

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket 8300

March 29, 2016

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 approximately 200kW, at the )  
Vermont Yankee Nuclear Power Station in the Town of )  
Vernon, Vermont )

**WINDHAM REGIONAL COMMISSION REPLY BRIEF RE: ENTERGY VY PETITION  
FOR A CERTIFICATE OF PUBLIC GOOD FOR A SECOND SPENT FUEL STORAGE  
FACILITY**

**Introduction**

Windham Regional Commission (WRC) serves 27 towns in southeastern Vermont, including the 23 towns of Windham County, Readsboro, Searsburg and Winhall in Bennington County, and Weston in Windsor County. As a matter of policy WRC does not support or oppose Section 248 petitions. Our purpose is to present the recommendations of the WRC, grounded in the Windham Regional Plan, in order for the Board to give due consideration to those recommendations per 30 V.S.A. § 248 (b)(1).<sup>1</sup> The WRC seeks to have all issues of regional importance addressed within the CPG process, and serves as a local source of information for our many constituents.

WRC is acting *pro se* in this docket, as we have in dockets 6812, 7082, 7600, 7440, 7862 and others.

**Due Consideration of WRC Comments on Entergy VY Petition**

In its Proposal for Decision Brief filed on March 15, 2016, Entergy VY correctly states the WRC initially submitted prefiled testimony in this docket but did not move to admit any direct testimony at the technical hearing. They incorrectly state that the WRC did not move to offer

---

<sup>1</sup> 30 V.S.A. §248(b)(1): “(b) Before the Public Service Board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment or construction: (1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.”

any exhibits at the technical hearing. We did, in fact, enter the following exhibits at the technical hearing:

- WRC-Cross-1 Entergy Vermont Yankee Site Assessment Study October 2014 p. 24, Section 2.3.2, Impact on Decommissioning
- WRC-Cross-2 Entergy Vermont Yankee Site Assessment Study October 2014 p. 58, 9.5 Expected Recovery of Damages from the Federal Government Associated with Spent Fuel Management
- WRC-Cross-3 Entergy VY's Response to DPS's First Set of Discovery Requests, June 17, 2015, A.DPS: EN.1-22
- WRC-Cross-4 Public Service Department Vermont Yankee SAS/PSDAR Review Comments December 13, 2014 pp. 15 & 37
- WRC-Cross-5 Comments of the State of Vermont to the U.S. Nuclear Regulatory Commission on the Entergy Nuclear Operations, Inc. Vermont Yankee Nuclear Power Station Post Shutdown Decommissioning Activities Report, March 6, 2015 pp. 19-23.

While the WRC did not enter testimony in this docket, on June 13, 2014 it did submit comments on Entergy VY's May 15, 2014 prefile notification, and on August 13, 2014 the WRC did file comments on Entergy VY's petition in this docket filed on June 30, 2014. As stated in our Brief, per Board Rule 5.402(A)(1) the WRC asks that the Board give due consideration to its comments dated June 13, 2014 and August 13, 2014, and per 30 V.S.A. §248(b)(1). Those comments, and the positions taken in the WRC initial and reply briefs, present the recommendations of the Windham Regional Commission concerning the orderly development of the region.

### **Allegations of Constraints on the Board's Authority Over Decommissioning**

Entergy VY asserts that there are adequate financial assurances for the project and that if the Board were to reach another conclusion it would confront significant preemption issues because the NRC has already reviewed the adequacy of the financial assurances for the Project and found no defect in Entergy VY's plan.<sup>2</sup> We disagree with this not so veiled threat. The decommissioning trust must also accommodate at least some of the costs of site restoration, and while the NRC regulates the availability of funds for decommissioning and spent fuel management, it does not consider the additional costs of site restoration. Since the NRC does not consider site restoration costs in assessing the adequacy of the fund, the Board must do so or there will be no allowance made for the adequacy of the fund to cover any site restoration costs. Use of fund for spent fuel management will have a direct bearing on when the site can be

---

<sup>2</sup> Entergy Docket 8300 Proposal for Decision Brief, p. 47.

restored, and when it can be reused, and this correlates directly with the orderly development of the region.<sup>3</sup>

### **Use of Decommissioning Trust Funds in Support of Spent Fuel Management**

Entergy VY states it intends to pay for some spent fuel management costs out of the decommissioning trust fund.<sup>4</sup> Given the limitations on the sufficiency of the fund for radiological decommissioning and site restoration we ask the Board to consider our recommendation presented in our comments dated August 13, 2014:

