

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

April 14, 2016

Docket 8300

NEW ENGLAND COALITION'S MOTION FOR
JUDICIAL NOTICE OF TWO NEWLY PUBLISHED DOCUMENTS

I. INTRODUCTION

New England Coalition ("NEC") by and through its undersigned *pro se* representatives, herein requests the Vermont Public Service Board to take judicial notice of two newspaper articles that are relevant to the above-captioned proceeding and which illuminate facts vitally material to a decision. Both articles were published after reply briefs were filed in this matter.

II. BACKGROUND

A. On June 30, 2014, ENVY petitioned the PSB for a Certificate of Public Good approving construction of a second Independent Spent Fuel Storage Installation.

B. The Board held a prehearing conference on October 29, 2014. ENVY requested that the proceeding be suspended to allow for additional soil sampling and analysis to be conducted at the Project site. The Board granted ENVY's request in a Prehearing Conference Memorandum dated October 30, 2014.

C. The Board held a second prehearing conference on April 29, 2015. On May 11, 2015, ENVY filed supplemental prefiled testimony ("supp. pf.") and exhibits with the Board.

D. On July 7, 2015, the Board granted permissive intervention to the Town of Vernon to address the 30 V.S.A. § 248 (b) criteria; to Windham Regional Commission ("WRC") to address the 30 V.S.A. § 248(b) criteria; and to New England Coalition to address the Project's impacts on the local environment, to the reuse of the Vermont Yankee property, regional planning and development, and aesthetics.

E. The intervenors submitted prefiled testimony ("pf.") and exhibits to the Board on August 19, 2015.

F. ENVY filed rebuttal prefiled ("reb. pf.") testimony and exhibits on October 21, 2015.

G. On December 23, 2015, the intervenors submitted surrebuttal testimony.

H. The Board held a one-day technical hearing on February 23, 2016.

I. The parties filed briefs on March 16, 2016 and reply briefs on March 29, 2016.

J.

1. The Keene Sentinel (Keene, New Hampshire) "Yankee security changing" Photo with caption excerpt, published (posted): Wednesday, March 30, 2016

2. The Wiscasset Newspaper (Wiscasset, Maine) "Meeting to address storage of spent nuclear waste" published (posted) April 4, 2016

III. APPLICABLE LAW

Rule 201. Judicial Notice of Adjudicative Facts

(b) Kinds of facts. -- A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. -- A court may take judicial notice, whether requested or not.

(d) When mandatory. -- A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. -- A party is entitled upon timely request to an opportunity to

be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. -- Judicial notice may be taken at any stage of the proceeding.

V.R.E. Rule 902. Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

... (6) Newspapers and periodicals. -- Printed materials purporting to be newspapers or periodicals.

IV. DISCUSSION

1. The Keene Sentinel (Keene, New Hampshire) "Yankee security changing"
Photo with caption excerpt published (posted): Wednesday, March 30, 2016 (Attachment A)

The photo in this article plainly shows that the ISFSI is visible through the VELCO site. A North-West viewpoint. This serves to invalidate the testimony of ENVY witness Dodson which relied on his assertion that the ISFSI was visible only from across the Connecticut River. The photo reinforces NEC late evidence that the ISFSI is visible from several areas North and West of the plant and following decommissioning will be viewed against a sylvan or natural background. ENVY provided no aesthetic analysis for these much more telling angles and distances. Thus the Board cannot base a positive aesthetics finding on ENVY testimony. The Board cannot justifiably ignore evidence that it is reviewing false testimony. Therefore the Board should take notice of this article (photo and caption) and rely on it in casting its decision.

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2. The Wiscasset Newspaper (Wiscasset, Maine) "Meeting to address storage of spent nuclear waste" published (posted) April 4, 2016. (Attachment B)

ENVY took the position that it could not offer mitigating measures because it was precluded from doing so by [unspecified] NRC regulations which purportedly require a "clear line of sight." [distance unspecified]. The Maine Yankee Atomic Power Company photo in this article clearly shows mitigating measures such as berming and foliage plantings in place at a NRC-licensed waste storage facility. NEC has previously testified that the measures were put in place as a response to the sensibilities of public advocates and the general public. In any case, contrary to ENVY's assertions the photo clearly shows what can and has been done. The Board cannot justifiably ignore evidence that it is reviewing false testimony

Also relevant to this proceeding, the article contains further evidence that the Department of Energy's Spent Fuel Acceptance Schedule is unrealistic as the enabling legislation is held up in Congress and DOE has only now begun exploring Community Consensus Building for an interim waste site.

Therefore the Board should take notice of this article (photo and caption) and rely on it in casting its decision

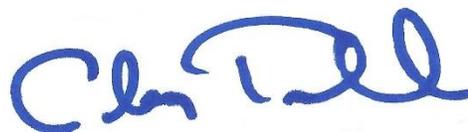
IV. CONCLUSION

For all of the foregoing good reasons, the Board should take judicial (administrative) notice of the news articles presented.

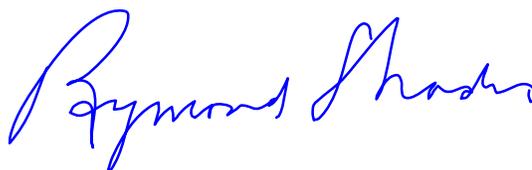
Respectfully Submitted

on Behalf of New England Coalition

This 14th Day of April, 2016



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