

January 3, 2011

Ms. Meridith Moldenhauer
Chairperson, D.C. Board of Zoning
Adjustment
441 4th Street NW, Suite 210
Washington, DC 20001

2011 JAN -3 PM 12:13

Re: BZA Appeal No. 18151 – Opposition to Appellant’s Request for Continuance

Dear Chairperson Moldenhauer and Members of the Board:

On behalf of the lessee University of the District of Columbia, we hereby oppose Van Ness South’s request for a continuance. The late notice regarding the continuance – less than one week before the hearing and after all of the other parties have filed their legal briefs – will prejudice UDC as well as the District of Columbia and the building owner, the other parties to the appeal, who relied on the original hearing schedule and await prompt resolution of this matter.

Van Ness South was required to file its required pre-hearing statement by December 21, 2010 (i.e., 14 days prior to the hearing), and failed to do so. Van Ness South then waited until December 29, 2010 at 9:30 PM to submit a motion to continue the hearing and notify the parties of by electronic mail. Importantly, Van Ness South waited to request the continuance until after all of the other parties in this appeal had “showed their cards” in their legal statements.

To explain this late notice, Van Ness South’s representative claims that his unrelated matter representing the IBEW before the Vermont Public Service Board was originally scheduled in December but was “recently” rescheduled. As it turns out, the Vermont PSB issued its order setting forth the revised scheduling on November 12, 2010 – over six weeks ago. (See attached Order.¹) Van Ness South’s representative should have recognized the potential conflict at that time and accordingly notified the parties that it would seek a continuance. At a minimum, Van Ness South should have realized the need for additional time by the date its pre-hearing statement was due (December 21, 2010) and requested the continuance at that time, so that the other parties could have adjusted their schedules and expectations accordingly.

¹ Also attached is a related scheduling order from the Vermont PSB proceeding, in which the Vermont PSB observed that IBEW (Mr. Lederer’s other client) had chided the appellant’s representative for a “demonstrated pattern in this docket of missing scheduling deadlines.”

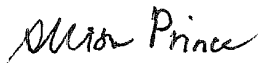
BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18151
EXHIBIT NO. 23

We oppose the continuance because further delay is prejudicial to our client and the other parties in this appeal, who relied on the original hearing schedule set forth by the Board and seeks a speedy resolution to what is otherwise a minor appeal that involves no questions of fact and only one actual question of zoning law. These parties all arranged their holiday schedules to file timely briefs as well as participate in the originally scheduled hearing. Furthermore, a delay will prolong the time it will take for Board to resolve this simple matter, which adversely impacts the University's ability to rely on the original permit.

We hope that the Board will consider fairness to all parties in this matter. At a minimum, should the Board grant the motion, we ask that the matter be rescheduled in the next couple of weeks, rather than be delayed until this spring. As the Board is now aware having reviewed the parties' briefs, the issues are straightforward and should be easy to resolve at a quick hearing.

Sincerely,



Allison Prince



David Avitabile

DA/da

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Pre-Hearing Statement of the University of the District of Columbia was served by electronic mail and by first-class mail, this 3rd day of January, 2011, upon the following:

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Chairperson
Advisory Neighborhood Commission 3F
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Ms. Karen Perry, ANC 3F02
3003 Van Ness St., NW
Washington, DC 20008



David Avitabile

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7600

Investigation into: (1) whether Entergy Nuclear Vermont)
Yankee, LLC, and Entergy Nuclear Operations,)
Inc.,(collectively, "Entergy VY"), should be required to)
cease operations at the Vermont Yankee Nuclear Power)
Station, or take other ameliorative actions, pending)
completion of repairs to stop releases of radionuclides,)
radioactive materials, and, potentially, other non-)
radioactive materials into the environment; (2) whether)
good cause exists to modify or revoke the 30 V.S.A. §)
231 Certificate of Public Good issued to Entergy VY;)
and (3) whether any penalties should be imposed on)
Entergy VY for any identified violations of Vermont)
statutes or Board Orders related to the releases)

Order entered: 11/12/2010

SCHEDULING ORDER

On November 10, 2010, the Vermont Public Service Board ("Board") convened a Status Conference in response to requests that the Board alter or clarify the existing schedule. After discussion with the parties, the Board established the following schedule for proceedings on the first phase of this investigation which is examining whether Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.(collectively, "Entergy VY"), should be required to cease operations at the Vermont Yankee Nuclear Power Station, or take other ameliorative actions, pending completion of repairs to stop releases of radionuclides, radioactive materials, and, potentially, other non-radioactive materials into the environment.

