

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	)	Docket No. 8300
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	)	

REPLY BRIEF OF ENTERGY NUCLEAR VERMONT YANKEE, LLC,  
AND ENTERGY NUCLEAR OPERATIONS, INC.

Petitioner Entergy VY respectfully submits this Reply Brief in support of its petition to authorize the Project.<sup>1</sup>

**INTRODUCTION**

Entergy VY's PFD with persuasive record evidence amply justifies the issuance of a CPG for the Project, which will facilitate transfer of the plant's SNF to dry storage as expeditiously as possible. The Board should grant the CPG requested by Entergy VY and reject the conditions proposed by NEC and WRC in their initial briefs.

**ARGUMENT**

This Reply Brief will show that NEC seeks to (1) avoid the record evidence—which demonstrates that Entergy VY's proposed location of and means for dry storage have distinct advantages over alternatives—by attempting to introduce non-record evidence, and (2) change

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<sup>1</sup> Capitalized terms used in this Reply Brief have the meanings defined in Entergy VY's Proposal for Decision and Brief ("PFD").

the process for deciding the means and location for the ISFSI and thereby delay the transfer of SNF to dry storage which all parties agree must be done as expeditiously as possible. Further, WRC's claim to impose liability on Entergy Corporation should have been made years ago in Docket 6545 in which the Board issued a CPG to ENO and ENVY as stand-alone entities. Both parties, moreover, seek Board action that could transgress into matters within the NRC's exclusive jurisdiction to regulate spent nuclear fuel containing special nuclear material and byproduct material, as argued in the PFD (at pages 47-50). The Board must reject these claims.

**I. THE NUCLEAR DECOMMISSIONING CITIZENS ADVISORY PANEL AND THE SECTION 248 SITING PROCESSES PROVIDE THE INFORMED STAKEHOLDER PROCESS THAT NEC ARGUES IS LACKING.**

The Nuclear Decommissioning Citizens Advisory Panel (the "Panel") and the Board's Section 248 process both ensure that stakeholders have processes by which they can become informed about decommissioning the VY Station, including management of SNF. NEC's claim that stakeholders cannot be informed about alternatives for the proposed ISFSI simply mischaracterizes the extensive stakeholder processes already in place.

The Vermont General Assembly established the Panel precisely to ensure citizen involvement in the plant's decommissioning. 18 V.S.A. § 1701. The Panel has six citizen members, representatives from local governments as well as members from other "Vermont Yankee decommissioning stakeholder organizations." *Id.* § 1700; State of Vermont, Department of Public Service, Nuclear Decommissioning Citizens Advisory Panel (NDCAP), <http://publicservice.vermont.gov/electric/ndcap>. It has membership from State agencies, such as the DPS and the Department of Health, whose expertise is available to the Panel's citizen membership. *Id.* §§ 1700 & 1702. The DPS also has authority to hire experts. *Id.*

The Panel may not be NEC's preferred stakeholder organization, but it is the form of stakeholder organization that the legislature chose to advise on decommissioning the VY Station.

And the Panel has experience, expertise, and funding to hire experts that leave little doubt that the Panel's work will be, to use NEC's term, "informed" about decommissioning.

The Board's Section 248 process, moreover, provides another forum for a stakeholder consideration of, in this case, alternatives for SNF management. Board intervention policy is liberal and has allowed NEC, as an environmental advocate, to participate repeatedly in siting issues at the VY Station that fall under the Board's jurisdiction. *See Pet. of Entergy VY*, Docket 8300, Order of 7/7/2015 at 5; *Pet. of Entergy VY*, Docket 7082, Order of 4/26/2006 at 6 ("The Board granted permissive intervention of NEC at the prehearing conference on August 10, 2005.").

Parties in Board proceedings may propound discovery requests; they can prefile testimony and put forward their informed opinion about matters at issue before the Board. In this case, NEC propounded discovery on the very questions it asserts the stakeholder process should take into account, and it offered its opinion on what form of dry storage should be pursued. NEC could have propounded discovery requests and submitted testimony based on what they learned from their participation in the Public Hearing and Site Visit on June 4, 2015. To say that Section 248 proceedings do not allow informed decision-making ignores the role that NEC has played in this case and on other VY Station dry cask storage decisions for over a decade.

