

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

March 29, 2016

Docket 8300

REGARDING A BRIEF OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE AND A PROPOSAL FOR DECISION AND BRIEF OF ENTERGY NUCLEAR VERMONT YANKEE, LLC, ENTERGY NUCLEAR OPERATIONS, INC.

NEW ENGLAND COALITION'S REPLY BRIEF

By Clay Turnbull
and
Raymond Shadis
Pro se Representatives
New England Coalition
Post Office Box 545
Brattleboro, VT 05320
Turnbull – 802-380-4462
cturnbull@necnp.org
Shadis - 207-380-5994
shadis@prexar.com

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | TABLE OF APPLICABLE STATUTES AND CASELAW (ANNOTATED) | 3 |
| II. | INTRODUCTION AND SUMMARY OF ISSUES RAISED | 6 |
| III. | MEMORANDUM OF FACT AND LAW | 7 |
| IV. | PROPOSED ORDER | 17 |
| V. | CONCLUSION | 18 |

I. TABLE OF APPLICABLE STATUTES AND CASELAW (ANNOTATED)

A. *Maine Yankee Atomic Power Co v. Bonsey*, 107 F. Supp. 2d (D.Me.2000), [noting a local authority's power to enforce local regulations including bond requirements to guarantee completion of site work such as grading and landscaping.]

Kerr-McGee Chemical Corp. v. City of West Chicago, 914 F.2d at 827 ["The City does indeed have the power to say 'no' to aspects of the project" that fail to comply with the City's regulations, "if they do not directly involve radiation hazards (including those 'inextricably intermixed' with non-radiation hazards) and are not selected for scrutiny by the City merely to delay or frustrate the project as a whole."]. (A normal and customary performance bond requirement, designed to ensure completion of site-grading, landscaping, drainage, etc., would probably be permissible, for example.)] [Emphasis added]

B. 895 A.2d 226 (Vt. 2006) 179 Vt. 370 *In re Petitions of Vermont Electric Power Company, Inc. and Green Mountain Power Corporation*. Supreme Court of Vermont March 10, 2006 [noting the Board must employ its discretion to weigh alternatives presented to it.]

"In a § 248 proceeding, the Board 'is engaged in a legislative, policy-making process.' " *In re Twenty-Four Vt. Utils.*, 159 Vt. 339, 357, 618 A.2d 1295, 1306 (1992) (quoting *Auclair v. Vt. Elec. Power Co.*, 133 Vt. 22, 26, 329 A.2d 641, 644 (1974)). The Board must employ "its discretion to weigh alternatives presented to it, utilizing its particular expertise and informed judgment." *Id.*

C. 30 V.S.A. § 248 (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.

(5) with respect to an in-state facility, will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K);

D. 10 C.F.R § 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste. [wherein there are isolation zone requirements out to twenty feet from the casks, but no line of sight clearance requirements.]

(1) Spent nuclear fuel and high level radioactive waste must be stored only within a protected area so that access to this material requires passage through or penetration of two physical barriers, one barrier at the perimeter of the protected area and one barrier offering substantial penetration resistance. The physical barrier at the perimeter of the protected area must be as

defined in § 73.2. Isolation zones, typically 20 feet wide each, on both sides of this barrier, must be provided to facilitate assessment. The barrier offering substantial resistance to penetration may be provided by approved storage cask or building walls such as those of a reactor or fuel storage building.

[63 FR 26962, May 15, 1998, as amended at 63 FR 49414, Sept. 16, 1998; 66 FR 55816, Nov. 2, 2001] *Page Last Reviewed/Updated Wednesday, December 02, 2015*

1. 10 C.F.R. § 73.2 Definitions.

Isolation zone means any area adjacent to a physical barrier, clear of all objects which could conceal or shield an individual.

E. Guidance documents, such as NUREGs or the Standard Review Plan, do not have the force of legally binding regulations. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001).

Guidance documents such as NUREGs do not purport to establish enforceable requirements, so nonconformance with such guides does not equate to noncompliance. While an NRC guidance document sets forth one way in which compliance might be obtained, other approaches to such compliance might prove just as acceptable. FMRI, Inc. [formerly Fansteel, Inc.], LBP-04-8, 59 NRC 266, 270 (2004).

