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June 18, 2015

HAND DELIVERED

Susan Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620

Re: 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 construct a second independent spent fuel storage installation ("ISFSI") at the Vermont Yankee Nuclear Power Station
Docket No. 8300

Dear Mrs. Hudson:


Enclosed for filing please find an original and six copies of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.'s ("Entergy VY") Opposition to New England Coalition, Inc.'s Motion for Leave to Intervene.

Additionally, please note that Entergy VY does not oppose the Town of Vernon's Motion to Intervene and will not be filing a separate response.

Thank you for your attention to this matter. Please contact me with any questions.

Very truly yours,

GRAVEL & SHEA PC


Matthew S. Stern

MSS:amb

cc: Service List (via e-mail and mail)

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 authorizing the)
construction of a second independent spent fuel)
storage installation 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 in the Town of Vernon,)
Vermont)

Docket No. 8300

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STATE OF VERMONT
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Petition of Entergy Nuclear Vermont Yankee,)
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ENTERGY VY'S OPPOSITION TO
NEW ENGLAND COALITION, INC.'S MOTION FOR LEAVE TO INTERVENE

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (together, "Entergy VY"), by their attorneys, submit the following response to the April 29, 2015 motion of New England Coalition, Inc. ("NEC") requesting that the Vermont Public Service Board (the "Board") grant NEC leave to intervene in this docket ("NEC Motion").

Preliminary Statement

The focus of this docket is narrow. Entergy VY is seeking authorization to construct a second Independent Spent Fuel Storage Installation storage pad ("Second ISFSI") and related improvements (together, the "Project"). As the Board is well-aware, the Vermont Yankee Nuclear Power Station ("VY Station") permanently ceased operations in December 2014 and no longer produces electricity for consumers in New England. The Certificate of Public Good ("CPG") issued to Entergy VY in Docket 6545, as amended by the Board in Docket 7862, authorizes the continued ownership of the VY Station after December 31, 2014 solely for the purpose of decommissioning. A necessary incident of the decommissioning of the VY Station,

given the U.S. Department of Energy's ("DOE") failure to remove spent nuclear fuel from the VY Station pursuant to its contract with Entergy VY, is the on-site storage of the spent nuclear fuel, which has already been authorized by the Board.¹ The issues in this docket, therefore, are limited to the construction of the Second ISFSI and related improvements, including a new 200 kW security diesel generator and barrier wall.

NEC, asserting generalized interests and raising speculative issues about long-term waste storage and decommissioning that are outside the scope of this docket, seeks intervention as of right, or, in the alternative, permissive intervention. NEC states that it "is interested in a comprehensive evaluation of all information concerning the proposed projects," including siting, design, civil engineering, quality control, financing, and "potential transfer of ownership, and the applicant's long-term commitment to stewardship of the facility." NEC Motion at 2. NEC also states that its concerns about decommissioning and site restoration in 60 years and federal rules regarding long-term nuclear waste storage "provide an entirely new context in which to consider the usual V.S.A. 30 Section 248 criteria as well as the individual considerations of the duration of Entergy's tenancy, fiscal and stewardship responsibility into the 23rd century CE, the potential necessity (per NRC) of building fuel handling and transfer facilities a hundred years hence, the new storage facility's effects on regional development, site reuse, site aesthetics, etc." NEC Motion at 2-3.

NEC has no right to intervene under Board Rule 2.209(A), and has failed to explain how it or its members, who are in no different position than any member of the public with respect to a

¹ In Docket 7082, Entergy VY was authorized to construct a dry fuel storage facility at the VY Station, including the existing ISFSI storage pad. Additionally, pursuant to the Board's Order in Docket 7862, the previous conditions in Docket No. 7082 limiting the cumulative total amount of spent nuclear fuel that may be 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. Docket 7862, March 28, 2014 Order at 81.

closed nuclear power plant, have a particularized interest that may be affected by this proceeding sufficient to warrant permissive intervention under Board Rule 2.209(B). The speculative issues raised by NEC do not demonstrate a substantial interest in the outcome of this proceeding. In fact, NEC's pleadings to date show that it will unnecessarily delay the proceedings. NEC wishes to focus not on statutory factors under 30 V.S.A. § 248, but contingencies for the 23rd Century. The Board should not grant NEC party status to present issues far beyond the scope of this narrowly-focused proceeding. Instead, the Board could allow NEC to participate as *amicus curie* to file briefs on limited issues relevant to this docket.

Discussion

I. NEC HAS NOT SATISFIED THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

Under Rule 2.209(A), upon timely application, a person shall be entitled to intervene in a proceeding as of right when a statute confers an unconditional right to intervene or a conditional right to intervene where the condition or conditions are satisfied; or “when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant’s interest is not adequately represented by existing parties.” NEC does not qualify for intervention as of right under any of the grounds established by Rule 2.209(A).