The Board should therefore reject NEC's request to create, in effect, a third stakeholder process for review of cask-storage alternatives in addition to the process it already has been afforded in this docket as well as the ongoing process established by the legislature and taking place before the Panel.



**II. THE RECORD EVIDENCE IS CLEAR THAT THE HOLTEC 100U SYSTEM FOR DRY CASK STORAGE WILL BE DIFFICULT TO CONSTRUCT AND MORE EXPENSIVE THAN THE HI-STORM 100 AND WILL DELAY THE TRANSFER OF THE VY STATION'S SNF TO DRY STORAGE BY AT LEAST TWO YEARS; AND BELATED EFFORTS TO INTRODUCE NEW EVIDENCE THROUGH BRIEFING MUST BE REJECTED AS VIOLATING THE ADMINISTRATIVE PROCESS TO WHICH ENTERGY VY IS ENTITLED.**

In its PFD (at pages 19-20), Entergy VY summarized the clear evidence that installing the Holtec 100U system would (1) be difficult because of groundwater conditions at the VY Station, (2) increase Project costs by approximately \$30 million and (3) delay the placement of SNF in dry storage by at least two years. NEC failed to offer any testimony, expert or otherwise, contradicting that evidence or the testimony of George Thomas, whose experience with dry cask storage systems for the Project and the existing ISFSI spans close to a decade. *See* Thomas pf. at 21:19–22:12; tr. 2/23/16 at 21:9-20 (Thomas). NEC also failed to introduce any evidence of factors that Entergy VY did not consider in its evaluation of alternative storage alternatives, including the 100U cask system, that could lead to a different outcome if NEC's proposal for an additional six months of evaluation were granted.

NEC seeks to overcome these evidentiary deficiencies and to cast doubt upon the credibility of Entergy VY's Senior Project Manager by introducing information from outside the record about the Humboldt Bay decommissioning. NEC claims that this extra-record information shows that the Holtec100U system was installed at Humboldt Bay, contrary to Mr. Thomas's testimony, and that a Holtec document promoting the 100U's merits proves that this system can be installed at the VY Station. NEC Brief, Requested Findings and Proposed Order ("NEC Brief") at 6-7.

The Board must reject NEC's attempt to introduce new evidence about Humboldt Bay through its brief. Parties in a contested case like the present one must have the opportunity to challenge testimony through cross-examination. 3 V.S.A. § 809(c); *See, e.g., Pet. of Vt. Gas*

*Sys., Inc.*, Docket 7970, Order of 12/23/2013 at 23 (“Under Vermont law, the Board is required to base its decision upon the formal evidentiary record compiled pursuant to the contested case process, the hallmarks of which are sworn testimony and cross-examination during the technical hearings.”). NEC’s belated attempt to introduce new evidence at the briefing stage of the process violates this requirement.

As Entergy VY explains in its Opposition to NEC’s motion to admit new evidence, Entergy VY could have challenged NEC’s late-made claims if NEC had prefiled testimony on this issue in accordance with the procedural schedule. For example, Entergy VY could have elicited facts about whether *in fact* Humboldt Bay installed the Holtec 100U system, as NEC claims, and whether the circumstances at Humboldt Bay that purportedly led to the choice of an underground storage system apply to the VY Station site.

Entergy VY’s evidence on the alternatives it considered in its PFD (at pages 18-23), including the Holtec 100U system, is uncontroverted and entirely sufficient to show that the Project represents the best option to enable the timely and efficient decommissioning of the VY Station, which is indisputably in the public interest. The means for NEC to bring before the Board information about Humboldt Bay or Holtec’s statements about the 100U was through timely prefiled testimony, Board Rule 2.213(A), not through post-hearing briefing after the record closed on February 23rd. *See, e.g., Investigation into regulation of Voice of Internet Protocol (“VoIP”) servs.*, Docket 7316, Order of 3/23/2009 at 2 (“The evidentiary record in this case has been closed since the end of the technical hearing on November 18, 2009 [sic].”); *Pet. of Vt. Transco LLC*, Docket 7752, Order of 7/13/2012 at 48 (same).

### **III. THE BOARD SHOULD REJECT WRC'S REQUEST TO HOLD ENTERGY CORPORATION LIABLE FOR UNEXPECTED INCREASES IN DECOMMISSIONING COSTS RESULTING FROM THE PROJECT.**

Entergy Corporation is not liable for any unexpected increase in decommissioning costs resulting from the location of the proposed Project. WRC's request to ask the Board to hold Entergy Corporation liable is not supported by the record evidence.

