NEW ENGLAND COALITION
On Nuclear Pollution

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October 5, 2015

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Mrs. Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

BY HAND DELIVERY

Docket No. 8300: 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

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Dear Mrs. Hudson:

Enclosed please find for filing an original and six copies of NEW ENGLAND COALITION'S REPLY TO ENTERGY VERMONT YANKEE'S OBJECTION TO ADMISSION OF PREFILED TESTIMONY OF RAYMOND SHADIS.

Thank You for your assistance. Please contact me with any questions.

By:

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PSB Docket No. 8300 Service List

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I, Clay Turnbull, hereby certify that on the 5,th day of October, 2015, a copy of the attached filing regarding Docket No. 8300 was sent via U.S. Mail, postage prepaid, to the parties listed above.

Clay Turnbull
New England Coalition, Inc.
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Brattleboro, VT 05302

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for a Certificate of Public Good 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 approximately200 kW, at the Vermont Yankee Nuclear Power Station in the Town of Vernon, Vermont	October 2, 2015 Docket No. 8300

NEW ENGLAND COALITION'S REPLY TO ENTERGY VERMONT YANKEE'S OBJECTION TO ADMISSION OF PREFILED TESTIMONY OF RAYMOND SHADIS

New England Coalition("NEC"), by and through its Pro Se Representative, Clay Turnbull, replies herein to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, "ENVY") objections to the admissibility of the Prefiled Testimony of Raymond Shadis, said objections submitted on September18, 2015.

ENVY claims that Mr. Shadis' prefiled testimony should be excluded because it:

" (1) addresses issues that are irrelevant to this proceeding; (2) exceeds the limited scope of NEC's intervention allowed by the Board; and (3) addresses areas that are preempted by federal law."

ENVY is wrong on all three counts. ENVY is also in error regarding its claim that much of the Shadis testimony is federally preempted.

The testimony of Raymond Shadis is relevant, within the scope of issues delineated by the Board, and it is material to an informed decision. Mr. Shadis' uncritical recounting of the schedules, agendas, and topical concerns of federal agencies, commissions, and so forth does

not affect in any way the federal regulatory scheme nor does it invite the Board to attempt to base its decisions on preempted matter or regulate in anyway those areas reserved to the U.S. Nuclear Regulatory Commission. Mr. Shadis' testimony is therefore not preempted.

As discussed below, the objection of ENVY should be overruled or dismissed and the testimony of Raymond Shadis should be admitted. NEC and its witness look forward to vigorous examination by the Board and cross-examination by the parties.

DISCUSSION

NEC agrees with ENVY that evidentiary matters before the Board are governed by 3 V.S.A. § 810, Board Rule 2.216(A) and that Section 810 provides, in pertinent part:

> In contested cases: Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

NEC agrees that in determining whether evidence should be admitted over an objection in a contested case, the Board must thus examine whether the evidence is relevant, material, or not unduly repetitious. The Board must also determine whether the evidence is admissible under the Vermont Rules of Evidence. Finally, if the evidence is not admissible under the Vermont Rules of Evidence, the Board must determine whether the evidence is "necessary to ascertain facts not reasonably susceptible of proof' under these rules and whether "it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." 3 V.S.A. § 810(1).

Setting aside the question of whether or not Mr. Shadis' testimony is repetitious (no one claims it to be repetitious), NEC turns first to the question of relevance, which in the Vermont Rules of

Evidence (invoked, but not quoted, by ENVY in its Objection) reaches to both materiality and admissibility.

> Rule 401. Definition of "Relevant Evidence"
>
> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
>
> Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible
>
> All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute or by these rules or by other rules prescribed by the Supreme Court. Evidence which is not relevant is not admissible
>
> V.R.E. Article IV. RELEVANCY AND ITS LIMITS
> As amended through August 5, 2015

NEC notes 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 it would be absent the evidence. Mr. Shadis' testimony regarding an alternative approach to incorporating public opinion regarding ISFSI siting and his warning that the tenure of the ISFSI may exceed the expectations promoted by Entergy VY amply meets the relevancy criteria set forth in Rule 401. And if the proffered evidence (in this case, testimony) is relevant then it is admissible under Rule 402

NEC further notes that Blanes Law Dictionary [and this may be the thrust of ENVY's Objection] gives a somewhat less generous definition of relevant evidence:

> RELEVANT EVIDENCE: the evidence and the testimony that directly relates to the issues disputed or discussed.
> thelawdictionary.org/relevant-evidence/

Even so, that portion of Mr. Shadis' testimony which ENVY deems irrelevant can only be found

to be irrelevant if we follow ENVY's cribbed, highly selective, and distorted interpretation. Mr. Shadis did not discuss events at Maine Yankee only, as ENVY says, he contrasted and compared the Maine Yankee approach to public involvement in decommissioning and spent fuel storage installation siting and construction with the approach taken by ENVY. The nexus between seeking to understand and incorporate the values and perceptions of the affected public and seeking to mitigate any potential negative impacts of the proposed project on such within-the-scope considerations as aesthetics, planning, and site reuse is really self-evident or should be even to ENVY unless they are being deliberately obtuse.

One way to take the measure of an object or action is to measure it with a ruler or stopwatch; another less precise although equally legitimate, way is to contrast or compare it to known or experienced objects or actions.

The Board would not be remiss nor would information gathered be irrelevant if the Board were to at least somewhat displace ENVY's speculations regarding ISFSI impacts with observations and perspective gleaned from real experience in ISFSI siting and construction elsewhere in New England. This added perspective is not irrelevant but it is germane and relates directly to the issues in dispute.

With Entergy VY as a background, Mr. Shadis compares one licensee's alternative approach to integrating community values and perceptions. The Board must weigh this alternative way of seeking reconciliation with community values, plans, goals, and aesthetics.

> "In a § 248 proceeding, the Board 'is engaged in a legislative, policy-making process.' " *In re Twenty-Four Vt. Utils.*, 159 Vt. 339, 357, 618 A.2d 1295, 1306 (1992) (quoting *Auclair v. Vt. Elec. Power Co.*, 133 Vt. 22, 26, 329 A.2d 641, 644 (1974)). The Board must employ "its discretion to weigh alternatives presented to it, utilizing its particular expertise and informed judgment." *Id.*
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> 895 A.2d 226 (Vt. 2006)179 Vt. 370In re Petitions of Vermont Electric Power Company, Inc. And Green Mountain Power Corporation. Supreme Court of Vermont March 10, 2006

In re Petitions of Vermont Electric Power Company, Inc. And Green Mountain Power Corporation