We have argued that alternative funding sources exist including funds Entergy VY expects to receive from the Department of Energy (DOE) for breach of contract related to spent fuel management expenses while the Station is operating.<sup>5</sup>

The Board should reject any Entergy VY assertion that available funding is limited to the Decommissioning Trust Fund and should instead require Entergy VY to first use reimbursements paid by DOE for past spent fuel management to offset future spent fuel management costs, and then use alternative funds from ENVY, ENO, and Entergy Corporation. Ensuring robust funding for decommissioning is in the fundamental best interests and public good of the region and the state, and would help to ensure that the site will be decommissioned and restored in an expeditious manner that promotes the orderly development of the region (p. 5).

### **Ensure the Proximity of Spent Fuel to Structures to be Demolished and Decommissioned Does not Delay Decommissioning and/or Burden the Decommissioning Trust**

Both Entergy VY<sup>6</sup> and the Public Service Department<sup>7</sup> claim in their briefs that the second pad near the existing pad will not adversely impact the ability of Entergy VY to decommission the plant and remove existing structures and that it will have less of an impact on decommissioning than the existing pad already has. However, as we noted in our August 13, 2014 comments,

---

<sup>3</sup> We note that in the Board's Final Order in Docket 7862, it states the parties to the MOU anticipate that the Board will conduct a proceeding, probably in 2015, to determine what site restoration standards will apply, and that this would be part of the process that would enable the Board and parties to determine early in the post-operational period what standards will apply when Entergy VY eventually decommissions the VY Station site and restores it (pp. 88-89). This has not occurred.

<sup>4</sup> Entergy Docket 8300 Proposal for Decision Brief, item 180, pp. 22-23

<sup>5</sup> In docket 7862 WRC and other intervenors expressed a concern that there would be insufficient funds to meet the demands of the December 23, 2013 MOU. Entergy VY witness Michael Twomey identified DOE reimbursement for spent fuel storage costs prior to shut down as one additional revenue stream to supplement the Entergy VY MOU commitment and the Decommissioning Trust Fund. Docket 7862, Transcript, 1/31/14, Twomey, page 59, lines 1-14.

<sup>6</sup> Entergy Docket 8300 Proposal for Decision Brief, items 61 & 62, pp. 22-23.

<sup>7</sup> DPS Docket 8300 Brief, Proposed Finding 17, p. 5.

when the existing ISFSI was approved it was with the understanding that a second larger ISFSI would be constructed to hold all of the fuel and that it would be located away from the reactor complex because placement of the spent fuel close to the power block would inhibit eventual decommissioning or otherwise make decommissioning more expensive or difficult.<sup>8</sup> Evidence has not been produced in this docket that refutes the fact that the location of the existing ISFSI will inhibit decommissioning or otherwise limit demolition and decommissioning options.

While it may be the case that the second ISFSI will not greatly exacerbate the conditions of decommissioning caused by the existing ISFSI, the challenges presented by the presence of spent fuel in close proximity to the power block/reactor building/other structures remains. The petitioner knew this in Docket 7082 and the Board issued the Certificate of Public Good in that docket with an understanding of the same. It is therefore incumbent upon the Board to ensure for this and future generations that the location of *both* the existing and proposed second ISFSI not inhibit demolition, or restrict the methodologies available for demolition, or result in increased decommissioning costs, or result in decommissioning costs that further encumber the decommissioning trust thereby further delaying decommissioning, or result in decommissioning delays, or some combination thereof.