A regulatory guide, however, only presents the Staff's view of how to comply with the regulatory requirements. Such a guide is advisory, not obligatory and, as the guide itself states at the bottom of the first page: "Regulatory Guides are not substitutes for regulations, and compliance with them is not required." Louisiana Energy Services (Claiborne Enrichment Center), LBP-96-7, 43 NRC 142 (1996).

F. [The States of Vermont and New Hampshire identify the fishing, recreational, historic and scenic interests of citizens in the use of the Connecticut River, its tributaries and impoundments (reservoirs).] New Hampshire Statutes - Title 18. Fish and Game - Chapter 211. Fish, Shellfish, Lobsters And Crabs-Method and Manner of Taking Fish.

Current through Chapter 10 of the 2016 Legislative Session

R.S.A. § 211:5. Fishing in Connecticut River

If the laws of the state of Vermont permit fishing in that part of the Connecticut River lying within that state by persons legally licensed to fish in New Hampshire or otherwise entitled under the laws of this state to fish in that part of said river lying within this state, residents of Vermont legally licensed to fish in the state of Vermont or otherwise entitled under the laws of that state to fish in said part of the Connecticut River lying within the state of Vermont shall be permitted to fish in that part of the Connecticut River lying within this state. If the above reciprocal laws are in effect as to that part of the Connecticut River lying within the states of New Hampshire and Vermont, the executive director is authorized to adopt special rules as to fishing in such waters, after consultation with the like officer of the state of Vermont, in the same manner and with the same effect as the executive director is authorized to do with respect to boundary lakes under the provisions of RSA 211:4.

Title 10 : Conservation And Development

Chapter 049 : Protection Of Navigable Waters And Shorelands

§ 1424. Use of public waters

(a) The Secretary may establish rules to implement the provisions of this chapter, including:

- (1) Rules to regulate the use of public waters of the State by:
- (A) Defining areas on public waters wherein certain uses may be conducted;
 - (B) Defining the uses which may be conducted in the defined areas;
 - (C) Regulating the conduct in these areas, including the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats;
 - (D) Regulating the time various uses may be conducted.
- (2) Rules to govern the surface levels of lakes, ponds, and reservoirs that are public waters of the State.
- (b) The Secretary in establishing rules under subdivision (a)(2) of this section shall consider the size and flow of the navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating, and bathing facilities, the scenic beauty, and recreational uses of the area.
- (c) The Secretary shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the State. To the extent possible, the Secretary shall provide for all normal uses. {Emphasis added.}

G. The Board would not be alone in valuing recreational uses. A Federal Court, for example, has found that birdwatching over a decommissioning Navy base, from beyond a site boundary fence, sufficient to show particularized interest establishing standing for purposes of intervention. *Cantrell v. City of Long Beach*, 241 F.3d 674; 2001 U.S. App. LEXIS 1538; 51 ERC (BNA) 1993; 2001 Cal.

II. INTRODUCTION AND SUMMARY OF ISSUES RAISED

New England Coalition (NEC) doesn't have the resources to engage in a tag-team match by replying in full to the Briefs both of the Petitioners and the Department of Public Service ("DPS"). NEC will reply directly to the DPS Brief and respectfully request that where appropriate its responses be applied to the Petitioners Brief as well. NEC is not ignoring the Petitioners. As demonstrated in NEC's Brief, the Petitioners [Entergy, etc] have provided only the sketchiest consideration of alternatives, negative impacts, and reasonable actions to mitigate negative impacts for their proposed project. NEC's Brief showed the testimony of Entergy witnesses Dodson and Thomas to be inaccurate and wholly inadequate to support positive findings of fact with respect to aesthetics, alternatives and mitigation of the potential effects of the proposed project on considerations within the § 248 criteria generally.

