

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

OBJECTION TO ADMISSION OF PREFILED SURREBUTTAL TESTIMONY OF
RAYMOND SHADIS SUBMITTED ON BEHALF OF NEW ENGLAND COALITION

Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, “Entergy VY”), by its attorneys, objects pursuant to Vermont Public Service Board (“Board”) Rule 2.216(C) to the admissibility of the Prefiled Surrebuttal Testimony of Raymond Shadis submitted on behalf of New England Coalition (“NEC”) on December 23, 2015. As explained in the memorandum of law below, Mr. Shadis’s surrebuttal testimony at A7, A8 and A9, pages 4 through 10¹ should be excluded because it: (1) exceeds the limited scope of NEC’s intervention allowed by the Board; (2) addresses issues that are irrelevant to this proceeding; and (3) addresses areas that are preempted by federal law.

¹ Mr. Shadis’s surrebuttal testimony does not contain line numbers. To be clear, Entergy VY objects to the entirety of Mr. Shadis’s testimony in question and answer numbers 7, 8 and 9.

Memorandum

I. ANSWER 7 OF MR. SHADIS'S TESTIMONY ADDRESSES ISSUES THAT ARE OUTSIDE THE SCOPE OF NEC'S PERMISSIVE INTERVENTION.

The Board granted NEC "permissive intervention limited to the interests it has articulated in the Project's impacts on the local environment, the reuse of the Vermont Yankee property, regional planning and development, and aesthetics." Docket 8300, Order of July 7, 2015, at 5. The Board did not grant NEC authority to address whether Entergy VY has provided adequate financial assurances for the management of spent fuel under 10 V.S.A. § 6522(b)(1). The Board has sustained objections to prefiled testimony that addresses issues outside the scope of a party's limited intervention. *See Petition of Barton Solar LLC*, Docket 8148, Order of April 11, 2014, at 4, 8 (sustaining objections to testimony from two witnesses that was outside the scope of the intervening party's limited status); *Application of Seneca Mountain Wind, LLC*, Docket 7867, Order of January 16, 2013, at 7-8.

In A7 of Mr. Shadis's surrebuttal testimony, he criticizes Entergy VY's plan to fund the construction of the second ISFSI with funds borrowed, he claims, using as collateral recoveries from the Department of Energy ("DOE") for breach of its contract to remove spent nuclear fuel from the VY Station. Instead, Mr. Shadis recommends that Entergy VY use the Nuclear Decommissioning Trust ("NDT") as collateral. *See Shadis Surrebuttal* at 4-5. Mr. Shadis also objects to Entergy VY's plan to use NDT funds to pay for operational spent fuel management expenses. *Id.* at 5.

Setting aside Mr. Shadis's failure to comprehend Mr. Twomey's testimony to which his testimony is directed,² and setting aside his disregard of the Board's order in Docket No. 7082 in

² As Mr. Twomey clearly explained in his May 11, 2015 supplemental prefiled testimony (p. 3:3-6), Entergy Corporation's parent guarantee, not expected DOE recoveries, provides the credit support ("collateral" in Mr. Shadis's terms) for the borrowings to fund the non-operations spent fuel management expenses.

which NEC was a party,³ the Board did not grant NEC permissive status to address the adequacy of financial assurances for spent fuel management under 10 V.S.A. § 6522(b)(1) or the use of NDT funds. Moreover, Mr. Shadis's testimony in A7 is not reasonably related to issues of the local environment, the reuse of the Vermont Yankee property, regional planning and development, or aesthetics. Therefore, the portion of Mr. Shadis's surrebuttal testimony appearing in A7 at pages 4-5 is outside the scope of NEC's limited intervention in this matter and should be excluded from the evidentiary.

II. ANSWERS 8 AND 9 OF MR. SHADIS'S TESTIMONY ADDRESS ISSUES THAT ARE IRRELEVANT TO THIS PROCEEDING AND THAT ARE WITHIN THE JURISDICTION OF THE NUCLEAR REGULATORY COMMISSION.

As previously discussed in Entergy VY's objections to Mr. Shadis's initial prefiled testimony, Mr. Shadis's opinions about the DOE's timely removal of spent nuclear fuel are irrelevant to this proceeding and preempted. *See* Entergy VY's Objection to Admission of Prefiled Testimony of Raymond Shadis Submitted on Behalf of New England Coalition, dated September 18, 2015, at 4-7.⁴ Indeed, the Board cautioned NEC that "this proceeding is not a forum for litigation issues that are within the jurisdiction of the Nuclear Regulatory Commission." Docket 8300, Order of July 7, 2015, at 5. Nevertheless, Mr. Shadis continues to offer preempted testimony disagreeing with the NRC's determination regarding the sufficiency

³ Docket 7082 order at 70 ("we conclude that, on the basis of the record evidence, from the period after the plant's closure at which time Vermont Yankee can access the full decommissioning funds, adequate financial assurance exists for the management of spent fuel at Vermont Yankee.").

⁴ To relevant extent, Entergy VY incorporates its arguments in support of its objections to Mr. Shadis's initial testimony as though fully set forth herein.

of the NDT to pay for both decommissioning and operational spent fuel management expenses⁵ based on his opinion about the perceived improbability of DOE removing spent nuclear fuel from the Vermont Yankee station before 2072.⁶ See Shadis Surrebuttal at 6.

While NEC was granted status to address issues of the reuse of the Vermont Yankee property and regional planning and development, Mr. Shadis's testimony addresses issues that are preempted and/or beyond the power of the Board to address (e.g., the federal government's plans for longer term storage of nuclear waste). The entirety of Mr. Shadis's testimony in question and answers 8 and 9, at pages 5-10, relates to DOE's schedule for the removal of spent

⁵ See, e.g., Letter dated October 27, 2015, to Vermont's Chief Assistant Attorney General:

The NRC staff found that the exemption allowing Entergy to use the decommissioning trust fund for certain spent fuel management costs will not adversely impact Entergy's ability to complete radiological decommissioning and terminate the Vermont Yankee operating license. The staff's conclusion was based on its determination that there are sufficient funds in the Vermont Yankee decommissioning trust fund to complete radiological decommissioning activities, as well as to conduct spent fuel management.

Available at <http://vydecommissioning.com/wp-content/uploads/2015/10/ML15253A581.pdf>.

⁶ [W]hile defendants have claimed authority to consider Maine Yankee's "financial capacity" (e.g., to deal with future economic contingencies related to spent fuel disposal) in determining whether to issue a Site Law permit, they of course cannot employ a 'financial capacity' requirement to indirectly regulated in the field of spent nuclear fuel storage. ... That is, the state cannot stand in the way of Maine Yankee's operational fuel storage plans, once they approved by the NRC, on grounds that the cost of future transfer or handling of the spent fuel may be high and plaintiff cannot post security satisfactory to the state to cover any economic contingencies.

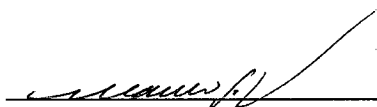
Maine Yankee Atomic Pwr. Co. v. Bonsey, 107 F. Supp. 2d 47, 55 (D. Me. 2000).

nuclear fuel and should be excluded as irrelevant, outside the scope of this proceeding, and preempted.

Conclusion

Mr. Shadis's surrebuttal testimony at A7, A8 and A9, pages 4-10, is outside the scope of NEC's limited intervention, irrelevant to this proceeding, and related exclusively to the transfer, delivery and possession of spent nuclear fuel, which is within the jurisdiction of the NRC. Those portions of Mr. Shadis's surrebuttal testimony should accordingly be excluded.

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