

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

NEW ENGLAND COALITION, INC'S RESPONSE TO
ENTERGY VY'S OPPOSITION AND TO THE RESPONSE OF
THE DEPARTMENT OF PUBLIC SERVICE TO
NEW ENGLAND COALITION, INC'S MOTION FOR LEAVE TO INTERVENE

New England Coalition, Inc. ("NEC"), by its *pro se* representative Clay Turnbull, submits the following response to the Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (together, "Entergy"), June 18, 2015 Opposition and to the Department of Public Service Response to the April 29, 2015 motion of New England Coalition, Inc. ("NEC") requesting the Vermont Public Service Board (the "Board") grant NEC leave to intervene in this docket ("NEC Motion").

Preliminary Statement

Entergy is seeking authorization to construct a second Independent Spent Fuel Storage Installation storage pad ("Second ISFSI") and related improvements (together, the "Project"). The issues in this docket are the construction of the Second ISFSI and related improvements, including a new 200 kW security diesel generator and barrier wall. This matter is being considered properly under 30 V.S.A. Section 248. As Entergy VY has admitted through prefiled

testimony and exhibits, almost all of the criteria under Section 248 are relevant and to be considered and examined before the Board may rule on Entergy's petition. 10 V.S.A. Section 6522 also requires examination of additional factors when deciding this type of proceeding as also evidenced through Entergy's prefiled testimony and exhibits. We seek intervention as of right, or, in the alternative, permissive intervention.

We are interested in a comprehensive evaluation of all information concerning the proposed project, including but not limited to siting, design, civil engineering, quality control, financing, and potential transfer of ownership, and the petitioner's long-term commitment to stewardship of the facility, all permissible factors under the statutory authority. Our concerns about decommissioning and site restoration in 60 years and federal rules regarding long-term nuclear waste storage provide an entirely new but nonetheless proper context in which to consider the usual V.S.A. 30 Section 248 criteria as well as 10 V.S.A. Section 6522 criteria.

As the parties are aware, reliability and cost are well within this Board's purview as reiterated in Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for amendment of their Certificates of Public Good.¹

We have the right to intervene under Board Rule 2.209(A), and have explained how we and our members, have a particularized interest that may be affected by this proceeding sufficient to warrant permissive intervention under Board Rule 2.209(B). The issues raised by us demonstrate a substantial interest in the outcome of this proceeding. We wish to focus on statutory factors under 30 V.S.A. § 248 and 10 V.S.A. Section 6522 criteria. The Board should grant NEC party status to present issues clearly within the scope of this proceeding.

¹ See Docket 7440, September 5, 2008 Order at 4.

This Board has not only characterized our interests as substantial but also recognized the value of our participation in a number of dockets. For example “NEC and its members, being local to the site of the Vermont Yankee Nuclear Power Plant in Vernon, VT, have demonstrated a substantial interest in the aesthetic impacts of the Project, would be helpful to the Board in evaluating the adequacy of the alternative parking area evaluated by Entergy VY in its petition, and that no existing parties adequately protect these interests.”² NECNP (“public interest group with environmental and consumer protection concerns”) is “in a position to provide this Board with valuable perspectives.”³

Furthermore “[NECNP] demonstrated an interest in this proceeding” and is “in a position to provide this Board with valuable perspectives” and “we do not exercise our authority under Rule 2.209(C) to restrict the scope of the interventions, to mandate that parties coordinate, or to limit the examination of witnesses by parties that may have similar interests.”⁴ And “In general, when the Board considers motions to intervene, we recognize that public participation in Board proceedings is beneficial to the Board, other parties, and to the public interest. We have found in the past and continue to believe that, to the extent that a particular individual, group, or organization has an interest in the proceeding and can assist us in understanding the issues, we are better able to fulfill our statutory duties.”⁵

Discussion

I. NEC HAS SATISFIED THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

² See Docket 6976, September 9, 2004 Order at 4.

³ See Docket 6300, January 7, 2000, Order at 4.

⁴ See Docket 6545, October 26, 2001, Order at 4.

⁵ See Docket 6300, January 7, 2000, Order at 3.

Under Rule 2.209(A), upon timely application, a person shall be entitled to intervene in a proceeding as of right when 1) a statute confers an unconditional right to intervene or 2) a conditional right to intervene where the condition or conditions are satisfied; or 3) "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." Board Rule 2.209(A). NEC qualifies for intervention as of right under the grounds established by Rule 2.209(A)(3).

NEC has demonstrated a substantial interest in this proceeding, which differentiates it from the interests of other members of the general public, an interest this proceeding provides the exclusive means to protect and our interest is not adequately represented by existing parties. Accordingly our intervention as of right must be granted.

