

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee,)
LLC, and Entergy Nuclear Operations, Inc.,)
For a Certificate of Public Good Pursuant to)
30 V.S.A. § 248 and 10 V.S.A. § 6522 to) PSB Docket No.
Construct a Second Independent Spent Fuel)
Storage Installation (“ISFSI”) at the Vermont)
Yankee Nuclear Power Station)

PETITION FOR A CERTIFICATE OF PUBLIC GOOD

Entergy Nuclear Vermont Yankee, LLC (“ENVY”) and Entergy Nuclear Operations, Inc. (“ENOI”) (together, “Entergy VY”), by and through their counsel, petition the Vermont Public Service Board (“Board”) pursuant to 30 V.S.A. § 248 and 10 V.S.A. § 6522 for a Certificate of Public Good (“CPG”) to construct a second Independent Spent Fuel Storage Installation (“ISFSI”) storage pad and related improvements, including installation of a new diesel generator, with an electrical rating of approximately 200 kW, at the Vermont Yankee Nuclear Power Station (“VY Station”) in the Town of Vernon, Vermont (the “Project”). In support of this request, Entergy VY states the following:

1. Entergy VY owns and operates the VY Station, an electric-generating plant in the Town of Vernon, Vermont. The VY Station generates electricity using nuclear fuel. Its operations are regulated by the United States Nuclear Regulatory Commission (“NRC”), which issued a renewed license to Entergy VY on March 21, 2011 (Renewed Facility Operating License No. DPR-28).
2. The CPG issued to Entergy VY by the Board pursuant to 30 V.S.A. § 231(a) in Docket No. 6545, as amended by the Board in Docket No. 7862, authorizes Entergy VY to

operate the plant through December 31, 2014, and authorizes the continued ownership of the VY Station thereafter solely for purposes of decommissioning.

3. A necessary incident of the operation and subsequent decommissioning of the VY Station is the on-site storage of spent nuclear fuel. The CPG issued to Entergy VY by the Board in Docket No. 7082 authorized Entergy VY to construct a dry fuel storage facility at the VY Station, including the existing ISFSI storage pad.

4. In this petition, Entergy VY requests authorization to construct a second ISFSI storage pad at the VY Station. The Second ISFSI storage pad is necessary for Entergy VY to store, together with the existing ISFSI storage pad, all the spent nuclear fuel at the VY site in dry-fuel storage containers following permanent shutdown of the VY Station in the fourth quarter of 2014.¹ In addition, the proposed Second ISFSI storage pad provides capability to store up to three additional casks of greater than Class C waste. As currently planned, the Second ISFSI storage pad will be located approximately 30 feet to the west of the existing ISFSI storage pad with 25 cask spaces in a five-by-five array, measuring approximately 93 feet by 76 feet.

5. Installation of the Second ISFSI storage pad will require the following modifications:

- Relocate underground utilities and storm water piping in the location of the proposed second ISFSI storage pad;

¹ Pursuant to the Board's Order in Docket No. 7862, Condition 4 of the Order in Docket No. 7082 and Condition 3 of the CPG in Docket No. 7082 limiting the cumulative total amount of spent nuclear fuel stored at the VY Station to the amount derived from the operation of the facility up to, but not beyond, March 21, 2012 no longer apply.

- Remove the North Warehouse (including foundation slab and frost wall) and the 175 kW diesel generator and its underground fuel oil storage tank;
- Remove the existing ISFSI storage pad west ramp, install a new apron, including a 30 foot long connector to the existing pad apron, and install a new west ramp;
- Install a highly-engineered concrete ISFSI storage pad; and
- Install a new 200 kW security diesel generator and incorporated above-ground storage tank with a capacity of approximately 1,250 gallons of diesel fuel.

6. Entergy VY needs an ISFSI of sufficient size to hold all the spent nuclear fuel at the VY Station until the Department of Energy (“DOE”) transports the fuel off-site. Under Section 302(a)(5)(B) of the Nuclear Waste Policy Act, 42 U.S.C. § 10222(a)(5)(B), the DOE is contractually obligated to remove spent fuel from the VY Station, but the date when it will perform this obligation is unclear at this time.

7. The Project is necessary to fully decommission the VY Station. Entergy VY cannot decommission the reactor building where the spent fuel pool is located without first removing all spent fuel from the spent fuel pool. Entergy VY currently expects to complete construction of the Second ISFSI storage pad in 2017. With the normal five-year cooling period for the last fuel load, Entergy VY expects that all of the spent fuel on site will be transferred from the spent fuel pool by 2020 with loading campaigns currently scheduled in 2019 and 2020.

8. In connection with the Project, Entergy VY will be removing the North Warehouse building, a 175 kW diesel generator and various underground utilities that currently occupy the location of the Second ISFSI storage pad. Entergy VY is also planning to install a new diesel generator, with an electrical rating of approximately 200 kW, west of the Second ISFSI storage pad. The new diesel generator will not interconnect with the electric grid but will

provide backup power for security systems at the VY Station and will be needed to continue to meet NRC requirements under 10 C.F.R. Part 73.

