to appeal the Board's decision in LBP-15-24 to the Commission under 10 C.F.R. § 2.311, until 10 days after the Board's ruling on Entergy's September 22, 2015 Withdrawal Motion. Accordingly, Entergy requests that the Commission grant this Motion.

⁸ See, e.g., *Sequoyah Fuels Corp.* (Source Material License No. SUB-1010), LBP-93-25, 38 NRC 304, 315-16 (1993) (discussing an applicant's "unqualified right" to withdrawal absent legal prejudice), *aff'd*, CLI-95-2, 41 NRC 179 (1995).

⁹ The scope of the proceeding is limited to the LAR. See Notice of Proposed Action, 80 Fed. Reg. at 8359.

¹⁰ See *Vermont Yankee*, LBP-15-24, 82 NRC at __ (slip op. at 45); 10 C.F.R. § 2.311(b).

Counsel for Entergy certifies under 10 C.F.R. § 2.323(b) that the movant has made a sincere effort to contact the other parties in this proceeding and resolve the issues raised in this Motion. Neither the NRC Staff nor the State objects to this Motion to extend the time to file appeals of LBP-15-24.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, DC
this 22nd day of September 2015

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of the foregoing “Entergy’s Unopposed Motion to Extend the Time to Appeal LBP-15-24” were served upon the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned proceeding.

Signed (electronically) by Ryan K. Lighty

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