NEC has invested significant amounts of money and time in oversight of VY operations and activities for over 45 years. Since Entergy intervened in the sale docket before this Board (Docket 6545), NEC, its members and constituency, have invested more than one million dollars in opposing Entergy initiatives, much of it in intervening before this Board. Much of the investment may be wasted if siting, construction, and maintenance of the Independent Spent Fuel Storage Installation ("ISFSI") pad is now left to the whim and will of Entergy for an undetermined or quasi-permanent period.

NEC is concerned construction of the pad is proposed without the prudent exploration of siting and construction alternatives. Entergy witness George Thomas does, in his prefiled testimony, only briefly mention alternative siting within the VY site boundaries as well as consideration of the alternative use of the Holtec High Storm 100U (underground) cask system .

See generally prefiled testimony of George Thomas. The 100U system would require entirely different design and engineering for support structure than the proposed concrete pad. Mr.

Thomas says that the 100U design was selected by other plants for reasons not applicable at VY. He does not say however that the 100U design is not practical and/or would not be of benefit at the VY site. NEC contends that if the 100U system would better protect the casks and canister from the elements or extraordinary environmental impacts than the proposed open pad, thereby extending the durability of the entire project over time, the 100U alternative should be explored in a more meaningful way than the witness' few brief observations. Although the Section 248 review criteria of reliability refers to reliability of electricity supply, NEC contends that when a CPG is sought for other than electric generating units, then reliability of what the proposed project does produce should be considered (in this case, storage). *See* 30 V.S.A. Section 248(b)(3) (the Board shall find the construction will not adversely affect "system safety and reliability").

NEC is concerned the proposed storage unit will preclude both full restoration and reuse of the site. To NEC's knowledge no site containing an ISFSI has been fully reused or restored to date. Surely, this terminal use must be considered under Section 248 criteria of environmental impact, esthetics, and regional planning and/or development. *See* 30 V.S.A. Section 248(b)(1) (the Board shall find the construction will not unduly interfere with the "orderly development of the region") and (5) (the Board shall find the construction will not have an undue adverse effect on "esthetics, historic sites, air and water purity, natural environment, use of natural resources, public health and safety"). NEC and its members and constituents, residing in close proximity to the VY site have focused interests in the local economy, environment and quality of life at risk of negative impact from this project. *See also* 30 V.S.A. Section 248(b)(10) (the Board shall find

the construction can be served economically “without undue adverse effect”). Those interests will not be protected by any other party.

NEC offices are in the heart of the Brattleboro Business District, near the banks of the Connecticut River and just a few air miles from VY. NEC is a recognized member of this community. In fact over the last few months NEC has been holding well-attended community meetings for open conversation about how this community shall address decommissioning. No other party is so uniquely situated and therefore no other party can adequately address NEC’s interests in the community and community life as they may be affected by siting and emplacement of an industrial storage which may never be emptied and so affect our community for many generations to come.

NEC is concerned the proposed pad will alter water runoff from the VY grounds in ways as yet not fully analyzed and which may result in the transfer of site contaminants (including, but not limited to lead, mercury, PCB’s, petroleum products, and asbestos) to the groundwater, wetlands, local aquifer, and the Connecticut River. This is an environmental impact to be considered under Section 248(b)(5) as above described.

NEC is concerned when other VY structures are demolished and removed, the ISFSI will stand out in high relief, large concrete pads with dozens of concrete silos presenting a unique industrialized aspect in an otherwise sylvan setting. As in Docket 6976, where the Board ruled NEC was in a unique position to be affected by the esthetics of the project, NEC bears a special relationship to the site area and its interests will not be protected by any other party. *See* Docket 6976, September 9, 2004 Order at 4.

NEC is concerned this pad and its burden of thousands of tons is proposed to be supported (partially or wholly) on fill or “made ground” which may be subject to subsidence or,

in a seismic event, to liquefaction and collapse. Soil stability is the subject of Entergy's study, which Entergy claims delayed this proceeding ten months. Surely, the validity and results of this study, which NEC believes flow from NEC's introduction of questions regarding soil stability, in Docket 7082, need to be examined in Docket 8300. No party is quite as familiar with the overall issue as NEC, and given NEC's proximity to the site, no other party is likely to represent NEC's unique interests and perspectives as well as they will (*See generally* Docket 7082).

NEC is concerned no alternative away-from-reactor site has been explored and evaluated using Section 248 criteria. NEC reasons there may be another potential site within Southern Vermont which is more unobtrusive, more isolated, less open to environmental impacts, on more solid ground, and worth less overall than the current VY site. NEC questions if a permanent repository is the best use for a historically rich riverfront meadow. NEC contends Section 248 criteria referring to regional development, planning, esthetics, and environmental impacts apply. It is NEC's position these impacts must be considered as they would affect the site and local environs for the period in which the proposed project would be in use.