Inasmuch as, it may reasonably be inferred from the record evidence, the petitioners clearly did not fully advise the appropriate state and local entities [for example the Towns of Vernon and Hinsdale and Windham County] full details regarding the availability of alternative sites and systems and the comparative impact of the those alternative sites and systems and potential mitigation initiatives, the consent given by those entities was not informed consent.

NEC will focus on the DPS Brief in part because NEC is disturbed by DPS' failure to thoroughly probe the petition and its supporting data, or lack of supporting data, and by the Department's failure to birdog the issues of interest to the affected public. The willingness of the Department of Public Service as demonstrated in the DPS Brief and in the testimony of Commissioner Recchia, to accept second-best protection for the nuclear fuel waste, the welfare of the citizens, and the regional environment is a really dismal but not unexpected prospect. NEC fears that the DPS uncritical acquiescence on all § 248 criteria portends the possibility that

the Department is cutting informal deals with Entergy behind the scenes as DPS has routinely done in previous dockets. This practice is antithetical to the fundamental idea that citizens should be able to participate, if only as observers, in their own governance. DPS should be required to bring any such barter to light before and not after a decision is cast in this docket. *"Sunlight is the best disinfectant."* —Justice Louis Brandeis.

Before a CPG is granted for construction of a storage site of indeterminate tenure, NEC affirms its plea (Brief) that the Petitioners should be required “to undertake and complete a competent and professional study in concert with informed stakeholders into what alternatives (including the 100U) and mitigating actions might best serve to address potential negative impacts of the proposed project on the local environment, the reuse of the Vermont Yankee property, regional planning and development, and aesthetics,”

III. MEMORANDUM OF FACT AND LAW

A. STATUTORY CRITERIA UNDER 30 V.S.A. § 248

1. Orderly Development of the Region [30 V.S.A. § 248(b)(1)].

The DPS declares that The Project 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. 30 V.S.A. § 248(b)(1).

NEC rejects this DPS proposed finding because there is no evidence that municipal and regional planning commissions and municipal legislative bodies were fully informed of the many available alternatives and mitigation strategies including 100U below-ground storage. The Board

cannot know what their choices and recommendations might have been. The Petitioners have not presented any evidence as to what information was laid before the various bodies. If the incompleteness and inaccuracy of the information submitted to them was consistent with the incompleteness and inaccuracy of the testimony of petitioner's witnesses Dodson and Thomas, then it must be found that their consent was not informed consent.

Thus DPS Proposed Findings 13. "The Town of Vernon Selectboard voted unanimously to support the Project as being in the best interest of the town. Twomey pf . at 4; Dodson pf. at 25; Exh. EN-TMT-2 at 1," and 14. "The Town of Vernon Planning Commission voted unanimously that the development of the ISFSI will not unduly interfere with the orderly development of the region. Twomey pf. at 4; Dodson pf. at 25; Exh. EN-TMT-2 at 2," are rendered irrelevant and immaterial because the Selectboard and Planning Commission were not able to make fully-informed decisions.

As to land use conservation measures contained in the plans of affected municipalities, the Petitioners and DPS together cannot, for comparison purposes, point to municipal land use measures anywhere that address dry cask storage and nuclear site repurpose. This is a really new land use proposition and so should pass through rulemaking before higher decisions are cast based on a rule's absence or lack of direct address.

DPS proposes finding 19. Use of the Holtec HI-STORM 100U underground storage design at the VY Station would require a significant increase in cost over the Project and would be difficult to install at the site. Thomas pf. at 21, Supp. pf. at 8; Tr. at 14-19 (Thomas).

In fact Mr. Thomas admitted that Entergy VY's chosen vendor Holtec had represented that the principal difficulty that Mr. Thomas foresaw, excavation into groundwater bearing earth

could readily be dealt with and that Holtec had represented that groundwater intrusion would not be an issue.