First, there is no basis to conclude that the location of the proposed second ISFSI will increase the cost to decommission the VY Station. To the contrary, the evidence establishes that construction of the second ISFSI pad near the existing ISFSI pad will not adversely impact Entergy VY's ability to decommission the plant and remove existing structures. The evidence shows that at most, a change in the approach to demolish the Reactor Building may be required. *Id.* at 10:21–11:3, 13:6-25 (Thomas), 90:5-17 (Twomey). The second ISFSI pad will be located further away from the Reactor Building than the existing pad and will thus have less of an impact on decommissioning. *Id.* at 38:16-20, 40:3-7 (Thomas). WRC had the opportunity to submit testimony to the contrary, but elected not to do so.

Entergy VY has established that the location of the Project is superior to other locations at the VY Station for a second ISFSI and that the other potential locations had distinct disadvantages. Thomas reb. pf. at 10:20–12:5; *see also* PFD at 20-25. This determination included consideration of a potential, single consolidated storage site for all of the SNF. *See* Thomas pf. at 10:18-20. Entergy VY has explained why the earlier engineering concerns that led it to consider a single storage pad elsewhere on the site are no longer applicable. *Id.* at 13:13-20. No party provided evidence to demonstrate that any other potential location or option that Entergy VY considered is superior to the location that Entergy VY selected. *See, e.g.,* tr. 2/23/16 at 149:22–150:1, 151:22–152:4 (Shadis).

Second, it is contrary to general principles of corporate law and to this Board's Order in Docket 6545 to assign liability to Entergy Corporation for any unexpected increase in decommissioning costs. The relationship between Entergy Corporation and ENVY and ENO has been explained as follows:

In Docket 6545, the Board approved the sale of the VY Station to ENVY – not ENO or Entergy Corporation. The structure of Entergy Corporation and its affiliates, including ENVY, was directly addressed by the Board in Docket 6545. The Board's order approving the acquisition clearly stated that ENVY was a limited liability company. *Investigation into General Order No. 45*, Docket 6545, Order of 6/13/02 at 110.

Twomey reb. pf. at 5:10-18.

It would thus be contrary to this Board's Order in Docket 6545 and to general principles of corporate law to hold Entergy Corporation liable for any unexpected increase in costs resulting from the Project, particularly when the second ISFSI pad will have less impact on decommissioning than the already-existing ISFSI pad. Tr. 2/23/16 at 12:21–13:3 (Thomas).

#### **IV. THE BOARD SHOULD REJECT NEC'S PROPOSED FINDINGS WITH RESPECT TO THE TIMING OF SNF REMOVAL.**

NEC's proposed findings that SNF will not be timely removed should be rejected because Entergy VY has made reasonable commitments to ensure that it will be removed from the site in a timely manner as reflected in the Spent Fuel Management Plan.<sup>2</sup> For purposes of its Decommissioning Cost Estimate, Entergy VY relied on the best available evidence to assume that DOE will begin to pick up fuel in 2026 and to complete that pick up by 2052. *See* tr. 2/23/16 at 83:7-14 (Twomey).

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<sup>2</sup> NEC argues that it is possible that SNF will remain at the VY Station for a long time into the future and may become a multi-generational issue of concern. *See* NEC Brief at 10-13. Entergy VY restates its position that NEC's concerns regarding DOE's timely removal of SNF are irrelevant to this proceeding and preempted. *See* Entergy VY's Objection to Admission of Prefiled Testimony of Raymond Shadis dated September 18, 2015. Entergy VY understands the Board's ruling on this issue. *See* Order Re: Objections to Testimony, February 11, 2016.