Entergy cites the 2011 Vermont District Federal Court decision denying NEC intervention. BUT they cite it selectively. The Court indeed opined the Department and the Attorney General would adequately protect NEC's interests. What Entergy does not point out is the Court equated NEC's interests with the outcome of the proceeding (something the Department also does in this docket in its response to NEC's petition to intervene). In the federal case, the Court said NEC and the State were both interested in the same outcome - upholding the Legislation and shutting down Vermont Yankee. Therefore our interests were identical. In this docket NEC has already made it clear it does not oppose dry cask storage or necessarily the construction of a second pad. If NEC's interests were confined to a simple "yes", then there

would be no need to intervene. The Board is respectfully reminded in 15 years of almost constant litigation before this Board, NEC has cut a distinct and individual path raising pertinent and material issues no other party has even thought of, much less raised.

Entergy complains NEC is likely to delay or prolong this proceeding, when in fact Entergy has no basis in fact or the record to make the claim. It is more than somewhat specious for Entergy to complain about potential delay when its opening gambit in Docket 8300 was to ask for a delay in commencement, in order to complete a soil engineering study, for over ten months as it turned out. *See generally* Docket 8300.

Entergy objects to the “speculative” nature of NEC’s concerns. *See generally* Entergy Opposition. There is nothing speculative about asking blanks in contracts be filled-in before appending a signature. That said, Entergy’s CPG Petition begs speculation as it trends toward geologic time frames of storage with no plans or commitments even as far as the milestone of license termination or subsequent site restoration.

Entergy is seeking to raise the bar (to admittance) for this case and this intervener to levels never before required by the public service board. They do so without themselves providing reason or basis. Further Entergy and the Department suggest levels of specificity, detail, and legal citation that amount to a requirement that NEC brief its case with proposed findings of fact and law at the onset. As the Board has stated many times, the Petition for CPG Review is an iterative process; such iteration would be frustrated if parties are required to state their case in detail at the admission stage. NEC has provided ample demonstration of interest as required by the rules.

II. NEC MEETS 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." *See* 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 demonstrated a substantial interest which may be affected by this proceeding, and the factors the Board must consider in determining whether to grant intervention weigh in favor of granting permissive intervention as hereinafter stated.

A. NEC's Interests Are Not Adequately Protected By Other Parties.

The issues NEC seeks to examine which are within the scope of review in this docket, will not be adequately protected and addressed by either the Public Service Department a/k/a Department of Public Service ("Department") or Agency of Natural Resources. For example, in a recent case, "the Hearing Officer noted that while the concerns articulated ... appeared to be of a private nature, her intervention might nonetheless serve to further illuminate the public concerns already being examined by the Department."⁶ Clearly this highlights the availability of intervenor status to one seeking such status even in the face of the Department's participation as a party.

This Board has exercised its discretion to grant an intervenor status even when a party represents an intervenor's interests if the interests cannot be represented by a party "as well as"

⁶ Docket 8302, June 9, 2015 Order at 4.

the intervenor would represent its own interests. *See* Petitions of *USGen New England, Inc. for consent to transfer its Bellows Falls project to the Vermont Hydroelectric Power Authority*, Docket 7047, March 31, 2005 Order at 2.

Furthermore our concerns are directed towards the analysis and application of the requirements of 10 V.S.A. § 6522(b)(1) whereby the Department will not adequately protect our interests, as above discussed.

The Board has admitted NEC in cases both broad and narrow in scope and saw no delay or broadening of scope. The Board has admitted NEC in Entergy Vermont Yankee-related Dockets 6300, 6545, 6812, 6812A, 6976, 7082, 7195, 7600, and 7862 where NEC has diligently labored to assist in building a good record. Entergy and the Department offer no good reason why the Board should make an exception by denying NEC intervenor status or otherwise limiting NEC's participation in this case.

B. Alternative Means Do Not Exist By Which To Protect NEC's Interests.

As this Board is well aware there are few forums in which to advocate for any matter regarding nuclear power plants. Federal hearings are limited to matters of nuclear safety which are not included in the concerns enumerated in NEC's Petition for Leave to Intervene. The Vermont Public Service Board remains the only body before which NEC's concerns may be brought.

C. Intervention By NEC Will Not Cause Undue Delay Or Prejudice The Interests Of Others.

The issues raised by NEC are within the scope of this docket. In this instance, NEC's participation would unlikely result in delay and prejudice.