9. Pursuant to 30 V.S.A. § 248(f), Entergy VY provided prefiling notice of the proposed Project to the Town of Vernon Selectboard, the Town of Vernon Planning Commission and the Windham Regional Commission on May 15, 2014. A copy of this filing is also being provided to each of these authorities.

10. Pursuant to Vermont Public Service Board Rule 5.402(F)(3), a list of adjoining property owners is attached to this petition. The undersigned counsel affirms that a good faith effort was used to identify all adjoining landowners using the Grand List for the Town of Vernon, which was last certified on June 27, 2013 and reviewed on May 6, 2014. Notice of this filing is also being provided to each adjoining property owner.

11. The Project is described in the attached prefiled testimony and exhibits, which demonstrate that the Project: (1) is needed to fully decommission the VY Station; (2) will not have an undue adverse impact on the resources and matters protected by § 248(b); (3) meets the criteria established by 10 V.S.A. § 6522; and (4) will promote the general good of the state.

12. Entergy VY submits this petition, and all other written submissions including prefiled testimony, noting its continued objection to the State of Vermont's assertion of jurisdiction over matters for which the federal government and the NRC have exclusive jurisdiction,² including such exercise of its jurisdiction under Section 248 of Title 30, Vermont Statutes Annotated and Chapter 157 of Title 10, Vermont Statutes Annotated.

² The federal government has "exclusive authority over [commercial nuclear] plant construction and operation." *Pac. Gas & Elec. Co. v. State Energy Resources Conserv. & Dev. Comm'n*, 461 U.S. 190, 212 (1983) ("PG&E"), as well as "nuclear safety concerns," *id.* Such exclusive authority extends to the nuclear phase of decommissioning. *See, e.g., Missouri v.*

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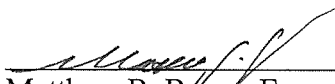
13. This Project is being undertaken to satisfy NRC radiological safety and decommissioning regulations governing nuclear-power plants. The NRC regulates the issuance of licenses to receive, to transfer, and to possess power reactor spent fuel, power reactor-related greater than Class C waste, and other radioactive materials associated with spent fuel storage in an ISFSI. 10 C.F.R. Part 72. It also regulates site physical protection systems, subsystems components and procedures, including requirements that all alarms remain operable from independent power sources. 10 C.F.R. § 73.46. Although the Board may have non-preempted authority based on state-law concerns such as aesthetics to regulate the placement of the Project on the site (unless such authority conflicts with a federal mandate), the Board may not exercise its authority to prohibit installation of a Second ISFSI storage pad altogether. Entergy VY expressly reserves its rights to challenge on federal preemption grounds any state directive that would delay, prohibit, or interfere with installation of the Project.

Westinghouse Elec., LLC, 487 F. Supp. 2d 1076 (E.D. Mo. 2007) (AEA preemption applies to decommissioning facilities); *Me. Yankee Atomic Power Co. v. Bonsey*, 107 F. Supp. 2d 47, 51 (D. Me. 2000) (state “authority to regulate [a nuclear power plant’s] decommissioning activities is preempted”); *see also Me. Yankee Atomic Power Co. v. Me. Pub. Utils. Comm’n*, 581 A.2d 799, 805-06 (Me. 1990) (finding preempted Maine’s attempt to regulate the decommissioning fund of the Maine Yankee Atomic Power Company). The same is true for the storage of spent nuclear fuel, as the NRC has “exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession and use of nuclear materials,” and “[u]pon these subjects, no role was left for the states.” *PG&E*, 461 U.S. at 207 (citations omitted); *Skull Valley Band of Goshute Indians v. Nielson*, 376 F.3d 1223, 1250 (10th Cir. 2004) (“Under the federal licensing scheme...it is not the states but rather the NRC that is vested with the authority to decide under what conditions to license an SNF storage facility.”); *Bullcreek v. NRC*, 359 F.3d 536, 538 (D.C. Cir. 2004) (“[T]he AEA confers on the NRC authority to license and regulate the storage and disposal of [SNF].”); Docket 7082, *Pet. of Entergy VY for a CPG to construct a dry fuel storage facility at the VY Station*, Order of 4/26/06 at 15 (recognizing federal preemption of state-level regulation of spent nuclear fuel management).

WHEREFORE, in consideration of the foregoing and the attached prefiled testimony and exhibits, Entergy VY respectfully requests that the Board:

- A. Docket this matter and schedule a prehearing conference to establish a schedule for this proceeding;
- B. Find that the Project does not raise a significant issue under the § 248(b) criteria or 10 V.S.A. § 6522 criteria and that it will promote the general good of the State of Vermont;
- C. Issue a CPG authorizing construction of the Project; and
- D. Take such other actions as the Board finds necessary and appropriate for the prompt consideration and resolution of this petition.

Dated: Burlington, Vermont
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