

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

REPLY IN SUPPORT OF ENTERGY VY'S OBJECTIONS
TO ADMISSION OF PREFILED TESTIMONY OF RAYMOND SHADIS

Petitioners Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, "Entergy VY"), by their attorneys, submit the following reply memorandum in support of its objection to the admissibility of the Prefiled Testimony of Raymond Shadis submitted on behalf of New England Coalition ("NEC") on August 21, 2015. Mr. Shadis' testimony complains about process and the extent of public involvement in nuclear regulation and policy making. NEC now claims that this testimony is germane to the issue of aesthetics (*see generally* New England Coalition's Reply to Entergy Vermont Yankee's Objection to Admission of Prefiled Testimony of Raymond Shadis, hereinafter, "Reply"), but the connection is fictitious. Mr. Shadis' testimony should be excluded as irrelevant, immaterial, beyond the scope of NEC's limited intervention and preempted.

Discussion

Entergy VY and NEC can at least agree upon the definition of "Relevant Evidence." But the key question is, *relevant to what?* NEC argues that "the V.R.E. definition of relevance hinges on whether the evidence has 'any tendency' to make any material fact 'more probable or less probable' that [*sic*] it would be absent the evidence." Reply at 3. NEC overlooks the portion of Rule 401 that explains relevant evidence must pertain to a fact "that is of consequence to the determination of the action . . ." V.R.E. 401. The scope of this action is defined by statute. Only facts pertaining to the criteria of section 248(b) and 10 V.S.A. § 6522 are relevant. Mr. Shadis' testimony compares the public participation process he experienced at Maine Yankee to the "quality of public participation at Vermont Yankee," Shadis pf. at 5-8, and argues that the Department of Energy ("DOE") is unlikely to remove spent fuel from the Vermont Yankee Nuclear Power Station (the "VY Station") "until at least the 22nd century." Shadis pf. at 9-12. Neither topic is relevant or material to the section 248(b) criteria or the criteria of 10 V.S.A. § 6522.

Incredibly, NEC's Reply asks the Board to believe that Mr. Shadis' testimony is actually intended to address aesthetics under section 248(b)(5). It is not. Mr. Shadis' testimony mentions aesthetics only once, in Answer 9 of his testimony. Even then, Mr. Shadis only offers the general observation that "negative effects of the ISFSI on regional planning, aesthetics, site reuse, and/or the local environment will remain until the ISFSI is removed." Shadis pf. at 9. Mr. Shadis' testimony goes on to detail at length his critique of the DOE's plans for long-term storage of spent nuclear fuel at Yucca Mountain and the NRC's policies for permanent disposal

of fuel—two issues that are beyond the Board's powers to address and have absolutely nothing to do with aesthetics or any other issues within the scope of this docket.¹

NEC's Reply also ignores the fact that Mr. Shadis' testimony does not even make a passing reference to the *Quechee* test. Nor does Mr. Shadis make any effort to respond to the testimony of Entergy VY's aesthetics expert, Harry Dodson.² NEC's Reply tries to remedy this deficiency after the fact by quoting the *Quechee* test and citing to cases applying it at length. But NEC's Reply is not supplemental testimony and even if it were, it would be untimely by several weeks and unauthorized under the Board's May 6, 2015 Scheduling Order. As Mr. Shadis' prefiled testimony was submitted and now stands, it is irrelevant, immaterial, and it should be excluded in its entirety.

Ultimately, NEC is attempting to conceal its concerns about safety and the fact that NEC does not want to have spent nuclear fuel stored in Vermont into, it claims, the 22nd Century by calling it an "aesthetic issue." But Mr. Shadis' testimony offers no alternative to on-site storage. While Mr. Shadis may regard the Yucca Mountain project as "a technical 'balls-up' gone soft with feather-bedding and incompetence," that opinion has no bearing on aesthetics. Shadis pf. at 10.

¹ If Mr. Shadis' testimony is *actually* intended to address aesthetics, Mr. Shadis has not demonstrated any knowledge, skill, education, training or experience sufficient to qualify him as an expert in the area, and his testimony should be excluded as impermissible opinion testimony under V.R.E. 702.

² NEC's Reply states that "[i]t appears that, following logically, ENVY has laid no plans, nor has it taken 'generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.'" Reply at 5. NEC apparently ignores the Prefiled Testimony of Harry Dodson (June 30, 2014) at pages 23-24 that addresses reasonable mitigation measures for the Project.

Finally, Entergy VY must respond to NEC's allegation that Entergy VY violated its duty of candor before the Board. NEC takes issue, for example, with the fact that Entergy VY did not also quote the passage of *Maine Yankee* that provides that a state may "insist that the ISFSI comply with state requirements that do not impermissibly infringe on radiological, operational, construction, or safety issues, such as, for example, aesthetic landscaping requirements, or flood or soil erosion control measures." See NEC's Reply at 10, quoting *Maine Yankee Atomic Power Co. v. Bonsey*, 107 F. Supp. 2d 47, 55 (D. Me. 2000). But Entergy VY never suggested that state regulation of spent fuel storage is *entirely* preempted. Indeed, that is why Entergy VY filed its petition seeking a CPG from the State for the Project. Entergy VY had no need to discuss the portion of *Maine Yankee* cited by NEC because Mr. Shadis' testimony does not say *anything* about "aesthetic landscaping requirements, or flood or soil erosion control measures." *Maine Yankee*, 107 F. Supp. 2d at 55.

Conclusion

Contrary to the assertions in NEC's Reply, Mr. Shadis' testimony *does not* address alleged aesthetic impacts of the Project. Mr. Shadis' prefiled testimony addresses issues that are irrelevant to this proceeding, are beyond the limited scope of NEC's intervention and are preempted by federal law. His prefiled testimony should be excluded in its entirety.

Dated: Burlington, Vermont
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