In some cases intervenors are permitted even subsequent to the deadline to intervene absent prejudice to the parties or public, especially early in the proceedings, as in the docket currently before the Board. "...I perceive no prejudice to the Petitioners if VPIRG is permitted to intervene in this proceeding despite the late filing of its motion. Permitting VPIRG's intervention at this stage of the proceeding will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. The only actions taken so far with respect to this matter have been the filing by the Petitioners of their petition and prefiled testimony, the Board's Order of December 27, 2012, the convening of a prehearing conference, and the decision to process the petition and solicit comments under 30 V.S.A. § 248(j)(2). Substantive proceedings on the merits of the petition have not yet begun.”⁷

As in the VPIRG intervention, here we have not yet begun the proceedings on the merits.

In fact we will "significantly contribute to full development of the underlying factual issues in the suit" which has been recognized as being valued by the courts in analogous cases.⁸

Recently an applicant "...was granted intervenor status ...subject to her representation that she was prepared to submit testimony consistent with the schedule in the proceeding.”⁹ NEC has not contended it would not be able to meet scheduling deadlines and has met them to date in this docket. In deed we agreed to the proposed scheduling order here even though the first round of discovery was due before the motions to intervene.

⁷ See Docket 7964, March 12, 2013 Rulings at 4.

⁸ See *United States Postal Serv. v. Brennan*, 579 F.2d 188, 192 (2d Cir. 1978).

⁹ Docket 8302, June 9, 2015 Order at 4.

We will work diligently to avoid delaying the proceeding. Our intervention would not cause any change in the schedule or process set out in the Board's order dated May 6, 2015.

The Board therefore should, in the exercise of its discretion, grant permissive intervention absent a finding of intervention as of right.

III. NEC'S INTERVENTION, IF GRANTED, SHOULD NOT BE LIMITED IN SCOPE.

While Entergy has suggested the Board exercise its authority to limit the scope of our intervention, the statutory mandate that the Board review all Section 248 and 6522 criteria may not be fulfilled by limiting the scope to the construction of a pad and installation of a generator as the petitioner attempts to characterize this. This is not a tidy little package to be trimmed with a CPG as its bow. This is complex and requires a thorough review for the benefit of the citizens of this State and not to be short cut at their expense and most certainly would not be in the interest of justice.¹⁰

Where, as in the present docket, a party attempts to limit the scope of intervention too early in the proceeding "...there is little basis to limit the scope of any intervenor's participation in this proceeding before the deadline for comments on whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248. Circumscribing the scope of NEC's intervention at this time in the manner the Petitioners suggest might unjustifiably prevent NEC from pursuing matters relating to the substantive criteria of Section 248 it may raise in its

¹⁰ (C) Conditions. Where a party has been granted intervention, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require. See Board Rule 2.209

comments on the petition.”¹¹ While the procedural history is not exact this case demonstrates a willingness and desire to allow for a full participation in this crucial regulatory process.

Likewise “...the Petitioners' scheduling concerns do not supercede the statutory and regulatory process under which this petition must be considered. This is especially true at this early stage of the proceeding ...”¹²

IV. NEC’S RIGHTS CANNOT BE EXERCISED THOUGH AMICUS CURIAE.

This Board has recognized on more than one occasion intervention may allow them to better adhere to their statutory duties. “...when the Board considers motions to intervene, we recognize that public participation in Board proceedings is beneficial to the Board...we are better able to fulfill our statutory duties.” *See Petition of ENVY and ENO for a CPG to mod. cert. gen. facil. at the VYNPS in ord. to inc. the station’s gen. out., see also* Docket 6812, March 31, 2003 Order at 2 (granting and not limiting the scope of our intervention). Simply allowing one to file as friend of the court would preclude an interested non party from certain constitutionally protected activities such as following up as a party on any issues.

It should be noted the offer of Entergy to allow us to file amicus curiae seems “disingenuous”, which this Board has noted itself with respect to Entergy.¹³

Conclusion

NEC satisfies the requirements for intervention as of right, and its petition demonstrates a particularized substantial interest that may be affected by this proceeding sufficient to warrant

¹¹ Docket 7964, March 12, 2013 Rulings at 2.

¹² Docket 7964, March 12, 2013 Order at 3.

¹³ Docket 7404, May 5, 2008 Order at 5.

permissive intervention as no other venue exists, no other party could represent our interests and we will not cause undue delay or prejudice the parties. NEC's motion should therefore be granted. If NEC is permitted to intervene in this docket, its participation should not be restricted.

Dated: Brattleboro, Vermont
July 1, 2015

For New England Coalition, Inc.



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July 2, 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 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.

Dear Mrs. Hudson:

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

I certify we have today served via U.S.P.S. copies of this filing to parties on the Service List. In addition, we have sent a copy to all parties by electronic transmission.

Thank you for your assistance with this matter. Please contact me should you have any questions about this filing.



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**Motion to Intervene Pending*