---

<sup>8</sup> Docket 7082 Board Order, April 26, 2006, page 25 (“*Certainly, other possible locations exist within the Vermont Yankee site that could accommodate a storage facility. Entergy VY will eventually need to construct a larger storage facility in such a location*”); Docket 7082 Board Order, April 26, 2006, page 78, finding 230 (“*When Vermont Yankee shuts down in 2012 or at some later date, Entergy VY will need to construct a separate dry fuel storage pad that may need to hold from 60 to 80 casks depending on the DOE schedule for spent nuclear fuel removal*”); Spent Fuel Management Plan, June 2006, page 3, section 3.1 (“*The SNF stored in casks on the existing pad as well as the SNF remaining in the spent-fuel pool will be transferred to the new ISFSI.*”); Spent Fuel Management Plan, November 2008, page 4, section 3.1; Decommissioning Cost Analysis, January 2007, section 2 page 4 of 12, bullet 1 (“*Construct the “North 40” ISFSI (Scenarios 1,3,4,5,7,8). Relocate the spent fuel storage pool assemblies and the fuel in the PA ISFIS so that decommissioning (or safe storage preparations) can proceed on the power block structures.*”); Decommissioning Cost Analysis, January 2007, section 3, page 8 of 35 (“*New ISFSI constructed in the “North 40” to support decommissioning operations. Fuel relocated from the PA ISFSI to “North 40” ISFSI at shutdown*”); Decommissioning Cost Analysis, January 2007, Section 4, page 2 of 5, bullet 2 (“*In Scenario 2, fuel remains in storage on the PA pad during building demolition. As such, the duration for the demolition period is extended, as compared to the other scenarios. The longer schedule allows for additional safeguards to be put in place, the use of more benign dismantling techniques and or modifications to the dismantling sequence as an added precaution. In the remaining scenarios, fuel is transferred from the PA to the “North 40” ISFSI, away from the power block.*”); Decommissioning Cost Analysis, February 2012, page xv of xix (“*a second ISFSI is constructed at the site to accommodate all of the spent fuel generated from reactor operations.*”); Decommissioning Cost Analysis, February 2012, Section 2 page 4 of 13 (“*Relocate the spent fuel storage pool assemblies and the fuel on the original ISFSI so that decommissioning can proceed on the power block structures*”); Decommissioning Cost Analysis, February 2012, section 4, page 2 of 5, bullet 2 (“*The duration of the building demolition phase assumes that all fuel has been transferred to the new ISFSI. It also assumes that the new ISFSI is located far enough away from the power block so as not to require any additional safeguards to be put in place for the protection of the fuel and/or the use of more benign dismantling techniques*”); Docket 7440, WRC-TB-2-Appendix D, Letter from Downs Rachlin Martin, December 7, 2007, page 5, item iii (“*Dry fuel storage plans following shutdown in 2032 will consist of construction of a new storage facility outside the current protected area large enough to accommodate all fuel from the existing pad as well as the spent fuel pool.*”)

We stated the following in our comments filed August 13, 2014:

While the proposed location for the second ISFSI might be the best option, Entergy VY has not fully considered all reasonable alternatives, nor has it provided sufficient information to conclude that the proposed option is actually the best available option. Specifically, we believe it is in the best interest of the region and the state to know how the proximity of the existing and proposed ISFSI storage pads will affect the demolition associated with the eventual plant decommissioning.

WRC agrees with Entergy VY that *“keeping the spent fuel in the spent fuel pool is not a substitute for constructing a Second ISFSI storage pad because the VY Station cannot be fully decommissioned until all spent fuel has been removed from the spent fuel pool.”*<sup>9</sup> And we recognize that supporting two separate spent fuel storage pads at different points on the site might be prohibitively expensive and could restrict reuse of the property. However, Entergy VY did not adequately consider consolidated storage of all the spent fuel elsewhere on the site, nor has Entergy VY adequately considered or made a reasonable effort to remove the spent fuel from the VY site (p. 7).

These remain the facts in this docket. Our recommendation to the Board thus remains unchanged from that offered in our comments filed on August 13, 2014:

If the current Entergy VY proposal is accepted then Entergy VY should be held responsible for any costs associated with safeguards necessary through the decommissioning and site restoration periods (rather than impose those costs upon the Decommissioning Trust Fund), and should be required to show that the proposal will not inhibit redevelopment of the site (p. 9).

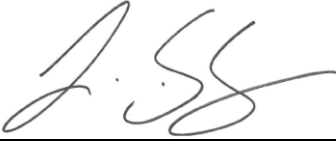
As we have stated, the decisions made in this docket by the petitioner and the Board will affect the orderly development of the site and the region. Given the anticipated timeline for decommissioning and site restoration, the decisions made in this current docket will likely influence the outcomes, and the timeliness of those outcomes, for a future generation. We do not want the “decommissioning generation” to be saddled with further delay in decommissioning because of a decision to place the spent fuel in a location that either delays decommissioning and/or increases the cost thereof.

---

<sup>9</sup> Petition, 6/30/14, prefiled testimony of George Thomas, page 20, line 13.

Dated at Brattleboro, Vermont this 29th day of March, 2016.

Windham Regional Commission

By:  \_\_\_\_\_

Christopher Campany, AICP  
Executive Director