Trans. Page 17, Lines 3-20

This is one of the issues with Vermont Yankee. If you put it all the way into the ground, you would go well beyond the groundwater level which is a major construction issue and is -- could be a major long term operational issue. In fact, I've talked to two project managers that have considered installing the system and they do not want to put it below ground level. We wouldn't either at Vermont Yankee. Q. Did you -- did you -- and in your conversations with Holtec did you raise that question? A. We discussed it. Yes Q. And what was their response? A. They feel that their system has been designed to prevent the potential from groundwater and leakage. Q. I believe -- A. So even though it was below ground water, the bottoms of the casks of the support pad were below ground water, they felt it could be designed and it could be

As to costs, Mr. Thomas testified,

Trans. Page 15 , Lines 16-22

BOARD MEMBER HOFMANN: Mr. Shadis, could I ask one question, a follow up to yours, which is you said considerable more expense to actually put in the Holtec 100U underground system. Do you know how much, Mr. Thomas? MR. THOMAS: In the range of 30 million dollars.

As a preliminary, the Board should consider Mr. Thomas' off-the-cuff estimate in the context of the \$145 million estimated cost of the project as it stands. At about \$30 million Mr. Thomas's estimated increase would amount to about a 20% increase; not usually a deal breaker in contract cost overruns. Viewed from the perspective of the entire decommissioning project cost estimate of \$1.24 billion, \$30 million amounts to about 2.5 tenths of a percent. Virtually all of the testimony in this docket points to establishing and loading of an ISFSI as a key element in decommissioning, thus one which should not be stinted. However, it appears that there are cost-savers attached to the 100U that Mr. Thomas either did not take into consideration or did not acknowledge. All of the ISFSI installation and loading variable cost drivers that Mr. Thomas addressed here and in his testimony elsewhere are dealt with in specific terms on Holtec's website, excerpts of which were provided to the Board as Attachments of NEC's Motion to Admit New Evidence ("New Evidence") . The principal variable cost drivers appear

to be schedule, labor, site preparation, and geotechnical analyses. Information contained in New Evidence from Holtec may be relied on by the Board because it is from an authoritative source and easily verifiable.

The 100 U in a nutshell,

- MPC stored underground and thus made essentially inaccessible to threats and hazards of any kind.
- Storage cavity engineered to self-extinguish combustion of any flammable material that is introduced (inadvertently or deliberately) in the MPC storage space.
- Thermal performance is enhanced, not degraded by floodwater intrusion.
- Engineered to prevent significant solids deposit in the storage capacity under windborne sand and debris.
- Configured to be visually inconspicuous (under two feet tall).
- Designed to allow vanishingly small site boundary dose.
- Economical to decommission.
- Loaded MPC can be placed in storage or removed from storage in the matter of a few hours

NEC MOTION TO ADMIT NEW EVIDENCE-ATTACHMENT ONE VPSB-8300 March 10, 2016
<http://www.holtecinternational.com/productsandservices/wasteandfuelmanagement/historm/historm100u>

Fulfilling Industry's Quest for Zeros

1. **Vanishingly Small Dose in the Vicinity of the Storage Site:** The depth of HI-STORM 100U can be increased virtually without limit. Even at its shallowest storage, the dose from a HI-STORM 100U loaded with extremely "hot" fuel (69 GWD/MTU, 5-year cooled) is only about one thousands of a milli-rem per hour at a distance of 100 meters. As the depth is increased, this infinitesimal dose rate reduces to incalculably miniscule values.

2. **Zero Risk of Release of Radioactivity at any Storage Site:** Release of radioactivity from the HI-STORM 100U by any mechanical means (crashing aircraft, missile, etc.) is virtually impossible. The only access path into the cavity for a missile is vertically downward, which is guarded by an arched, concrete-fortified steel lid weighing in excess of 10 tons. The lid design, at present configured to easily thwart a crashing aircraft, can be further buttressed to withstand more severe battlefield weapons, if required in the future for homeland security considerations. The lid is engineered to be conveniently replaceable by a later model, if the potency of threat is deemed to escalate to levels that are considered non-credible today.

3. **Zero Risk of Damage from Fire, Flood, Hurricanes, Tsunami, and the Like:** Combustible materials, if introduced in the storage cavity, cannot sustain its burn. There is no path of ground water to enter the storage cavity. HI-STORM 100U will continue to maintain the MPC in a cooled state for as long as necessary, even if the site is completely flooded submerging its diminutive body. Even off-the-chart tsunamis, hurricanes, tornados, and other vagaries of nature are incapable of preventing a HI-STORM 100U storage system from rendering its intended function.