First, NEC fails to cite any statute entitling it a conditional or unconditional right to intervene. *See generally* NEC Motion. Nor can it do so, because no such statute exists.

Second, NEC has not demonstrated any substantial interest in this proceeding that differentiates it from the interests of other members of the general public, much less an interest that this proceeding provides the exclusive means to protect. NEC asserts that it has numerous

members “with homes and businesses in Vermont Yankee’s immediate vicinity” who are “electric customers in Vermont and thus their concrete and particularized interests will therefore be directly affected by this proceeding.”² NEC Motion at 2. Rather than identifying what its members’ “concrete and particularized interests” are or how those interests will be “directly affected by this proceeding,” however, NEC merely describes the issues it would like to see examined in this docket:

NEC is interested in a comprehensive evaluation of all information concerning the proposed projects (ISFSI, generator, etc.), as to siting, appropriate land use, siting alternatives, design and civil engineering, construction quality control, durability, maintenance, financing of construction and maintenance, potential transfer of ownership, and the applicant’s long-term commitment to stewardship of the facility; especially as the forgoing considerations may promptly or eventually affect the local environment, Vermont Yankee property reuse, regional planning and development, and aesthetics.

NEC Motion at 2. NEC admits that its “interests and those of its members who purchase electricity in Vermont are aligned with those of the Department of Public Service” (the “Department”), but suggests, without any elaboration, that NEC *may* take a different position based on positions taken in previous dockets. NEC Motion at 3.

NEC’s vague and general description of its members’ interests do not satisfy the Rule 2.209(A) criteria, and the Board has previously denied intervention as of right based on similar claims of generalized environmental or economic interests. In the previous dry fuel storage docket for example, the Board denied Citizens Awareness Network’s request to intervene as of right, noting that the Board “has consistently held that such generalized interests are not sufficient, since the Department is already charged by 30 V.S.A. § 2(b) with representing the

² Electric ratepayers enjoy no special status in a proceeding involving a merchant generation plant that is permanently shut down and incapable of producing and transmitting electricity to the New England grid.

interests of the people of the state.” *Pet. of Entergy Nuclear Vermont Yankee, LLC*, Docket 7082, September 14, 2005 Order at 2-3;³ *see also Pet. of Entergy Nuclear Vermont Yankee, LLC* Docket 7440, September 5, 2008 Order at 4-5 (denying two individuals’ motions to intervene because their generalized interests were not distinguished from residents and ratepayers generally and would be adequately represented by the Department). This is true even if “its members may seek a different outcome from the position that the Department may espouse.” *Pet. of Entergy Nuclear Vermont Yankee, LLC*, Docket 7082, September 14, 2005 Order at 3.

By NEC’s own admission, it does not assert any particularized interest in issues that are distinguishable from the interests of other Vermont residents, the Department of Public Service, or the State of Vermont in general and that this proceeding provides the exclusive means to protect these interests. Accordingly, and recognizing that no statute confers a right or conditional right for NEC to intervene, its request for intervention as of right must be denied.

II. NEC FAILS TO MEET THE REQUIREMENTS FOR PERMISSIVE INTERVENTION.

Permissive intervention may be granted under Board Rule 2.209(B) when an application “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” Board Rule 2.209(B). While the Board has “far more discretion” in determining whether to grant or deny permissive intervention, it must consider whether the applicant’s interests are adequately represented by other parties, whether alternative means exist to protect the applicant’s interests, and whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public. *See* Board Rule 2.209(B); *Invest. into the Existing Rates of Vermont Tel. Co., Inc.*, Docket 5904, October 15, 1996 Order at 2. Here, NEC has failed to demonstrate a

³ Citizens Awareness Network was granted permissive intervention in Docket 7082 because no party opposed its permissive intervention. Docket 7082, September 14, 2005 Order at 2. That is not the case here.

substantial interest that may be affected by this proceeding, and the factors that the Board must consider in determining whether to grant intervention weigh in favor of denying permissive intervention.

“In applying the substantial interest standard under PSB Rule 2.209(B), the Board will deny a motion to intervene where a movant has failed to demonstrate a ‘specific particularized interest’ that may be affected by the outcome of a proceeding. Simply raising generalized concerns is not sufficient to support intervention.” *Application of Seneca Mountain Wind, LLC*, Docket 7867, October 5, 2012 Order at 2; *see also Invest. into alleged violation by Vermont Gas Sys., Inc.*, Docket 8328, November 6, 2014 Order at 3-5 (denying Conservation Law Foundation’s motion to intervene finding, in part, that its natural resources interests were not implicated). NEC’s Motion states that many of its members have homes and businesses near the VY Station and are electric customers in Vermont, and simply concludes—without any additional explanation—that “their concrete and particularized interests will therefore be directly affected by this proceeding.” NEC Motion at 2. NEC’s Motion fails to identify any particularized interest. And it fails to explain how the generalized interests of some of its members, as electric consumers in Vermont, could be affected by this docket’s outcome. The generalized interests asserted in NEC’s Motion are insufficient to support permissive intervention here.

