

STATE OF VERMONT  
PUBLIC SERVICE BOARD

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 )

Order entered: 2/11/2016

**ORDER RE: OBJECTIONS TO TESTIMONY**

On September 18, 2015, Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, “Entergy VY”) filed an objection to the admissibility of the prefiled testimony of Raymond Shadis that had been submitted on behalf of the New England Coalition (“NEC”). On January 22, 2015, Entergy VY filed an objection to the admissibility of portions of Mr. Shadis’s prefiled surrebuttal testimony. In this Order, the Board overrules the objections to the admissibility of both sets of prefiled testimony.

**Discussion**

On August 21, 2015, NEC filed the direct testimony and exhibits of Mr. Shadis. On December 23, 2015, NEC filed Mr. Shadis’s surrebuttal testimony. Entergy VY objects to the admission of all or portions of both sets of testimony. Entergy VY argues for the exclusion of the testimony for three reasons: (1) The direct testimony addresses issues that are irrelevant to this proceeding; (2) portions of both sets of testimony exceed the limited scope of NEC’s intervention allowed by the Board; and (3) portions of both documents address areas that are preempted by federal law. We address each of these issues below as they apply to the relevant portions of Mr. Shadis’s testimony.

Direct Testimony re: Public Participation in Siting of Spent Fuel Storage Facility

In his direct testimony, Mr. Shadis discusses (from pages 5 through 8) his experience concerning the decommissioning of the Maine Yankee nuclear power plant and the siting of an independent spent fuel storage installation (“ISFSI”) at Maine Yankee. Entergy VY contends that this testimony has no relevance to any of the substantive issues in this proceeding, namely whether the “ISFSI satisfies the Section 248(b) criteria and Section 6522 of Title 10.” Even if the testimony has some relevance, Entergy VY asserts that it is outside the scope of NEC’s intervention. Entergy VY contends that the public participation issues have no relationship to the substantive issues on which NEC has been permitted to intervene.

NEC disagrees with Entergy VY’s assertion, stating that the testimony is relevant in that it has a tendency to make a material fact “more probable or less probable.” NEC states that the nexus between a public participation process and the potential negative impacts of the project is “self-evident.” NEC states that, at a minimum, the testimony relates to the question of whether the impacts would be undue (focusing on the aesthetics criterion).

We overrule Entergy VY’s objection to this portion of Mr. Shadis’s testimony. Under the Rules of Evidence (Rule 401) “relevant evidence” means evidence having the 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.” Under this standard, we find that the testimony meets the standard for relevance. In particular, the testimony could be helpful in assessing whether the environmental impacts of the ISFSI, including aesthetic impacts, are undue. Similarly, it could relate to the consistency of the ISFSI with the orderly development of the region. However, we want to be clear: At this stage our determination is solely whether the testimony is relevant, not whether it is persuasive. Our conclusion that the testimony meets the evidentiary standard for being relevant in no way reflects the weight that it will be accorded, a matter that we will assess after considering all of the evidence.

As to the question of whether the testimony falls within the scope of NEC’s intervention, our Order of July 7, 2015, described the scope of the intervention as “the local environment, the reuse of the Vermont Yankee property, regional planning and development, and aesthetics.” This covers a wide range of issues. The testimony of Mr. Shadis appears to suggest that the process

employed in Maine produced a favorable outcome in terms of addressing environmental concerns and the concerns of local interests. These questions fall within the scope of intervention granted to NEC.

Direct Testimony re: Removal of Spent Fuel from the VY Station

Mr. Shadis's direct prefiled testimony (from pages 8 through 13) also discusses a concern related to when spent nuclear fuel stored at the ISFSI will be removed by the United States Department of Energy ("DOE"). Entergy VY objects to the testimony as being preempted. Entergy VY asserts that exclusive jurisdiction over spent nuclear fuel rests with the United States Nuclear Regulatory Commission ("NRC"). Entergy VY also objects that the testimony is irrelevant. In this latter objection, Entergy VY appears to focus on the last question of Mr. Shadis's testimony (on page 13) in which he "invites" the Board to a discussion of mitigating options during live testimony.

NEC states that Mr. Shadis's testimony relates to consideration of the implications of the federal actions — namely, the potential that any of the impacts of the ISFSI may be longer lasting than currently anticipated.

We overrule Entergy VY's objection to this portion of Mr. Shadis's direct testimony. On the issue of preemption, Entergy VY correctly observes in its motion that the Board reminded NEC that, in granting NEC's motion to intervene, the Board was not permitting intervention related to preempted matters. However, Entergy VY has not shown exactly what matters are preempted or how any of Mr. Shadis's testimony actually intrudes into preempted matters. Entergy VY merely makes a broad assertion that the testimony is preempted. Examining the testimony, we cannot find that any part of it seeks to regulate spent nuclear fuel or otherwise intrude on the DOE's or NRC's jurisdiction over that fuel. There is no suggestion that the Board should alter or otherwise affect the DOE's decisions related to removal of the spent fuel. Rather, Mr. Shadis only points out that the spent fuel might remain on-site for longer than currently forecast, suggesting that this consideration should be weighed when the Board makes its determination on Entergy VY's petition.

Entergy VY also has not demonstrated that the testimony is irrelevant. We note that Entergy VY does not clearly explain its objection to relevance, which appears to be directed at one sentence in the testimony. Accordingly, we overrule the objection.

#### Surrebuttal Prefiled – Answer 7

Entergy VY next objects to the admission of Answer 7 of Mr. Shadis’s surrebuttal testimony. In this response, Mr. Shadis criticizes what he characterizes as Entergy VY’s plan for funding the construction of the second ISFSI. Entergy VY argues that Mr. Shadis’s testimony is outside the scope of intervention granted by the Board.

NEC asserts that Mr. Shadis’s testimony does not focus on the adequacy of the financial assurances. Instead, according to NEC, the thrust of his testimony “is that of full funding of ENVY’s mitigation of the ISFSI’s potential negative impact on site reuse, regional planning, local environment, and aesthetics.”

We agree with Entergy VY that the adequacy of the financial assurances themselves is beyond the scope of NEC’s intervention. Nonetheless, NEC may present evidence related to the implications of Entergy VY’s chosen method for funding construction of the ISFSI on issues within the scope of NEC’s intervention. The testimony in Answer 7 reasonably relates to these implications and is thus permitted. Entergy VY’s objection to the admission of Answer 7 is overruled.

#### Surrebuttal Prefiled – Answers 8 and 9

In Answers 8 and 9 of the surrebuttal testimony, Mr. Shadis discusses issues related to the DOE’s schedule for the removal of spent nuclear fuel. Entergy VY objects to the admission of this testimony, arguing that it “should be excluded as irrelevant, outside the scope of this proceeding, and preempted.”

NEC responds that Mr. Shadis’s testimony relates to matters that the Board should consider when making a decision under the relevant criteria of Vermont statutes. In this case, NEC asserts, the Board must consider the impacts of having the ISFSI in place for longer than Entergy VY presently anticipates (which is based on current DOE projections).

Answers 8 and 9 of Mr. Shadis’s rebuttal testimony address the same issues as pages 8 through 13 of his direct testimony. We addressed Entergy VY’s arguments concerning that testimony earlier in this Order. As the nature of the testimony and Entergy VY’s objections to that testimony are essentially the same, we reach the same conclusion. Entergy VY’s objection is overruled.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 11<sup>th</sup> day of February, 2016.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/Margaret Cheney</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>	)	

OFFICE OF THE CLERK

FILED: February 11, 2016

ATTEST: s/Judith C. Whitney  
Acting Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)*