4. **Zero Risk of Ground Water Incursion:** The underground storage cavity is formed by a thick steel container that has no penetrations or joints and is fortified by a preservative suited to the geological characteristics of the site to prevent corrosion.

Ibid

Entergy complains that the construction of an ISFSI using the 100 U would also delay completion of SNF transfer to dry storage by at least two years. *Proposal for decision and brief for Entergy Nuclear Vermont page 20 point 50.*

However, on its website Holtec International spells out the advantages of the Holtec 100U and the experience at Callaway NPP. Finished excavation to finished pad was 4 months. The Callaway plant features casks that are partially embedded; then buried in a mound of engineered fill.

<http://www.holtecinternational.com/?s=callaway>

The geological studies at VY have been already done for the entire site during the initial construction of the plant and in preparation for both the existing ISFSI pad and the pad proposed. If groundwater intrusion were the excavation/ construction showstopper that Mr. Thomas fears, there would be no multi-span bridges anywhere. Surely, any construction difficulties due to groundwater are readily be taken care of by contractors who specialize in this type of problem. Energy Solutions who is already contracted to Entergy VY could be effective in this regard.

Entergy complains that the use of the Holtec Hi-Storm 100 system was approved in Docket 7082 for dry cask storage of SNF at the VY Station site. *Proposal for decision and brief for Entergy Nuclear Vermont, page 14 response 17.* This is irrelevant and immaterial. In fact, at the time, the Holtec Hi-Storm 100u had not yet been approved for use yet by the NRC. Holtec International promotes the Hi Storm 100u as being less expensive and more secure. (see above)

DPS says,

Even cursory evaluation of an alternative location would require Entergy to incur

significant costs associated with new geotechnical and engineering analyses, and a likely withdrawal from the VY Nuclear Decommissioning Trust ("NDT") to cover those costs. Evaluation of an alternative site would likely take a least a year to complete, with additional time required for the Board to review the new site. Such a delay would jeopardize a 2020 completion of the SNF transfer.

DPS Brief Page 7 of 22

This DPS speculative statement inflated to a conclusion is unadorned with the niceties of evidence, fact, or reference. As it may apply to the alternative of using the 100U, the above evidence from Holtec is that going to the 100U may actually speed the ISFSI construction and loading process. It is reasonable to infer from the above that seismic considerations for embedded casks would be bracketed by considerations for above-ground casks standing balanced on end.

2. Economic Benefit to the State [30 V.S.A. § 248(b)(4)]

DPS writes that the Project will provide employment of Vermont residents and secondary economic benefits will accrue during the anticipated Project construction phase, as well as during the SNF transfer campaigns that may occur as a result of the Project's construction.

It is by no means certain that the project will employ a significant number of Vermont residents. It has been shown in several preceding dockets that the large majority of Vermont Yankee workers are not Vermont residents. Construction workers are notoriously migratory. DPS has provided no evidence to support its optimistic statement.

DPS says that the project is necessary in order to facilitate timely decontamination and dismantlement of the VY Station and restoration of the site, and in turn decommissioning and site restoration will enable release of the site for unrestricted use, and potential reuse for a purpose that provides further economic benefit to the State and its residents. In fact the site will not be released for reuse until the project itself is vacated and decommissioned. It provides no

significant economic benefit. If its presence deters home sales or commercial development it is reasonable to infer that it will have a net negative effect on the local economy.

3. Aesthetics f30 V.S.A. S 248(bx5)l

DPS proposes at 31. “The Project will not offend the sensibilities of the average person. Dodson pf. at 22-23; Exhs. EN-HLD-19, 20, 21. DPS Brief- Page 10 of 22.”