A. NEC’s Interests Are Adequately Protected By Other Parties.

As discussed above, the generalized interests asserted by NEC, as well as the issues NEC seeks to examine that are within the scope of review in this docket, will be adequately protected and addressed by the Department and Agency of Natural Resources. NEC’s stated purpose is to advocate for more effective regulation of nuclear plants and better environmental stewardship of natural resources near existing plants. *See* NEC Motion at 1-2. Neither its stated purpose nor anything else in NEC’s Motion establishes any “substantial interest” that is distinguishable from

the interests of the state agencies required by statute to appear in all § 248 proceedings to represent the interests of the state and its residents. *See, e.g., Invest. into alleged violation by Vermont Gas Sys., Inc.*, Docket 8328, November 6, 2014 Order at 6 (denying Conservation Law Foundation’s intervention request based on its assertion that it represented “the public interest” because that is “a role that is statutorily reserved to the Department”).

NEC asserts that it is in a position to contribute to consideration of the issues in this docket based on its participation in past proceedings related to the VY Station. While Entergy VY acknowledges NEC’s intervention in past dockets, historical participation does not in and of itself create a substantial interest that may be affected by the outcome of this proceeding.

Although NEC has not met the criteria for permissive intervention, given that its interests are not sufficiently particularized and will, in any event, be adequately addressed by other parties in this docket, the Board could allow NEC to participate on a limited basis as *amicus curiae*. *See, e.g., Invest. into regulation of Voice over Internet Protocol (“VoIP”) servs.*, Docket 7316, July 29, 2011 Order at 6 (denying Voice on the Net Coalition’s motion to intervene because its interests were adequately represented by other parties and inviting *amicus curiae* briefing); *Inves. into alleged violation by Vermont Gas Sys., Inc.*, Docket 8328, November 6, 2014 Order at 6 (denying Conservation Law Foundation’s motion to intervene and permitting it to file an *amicus curiae* brief instead).

B. Intervention By NEC Will Result In The Injection Of Collateral Issues And May Cause Delay.

The issues raised by NEC relate almost exclusively to long-term waste storage and decommissioning concerns that are outside the scope of this docket. In fact, NEC’s Motion does not cite to any specific criterion under 30 V.S.A. § 248 to which it is concerned. In this instance, NEC’s participation would likely result in delay and prejudice, as the Board and the parties would be forced to deal with extraneous issues that would threaten to turn the litigation into an exercise

in speculation about such issues as the U.S. Congress' and the Nuclear Regulatory Commission's ("NRC") future plans for long-term storage of spent nuclear fuel, instead of a review of the Project under the applicable criteria. Courts within the Second Circuit have denied intervention where the proposed intervenor's interests would inject collateral issues into the scope of the proceeding. *See, e.g., Citizens Against Casino Gambling in Erie Cnty. v. Hogen*, 17 Fed. App'x 49, 51 (2d Cir. 2011) (affirming denial of permissive intervention where proposed intervenor "has the potential to inject collateral issues into this litigation and prejudice the parties") (summary order); *United States v. City of New York*, 198 F.3d 360, 367-68 (2d Cir. 1999) (affirming denial of permissive intervention where "the claimed interests of the proposed intervenors, although broadly related to the subject matter of this action, are extraneous to the issues before the court . . . intervention would indeed unduly delay the adjudication of the rights of the existing parties to the action.").

Specifically, NEC claims that NRC rules may require on-site construction of fuel transfer facilities a hundred years from now, raising issues of "Entergy's tenancy, fiscal and stewardship responsibility into the 23rd century CE." NEC Motion at 3. NEC also raises concerns over whether Entergy VY will have enough money to complete decommissioning and site restoration 60 years from now.⁴ NEC Motion at 2. As an initial matter, these claims are purely speculative and cannot form the basis of a particularized interest. *See, e.g., Washington Elec. Coop., Inc. v. Massachusetts Mun. Wholesale Elec. Co.*, 922 F.2d 92, 97 (2d Cir. 1990) (denying intervention to address an interest "based upon a double contingency" because "[a]n interest that is remote from