November 19, 2010	Parties file any Supplemental Discovery Requests
December 3, 2010	New England Coalition ("NEC") files any Supplemental Testimony

December 10, 2010	Parties file Responses to Supplemental Discovery Requests Parties file Discovery on Supplemental Testimony filed by NEC
December 20, 2010	NEC files Responses to Discovery Requests
January 11–14, 2011	Technical Hearings

The Board expects that the technical hearings will run from 9:30 a.m. to 5:00 p.m. each day, although it is likely that on one of the dates, the hearing will last for only one-half day.

So ORDERED.

Dated at Montpelier, Vermont, this 12th day of November, 2010.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: November 12, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7600

Investigation into (1) whether Entergy Nuclear)
Vermont Yankee, LLC, and Entergy Nuclear)
Operations, Inc.,(collectively, "Entergy VY"),)
should be required to cease operations at the)
Vermont Yankee Nuclear Power Station, or take)
other ameliorative actions, pending completion)
of repairs to stop releases of radionuclides,)
radioactive materials, and, potentially, other)
non-radioactive materials into the environment;)
(2) whether good cause exists to modify or)
revoke the 30 V.S.A. § 231 Certificate of Public)
Good issued to Entergy VY; and (3) whether)
any penalties should be imposed on Entergy VY)
for any identified violations of Vermont statutes)
or Board orders related to the releases)

Order entered: 8/26/2010

ORDER RE: IBEW MOTION TO ALTER SCHEDULE

On August 4, 2010, the International Brotherhood of Electrical Workers ("IBEW") filed a motion (the "IBEW Motion") seeking to modify a filing deadline set forth in our Procedural Order in this docket dated July 28, 2010 (the "Procedural Order"). Specifically, IBEW requests that the existing deadline for all parties to file reply briefs be extended from Wednesday, September 8, 2010, to Friday, September 10, 2010.

Pursuant to the Procedural Order, the extension request made in the IBEW Motion was due to be filed on August 3, 2010. Therefore, the IBEW Motion also includes a request for "leave to file out of time on August 4, 2010."¹

1. IBEW Motion at 1.

The IBEW Motion indicates that IBEW attempted to obtain the assent of all parties to its extension request.² While not all parties responded to IBEW's inquiries, IBEW did obtain the consent of several parties to the requested scheduling change, provided that the extension is granted to all parties.³ No party has opposed the IBEW Motion.⁴

Because the IBEW Motion is unopposed, we grant both IBEW's request for leave to file out of time and IBEW's request to extend for all parties the reply brief filing deadline to September 10, 2010. However, in granting this relief, we note that this is the second time in this docket that IBEW has failed to abide by a scheduling order deadline.⁵ Our procedural orders are intended to facilitate the timely and orderly conduct of our dockets so that our time and attention may be focused on the merits of the issues to be decided. All parties are required to participate in a manner that does not burden either the process or the progress of our proceedings. Therefore, we are troubled by IBEW's demonstrated pattern in this docket of missing scheduling deadlines. We expect IBEW and all other parties to adhere to the requirements of our procedural orders.

So ORDERED.

2. IBEW Motion at 2.

3. The parties who have expressed support for the IBEW Motion are: Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., ("Entergy VY"); the New England Coalition; the Conservation Law Foundation; Green Mountain Power Corporation; Conservation Law Foundation; Vermont Public Interest Research Group; Vermont Natural Resources Council; and the Connecticut River Watershed Council.

4. Pursuant to Vermont Rule of Civil Procedure 78(b)(1), any memorandum in opposition to the IBEW Motion was due to be filed on August 19, 2010. The Board has received no such filings.

5. See *IBEW Local 300 Request for Leave to File out of Time and Opposition to the Motion to Alter Schedule by the New England Coalition*, filed on June 25, 2010.

Dated at Montpelier, Vermont, this 26th day of August, 2010.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 26, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

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