Mr. Dodson says that the project casks will present only a very tiny image on a large industrial landscape; one that is visible only from the east shore of the Connecticut River – a distance of over ½ mile (for a satellite image with scaling tools, see, Vernon, Vermont, [www.GoogleEarth,.Com](http://www.GoogleEarth.Com)). Although , under cross examination , he could think of nothing negative about the appearance of the casks, he recommended planting screening foliage trees at the southeast portion of the site once power block buildings are removed. New England Coalition's witness Mr. Shadis, who closely followed development of the Maine Yankee ISFSI through 7 years of participation in the Maine Yankee Decommissioning Community Advisory Panel and who under the aegis of Maine Yankee Atomic power Company was able to visit ISFSI's and ISFSI communities at Calvert Cliffs, Maryland, Palisades Nuclear Station and Big Rock Point NPP in Michigan, takes strong exception to Mr. Dodson's characterization of the ISFSI's appearance as neutral or benign. Clearly the experience of Mr. Shadis put him in much closer touch with the sensibilities of the average person when viewing an ISFSI. Here he responds to a statement mentioning aesthetics in George Thomas's prefiled rebuttal testimony,

Mr. Thomas testifies that an alternative ISFSI site along the northwest fence line was deemed not suitable because,

Locating an ISFSI on the available VY Station site land to the west of the Vernon Substation would create aesthetic problems due to the ISFSI's security lighting requirement and its close proximity to the residential property along Governor Hunt Road. Such proximity would also create problems complying with the radiation dose limits for members of the public, 10 C.F.R. 72.104, and (to the extent it is not preempted) the Vermont Department of Health's more stringent requirement in its Radiological Health Rule, Section 5-305(D)(1)(e).

New England Coalition's witness, Mr. Shadis responds,

George Thomas demonstrates why Entergy's exploration of alternative siting and other mitigation of aesthetic impacts is inadequate and incomplete. Security lighting is only one of the proposed ISFSI's adverse aesthetic impacts, the entire project is ominous and foreboding in aspect. It presents multiple industrial-looking cylindrical silos surrounded by a double wall of razor-wire topped chain-link fences and industrial security lighting with armed guards patrolling 24/7. Close observers also can see that the ISFSI is ringed with motion detectors. Thus while the average person may or may not have any idea of the stored contents, they know it is something pretty serious. One aspect of the silos is that they are tall (approximately 19 feet, looming over as it were the passer-by and easily seen at a distance as a perceivably large object. The best solution to visual aesthetic impacts is to get the ISFSI out of site. The first ISFSI features an 18 foot high solid interstate highway style fence which blocks or obscures view from the river and the New Hampshire shore. Entergy is quick to say in any public forum that wall is there for aesthetic purposes.

The PSD offers 32. “Nearby buildings and structures that will remain after VY Station dismantlement and decontamination will continue to create an industrial visual context for the Project. Dodson pf . at 22-23; Exhs. EN-HLD- I 9, 20, 21.”

Mr. Dodson's Exhibits include a view of Vermont Yankee and the ISFSI after the buildings are dismantled and removed. The background is sylvan. Even today the views of the casks from the west have the verdant shores of New Hampshire for a background. New England Coalition does not think that we should be led into allowing a new eyesore because one already exists. “If one junk car in the yard, why not two,” is not an attitude that fosters protective regulation.

The PSD offers 33. “Energy(sic) has taken generally available mitigating steps that a reasonable person would to improve the harmony of the Project with its surroundings. Dodson pf. at 23.”

There are no mitigating steps identified in the record. If Dodson and Entergy VY believe that there is no aesthetic downside to the ISFSI then how can they justify mitigating steps?

DPS offers 34. “Screening measures around the Project are not possible at the VY Station in order to preserve line of visibility security requirements pursuant to NRC regulations. Dodson pf. 23; Tr. 22-23 (Thomas).”

There are no NRC "line of visibility security requirements pursuant to NRC regulations" to cover screening at unspecified distances. The applicable regulations only insure a clear twenty foot wide perimeter area starting with the wall of the cask.

10 C.F.R § 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste. [Wherein there are isolation zone requirements out to twenty feet from the casks, but no line of sight clearance requirements].

