

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket 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)
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)

March 29, 2016

REPLY BRIEF OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE

I. INTRODUCTION

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (together “Entergy”) seek a certificate of public good (“CPG”) from the Vermont Public Service Board (“Board” or “PSB”), pursuant to 30 V.S.A. § 248 and 10 V.S.A. § 6522, authorizing the construction of a second Independent Spent Fuel Storage Installation (“ISFSI”) pad and related improvements, including the installation of a new approximately 200 kW diesel generator at the Vermont Yankee (“VY”) Nuclear Power Station (“VY Station”)(together “Project”).

The Vermont Department of Public Service (“Department” or “DPS”) continues to support the issuance of a CPG for the Project. The Department submits the following reply brief in response to briefs filed by Entergy on March 15, 2016, and Windham Regional Commission (“WRC”) and New England Coalition (“NEC”) on March 16, 2016.

II. ARGUMENT

The Department notes concern and/or disagreement with certain proposed findings and/or representations made in the briefs filed by Entergy and NEC. The Department responds to these issues in turn below.

A. **NEC's BRIEF**

NEC brief argues that Entergy is able obtain recovery for "state mandated actions such as the installation of a visual barrier fence" from the U.S. Department of Energy ("DOE") as a result of the DOE's failure to meet its current obligation under federal law to remove SNF from the VY site. *New England Coalition's Brief, Requested Findings and Proposed Order*, Mar. 16, 2015 ("NEC Brief") at 18-19. NEC further claims that the U.S. Court of Federal Claims has upheld DOE recovery of costs associated with PSB-required installation of visual barrier fence at the existing ISFSI. *Id.*

NEC's claims are not correct. The case NEC cites in its brief has since been appealed to the U.S. Court of Appeals for the Federal Circuit. The Court of Appeals reversed the Claims Court's award for the costs associated with the construction of the visual barrier wall. *Vermont Yankee Nuclear Power Corp. v. Entergy Nuclear Vermont Yankee, LLC*, 683 F.3d 1330, 1349 (Fed. Cir. 2012). Any findings or inferences proposed by NEC as a result of its erroneous understanding of the current state of the law should be discounted by the Board.

B. **ENTERGY'S BRIEF**

Entergy makes the following proposed finding related to its analysis of the "orderly development" criteria: "72. The Project is within the existing VY Station site, which is and will

remain an industrial site.” *Proposal for Decision and Brief of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations*, Mar. 15, 2016 at 26.

Entergy is improper to represent that the VY site “will remain an industrial site.” The memorandum of understanding (“MOU”) executed between Entergy, the Department, and the Vermont Agency of Natural Resources on December 23, 2013 in PSB Docket 7862 expressly contemplates site restoration “necessary to support use of the property without limitation (excepting any [ISFSI] and any perimeter related to it.” Exh. DPS-Cross-10 at ¶5. Any finding made by the Board regarding the release of the site following site restoration activities should be consistent with the Docket 7862 MOU; release of the site should be unrestricted. As a result, Entergy’s proposed finding is contrary to the language and intent of MOU, and should be rejected by the Board.

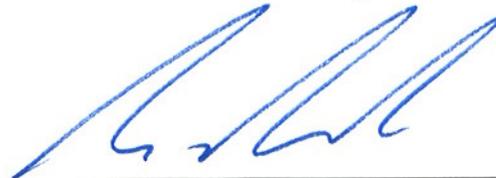
III. CONCLUSION

Based on the foregoing, the Department of Public Service continues to support the issuance of a CPG for the Project, subject to the recommendations made above.

Dated at Montpelier, Vermont this Twenty-Ninth day of March, 2016.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE
Geoffrey Commons
Director for Public Advocacy



Aaron Kisicki
Special Counsel

cc: Docket 8300 Service List