⁴ NEC cites to articles in the Times Argus and Rutland Herald attributing statements to T. Michael Twomey regarding the possibility that Entergy VY may not have enough money to complete decommissioning in 60 years. *See* NEC Petition at 2, fn. 2. In a subsequent article by the Associated Press, Mr. Twomey corrected the comments attributed to him without quoting his actual words, stating that "we have every expectation" that the decommissioning fund will be sufficient. *See* Dave Gram, *Vermont Yankee official expects enough money to clean site*, Associated Press, Feb. 17, 2015, available at <http://finance.yahoo.com/news/vermont-yankee-official-expects-enough-164845526.html>.

the subject matter of the proceeding, or that is contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy the rule.”); *Invest. of Alpine Haven, Inc.*, Docket 5555, May 12, 1993 Order (“To establish a right to party status, it is not sufficient simply to assert historical, speculative and tangential ‘interests’; it is necessary to demonstrate a material impact on a legally cognizable interest that could result or could be avoided by the relief sought by the petitioner.”).

Moreover, NEC’s concerns are not related to issues within Entergy VY’s control. Rather, they relate to the ability of the DOE to remove spent fuel from the VY Station in the future and, in a broader sense, the solvency of the federal government, as Entergy VY expects that the direct costs of spent fuel storage will be recoverable from the government until the DOE removes the spent fuel from the VY Station. Under Section 302(a)(5)(B) of the Nuclear Waste Policy Act, 42 U.S.C. § 10222(a)(5)(B), the DOE was required to commence disposing of commercially-generated spent fuel no later than January 31, 1998, in return for the payment of fees by utilities and others that generated or held title to the spent fuel. Entergy VY has already recovered approximately \$41 million from the DOE for costs incurred as a result of the DOE’s breach, *Entergy Nuclear Vermont Yankee, LLC v. United States*, Docket No. 03-2663C (Fed. Cl. March 12, 2013), and will pursue additional claims for damages as costs are incurred. The federal government’s ability to pay these costs is something far beyond the power of the Board to resolve here. And, to the extent NEC’s concern is directed towards the requirements of 10 V.S.A. § 6522(b)(1), NEC has not demonstrated why the Department will not adequately protect its interests, as discussed above.

It is therefore apparent that instead of “significantly contribut[ing] to full development of the underlying factual issues in the suit,” *United States Postal Serv. v. Brennan*, 579 F.2d 188, 192 (2d Cir. 1978), NEC—which is adequately represented by agencies of the State of Vermont—will principally offer either duplicative or irrelevant factual material that will likely

delay resolution of this matter. *See also Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 2011 U.S. Dist. LEXIS 53560, at *8 (D. Vt. May 17, 2011) (denying NEC permissive intervention because “NEC’s interests are adequately represented by Vermont. NEC has not persuaded the Court that its participation will add significantly to existing Defendants’ development of the legal and factual issues in the case, since its ultimate objective is the same as that of Defendants.”). NEC’s participation as an intervenor is thus inconsistent with the criteria of Board Rule 2.209(B). The Board therefore should, in the exercise of its discretion, deny permissive intervention.

III. NEC’S INTERVENTION, IF GRANTED, SHOULD BE LIMITED IN SCOPE.

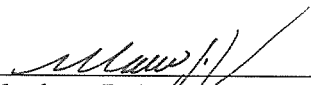
If the Board finds grounds supporting permissive intervention, however, “the Board may restrict such party’s participation to only those issues in which the party has demonstrated an interest . . . or may otherwise limit such party’s participation, all as the interests of justice and economy of adjudication require.” Rule 2.209(C); *see also Pet. of Entergy Nuclear Vermont Yankee, LLC*, Docket 6976, September 9, 2004 Order of at 4 (limiting NEC’s intervention to aesthetic interests).⁵ Restricting the scope of NEC’s participation to those criteria in which the Board finds NEC has demonstrated a substantial interest will reduce the risk of delay or prejudice as a result of its intervention.

⁵ Entergy VY notes that in Docket 6976, NEC demonstrated a substantial interest with respect to the aesthetics of a proposed parking lot. *See* Docket 6976, September 9, 2004 Order at 3-4. However, as to this docket, NEC has not demonstrated a substantial interest with respect to any of the relevant Section 248 criteria.

Conclusion

NEC cannot satisfy the requirements for intervention as of right, and its petition fails to demonstrate a particularized substantial interest that may be affected by this proceeding sufficient to warrant permissive intervention. NEC's motion should therefore be denied. NEC could nonetheless participate in this docket as a non-party *amicus*, with the Board's permission. If, however, NEC is permitted to intervene in this docket, its participation should be restricted to only those issues under § 248 in which the Board finds it has demonstrated a substantial interest.

Dated: Burlington, Vermont
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