(1) Spent nuclear fuel and high level radioactive waste must be stored only within a protected area so that access to this material requires passage through or penetration of two physical barriers, one barrier at the perimeter of the protected area and one barrier offering substantial penetration resistance. The physical barrier at the perimeter of the protected area must be as defined in § 73.2 Isolation zones, typically 20 feet wide each, on both sides of this barrier, must be provided to facilitate assessment The barrier offering substantial resistance to penetration may be provided by approved storage cask or building walls such as those of a reactor or fuel storage building.

[63 FR 26962, May 15, 1998, as amended at 63 FR 49414, Sept. 16, 1998; 66 FR 55816, Nov. 2, 2001]Page Last Reviewed/Updated Wednesday, December 02, 2015

1. 10 C.F.R. § 73.2 Definitions.

Isolation zone means any area adjacent to a physical barrier, clear of all objects which could conceal or shield an individual.

NEC will admit that there may be guidance that suggests some line-of-sight preservation, but guidance is not regulation and need to be followed to remain in NRC compliance. Also the Dodson/Thomas statements do not account for the presence of the existing wall at VY and the earthen berm and foliage screening at Maine Yankee.

35. “Extension of the barrier wall located on the north side of the existing ISFSI to shield the new ISF'SI would introduce an undesirable large, uniform visual element to the scene. Dodson pf. at 23; Tr. at 58 (Dodson).”

It is NEC's recollection that the original wall was to be painted dark green to better blend with ground foliage. The statement that a similar wall would be more visually obtrusive than a solid row, visually a mass of casks, is simply not credible.

DPS writes, "The proposed ISFSI pad is below the grade of Governor Hunt Road, which will reduce the visibility of the dry casks from that vantage point. The Project's distance from Governor Hunt Road will also reduce visibility." DPS Brief, P-11.

DPS and Entergy VY both must realize that what is visible from the New Hampshire shore and/or the Governor Hunt Road is not what is primarily at issue. The area between the new West fence and the exclusion fence (the first fence posted against trespass) areas open to the public with open gates to facilitate access, the area beneath screening westerly evergreens is open to the public and to residents, the adjacent Velco switchyard employees are protected by the same criteria as anyone else, as are hikers of the west shoreline, and boaters on the west half of the river. Sections F and G I. of NEC's foregoing Table of Applicable Statutes and Case Law (Annotated) broad-brush the state's interest, and by statute, duty, in protecting the citizen's right to unfettered enjoyment of nature, the scenic beauty of the Connecticut River Valley, and the recreational use of the river. Nowhere in the statutes does it say that sight of the offending object must be inadvertent, as in traveling down the Governor Hunt Road. To the contrary, a Federal Court identifies as a litigable interest, birdwatching over the fence of a decommissioning naval station.

Cantrell v. City of Long Beach, 241 F.3d 674; 2001 U.S. App. LEXIS 1538; 51 ERC (BNA) 1993; 2001 Cal.

IV. PROPOSED ORDER

New England Coalition requests, based upon the facts herein above, that the Public Service Board issue an Order in this case conditioning a Certificate of Public Good as follows: The petitioners shall cause to be undertaken a study of the project's impacts on site reuse, orderly development, regional planning, local environment, and aesthetics, with particular attention to mitigation and mitigating alternatives. The study is to be by professional measure, thorough, and undertaken in consultation with the affected public including advocacy stakeholders and the parties to this docket. The study shall include a detailed comparison of the currently proposed above ground storage and underground storage such as the 100 U system. The Petitioners may not begin construction of the proposed ISFSI. Parties will be accorded an opportunity to comment on the study and make recommendations regarding the Board's response to the study. All other matters in this petition are favorably decided.

.

V. CONCLUSION

For the reasons of law and fact set forth in the foregoing, the Vermont Public Service Board should issue an Order in this case embodying the conditions proposed above.

Respectfully Submitted

on Behalf of New England Coalition

This 29th Day of March, 2016



Clay Turnbull
Pro Se representative
New England Coalition
Post Office Box 545
Brattleboro, Vermont 05320
cturnbull@necnp.org
802-380-4462



Raymond Shadis
Pro Se Representative
New England Coalition
Post Office Box 76
Edgecomb, Maine 04556
shadis@prexar.com
207-380-5994