Consistent with the Board's April 26, 2006 Order in Docket 7082, however, Entergy VY's Spent Fuel Management Plan addresses the possibility that SNF could remain at the VY Station through 2082. *See* Exhibit EN-GT-3 at 8-9. Entergy VY's Spent Fuel Management Plan identifies several long-term actions for spent fuel management, including aging management procedures that Entergy VY will perform over the lifetime of on-site SNF storage, and notes that "[b]ecause of the uncertainty of future events over the relevant time period, it is expected that this section will need to be amended over time to address changed circumstances as they arise." *Id.*

Entergy VY recognizes that there is uncertainty regarding when DOE will pick up SNF for permanent disposal. However, as Mr. Twomey stated: "I can't and Entergy can't solve the problem of a permanent spent fuel storage facility for the country, but what we can do is enforce our rights under the standard contract, deal in a responsible manner with the spent nuclear fuel that's in the pool, and we're doing that." Tr. 2/23/16 at 89:23-90:3 (Twomey). Moreover, Entergy VY has committed in memoranda of understanding in Dockets 6545 and 7082 to "use its commercial best efforts to ensure that high-level SNF stored at the [VY] Station is removed from the site in a reasonable manner and as quickly as possible to an interim or permanent location outside of Vermont." *See* Twomey pf. at 13:7-10. The Department of Public Service's witness, Mr. Leshinskie agrees that "[t]he timeline for such removal [of SNF] is dependent upon the federal government accepting waste, either to a permanent or an interim storage facility, and the CPG at issue in this proceeding does not impact that timeline one way or another, and thus does not lessen the commitments Entergy has made." Leshinskie pf. at 2:13-16.

Entergy VY has taken all commercially reasonable efforts within its control to ensure that the SNF is removed in a timely manner even assuming that the plant's SNF will not be removed



by 2052. The Board should not base its decision in this docket on the unfounded claim that Entergy VY did not account for the possibility that SNF would remain at the site after 2052.

**V. THE BOARD SHOULD REJECT NEC’S CLAIM THAT THE COSTS OF AN UNDERGROUND STORAGE SYSTEM CAN BE RECOVERED FROM THE FEDERAL GOVERNMENT.**

NEC makes an uninformed claim, which the Board should reject, that DOE would likely reimburse Entergy VY for the cost of moving fuel from the existing ISFSI to a combined Holtec 100U storage site if the Board ordered Entergy VY to construct a consolidated underground ISFSI. *See* NEC Brief at 18. NEC’s claim, however, relies on a holding that the Federal Circuit expressly overruled.

NEC relies on *Entergy Nuclear Vt. Yankee, LLC v. United States*, 95 Fed. Cl. 160, 197 (Fed. Cl. 2010), to argue that because Entergy VY recovered costs incurred for “state mandated actions such as the installation of a visual barrier fence” in the past, Entergy VY can recover the costs of a combined Holtec 100U ISFSI if the Board requires Entergy VY to build it. NEC’s argument is obviously flawed. The Federal Circuit, however, reversed that part of the U.S. Court of Federal Claims’ decision in *Vt. Yankee Nuclear Power Corp. v. Entergy Nuclear Vt. Yankee, LLC*, 683 F.3d 1330 (Fed. Cir. 2012). In particular, the Federal Circuit held that “state-imposed requirements were not foreseeable, and hence not recoverable, including payments into Vermont’s Clean Energy Development Fund, performance of a flood analysis, and construction of a visual barrier to the dry storage facility.” *Id.* at 1335.<sup>3</sup>

Mr. Thomas testified that installing a Holtec 100U—just for the capacity of the second ISFSI pad—would require significantly more expense, in the range of \$30 million. Tr. 2/23/16 at 15:16-22 (Thomas). The cost to move all SNF already stored on the existing ISFSI pad to a new,

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<sup>3</sup> NEC should have been aware that the Federal Circuit disallowed these costs because Entergy VY specifically explained that fact in its discovery responses. *See* A.DPS:EN.1-3 (“Entergy VY’s Round 2 case does not claim costs that were claimed in the Round 1 case but were held by the courts to be non-recoverable (*e.g.*, payments made to the Clean Energy Development Fund, cost of capital, *visual barrier costs*).”) (emphasis added).

consolidated underground pad would necessarily be even greater. There is no evidence or any other reason to believe that these costs, or even the additional costs of the 100U for just the remaining SNF, will be recoverable from the federal government, particularly when the costs of the existing and still fully functional ISFSI pad and storage casks have already been recovered. *See* tr. 2/23/16 at 29:7-12 (Thomas).

**VI. THE BOARD SHOULD REJECT NEC'S CHALLENGES TO MR. DODSON'S CREDIBILITY.**

NEC encourages the Board to give little weight to the expert aesthetic testimony offered by Mr. Dodson about the Project. The Board should reject NEC's argument.

Mr. Dodson has over 36 years of experience as a landscape architect and planner. *See* Exhibit EN-HLD-1. He has testified on numerous occasions before the Vermont Act 250 District Environmental Commissions, the former Environmental Board, the Public Service Board and other state agencies. Dodson pf. 2:2-8. The Board has relied on his testimony in previous dockets, including Dockets 6812, 7440 and 7862. *Id.* at 2:12-15.

Mr. Dodson prepared a complete and thorough analysis under the *Quechee* Test. Dodson pf. at 5:1-39. He based his analysis on a review of maps, aerial photos, surveys of the surrounding area and a site visit of the VY Station and impacted areas. *Id.* at 6:1-13. Mr. Dodson created a detailed terrain model of the site and surrounding area "in order to precisely determine the extent and characteristics of the Project's future visual impacts." *Id.* at 6:17-18; exh. EN-HLD-6. He also developed numerous photographic simulations of the Project and viewshed maps depicting the limited areas where the Project may be visible to the public. Dodson pf. at 6:14-8:6; exh. EN-HLD-4, 5, 8, 9, 10, 15, 16, 19, 20, 21.

Despite the detailed analysis presented by Mr. Dodson, NEC argues that his testimony "leaves little to nothing upon which the Board may rely for positive findings." NEC Brief at 4. Specifically, NEC criticizes Mr. Dodson's testimony that "[t]he only location where it would be

visible from would be the Connecticut River and the hiking trail along the New Hampshire shore.” Tr. 2/23/16 at 50:23-25 (Dodson).

Mr. Dodson’s testimony is entirely consistent with his prefiled testimony and exhibits in which he states that the Project will only be visible from limited sections of the open water of the Connecticut River and portions of the river banks in Hinsdale, New Hampshire. *See* Dodson pf. at 11:3-15; Dodson supp. pf. at 3:18-21; exh. EN-HLD-4, 5, 15 and 16. Mr. Dodson has appropriately reviewed the Project to determine where it is visible from public view points and whether the Project’s aesthetic impact will be considered undue from the perspective of the average person. *See App. of Green Mountain Power Corp.*, CPG #NM-1646, Order of 3/27/2015 at 34 (“...the Board’s application of the ‘average person’ test has consistently referred to the perspective of the public at large when viewing proposed projects from public view points, and not to the perspective of adjoining landowners with more particularized interests, as the average person for purposes of aesthetics review under Section 248.”). But even if the Board were to consider views from the VELCO switchyard, NEC has not provided any evidence that the view would be unduly adverse given the industrial nature of the VELCO site. *See* NEC Brief at 5, 19.

Mr. Dodson has offered a careful and detailed review of the Project under the *Quechee* Test and has offered ample evidence upon which the Board may rely for positive findings on aesthetics. NEC, on the contrary, has not submitted any credible evidence to refute Mr. Dodson’s conclusions, nor offered its own analysis of the Project’s potential impacts under *Quechee* for the Board’s consideration. Mr. Dodson’s testimony and expert opinion are both credible and reliable and provide ample support for positive findings on aesthetics.

## **VII. THE DEPARTMENT’S CONCERNS ABOUT NDT FUNDS SHOULD BE ADDRESSED BY THE NRC.**

The Department supports the issuance of a CPG for the Project and argues that Entergy VY has provided sufficient evidence to allow the Board to issue positive findings under the



applicable criteria, including 10 V.S.A. § 6522(b)(1), adequate financial assurance for SNF management. *See* Brief of the Vermont Department of Public Service (“DPS Brief”) at 1. The Department notes, however, that it is challenging Entergy VY’s right to use funds from the NDT for spent fuel management costs through a petition to the NRC seeking review of the NRC Staff’s granting of Entergy VY’s “commingling exemption request.” *See id.* at 16-17. As stated in the Department’s brief, the NRC is the appropriate tribunal to resolve the issue of whether Entergy VY should be permitted to use NDT funds for SNF management costs. *Id.*

### **CONCLUSION**

As demonstrated in this Reply Brief, NEC and WRC have offered no credible evidence or legal basis to warrant the CPG conditions they propose. The Board should accordingly grant Entergy VY’s petition without imposing conditions other than those proposed in Entergy VY’s PFD.

St. Johnsbury, VT

March 29, 2016

Respectfully submitted,

ENTERGY NUCLEAR VERMONT  
YANKEE, LLC AND ENTERGY NUCLEAR  
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