

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)

Docket No. 8300

ENERGY VY'S OPPOSITION TO NEC'S MOTION FOR AN INTERIM ORDER

Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, "Entergy VY"), by its attorneys, submit the following memorandum in opposition to the New England Coalition's ("NEC") Motion for an Interim Order ("Motion") and Amended Motion for an Interim Order ("Amended Motion").

Preliminary Statement

NEC's self-appointed role as a "watchdog" does not give it license to defame Messrs. Thomas and Dodson. NEC's characterization of their testimony as "false, misleading, and/or inaccurate testimony" (Mot. at 7), like its earlier accusation of alleged "fraud" (March 11, 2016 Motion to Admit New Evidence at 1), exceeds the bounds of legitimate advocacy and crosses into sanctionable behavior. Entergy VY has completed a thorough investigation of the testimony challenged by NEC and is confident that NEC's claims are entirely without merit. Messrs. Thomas and Dodson testified truthfully after many hours of preparation and internal verification.

NEC's baseless allegations needlessly harm the witnesses, Entergy VY, and, as importantly, the dignity and solemnity of this administrative process.

Despite its inflammatory rhetoric, NEC has failed to provide any evidence that the testimony of Messrs. Thomas and Dodson is false or misleading. In fact, NEC's position on Entergy VY's security requirements has been discredited by information independently provided by the Nuclear Regulatory Commission ("NRC"). *See* NEC's Disclosure of New Information Adverse to Previously Filed New England Coalition Positions. Instead of withdrawing its incorrect allegations, NEC's Amended Motion merely re-phrases the same baseless arguments.

Rather than just describing the disputes between Entergy VY and NEC for what they really are – substantive disagreements over what conclusions should be drawn from the evidence or what weight particular evidence should be given¹ – NEC resorts to slander, repeatedly and improperly calling Entergy VY's testimony with which NEC disagrees "false" or "misleading." NEC's disrespectful fulminating may be today's currency in social media, but it has absolutely no place in this proceeding. NEC's Motion should be denied.

Discussion

I. GEORGE THOMAS'S TESTIMONY ABOUT THE HOLTEC 100U SYSTEM WAS ACCURATE AND FORTHCOMING ABOUT HOLTEC'S DIFFERING OPINIONS.

NEC accuses Mr. Thomas of offering "uninformed and un-informing responses" to questions about the Holtec 100U system, which NEC claims are "a sharp contrast to detailed and often contradictory information readily available from Holtec. . . ." *See* NEC's Motion to Admit

¹ "Evidence" here refers not just to the testimony and exhibits in the record, but also NEC's post-hearing submissions that it could have offered during the hearings had it properly prepared for them. Entergy VY has previously explained why that late-offered material should not be admitted into the record, but explains below why in any event that material does not show what NEC claims it does.

New Evidence at 2. In its Amended Motion, NEC took the opportunity to go even further, adding that “Mr. Thomas’s testimony regarding the 100U alternative is evasive, misleading, and in no way can be justly characterized as the whole truth.” Amended Motion at 5. NEC’s accusations continue to ignore the very testimony it challenges.

Contrary to NEC’s accusations, Mr. Thomas openly revealed during cross examination Holtec’s claims about the merits of the 100U system that were inconsistent with his own views about its use at the Vermont Yankee Nuclear Power Station (“Vermont Yankee”).

Mr. Thomas testified about the Holtec 100U system as follows:

BY MR. SHADIS:

Q. You testified that you had spoken with, communicated with, Holtec with regard to the 100U cask storage system; is that correct?

A. I don’t know whether I have testified to it, but I have spoken to Holtec about the 100U cask, yes.

Q. And I think I need to go to your testimony. Do you have a copy of your testimony there?

A. Yes, I do.

Q. Let’s take a look at the supplemental prefiled and we are on page 7 of 8 question 9. Question 9 refers back to your original prefiled testimony and this is an update apparently. It seems as though you are saying in this testimony that the Vermont Yankee site is not a suitable candidate for the 100U placement; is that correct?

A. It would be difficult and difficult means would require additional costs, considerable additional costs, and a considerable increase in schedule time to construct a 100U system at Vermont Yankee. There’s also limited space available to do that.

Q. When you say limited space you mean that your location – choice of locations would be limited, but it’s not impossible to fit a 100U system at Vermont Yankee; is that right?

A. It could be done if you spent enough money and took enough time. Certainly we would not be able to move the fuel on the pads by 2020 as we are presently working to do.

Q. I don’t mean to be going around this, but are there any other reasons why the 100U would be unsuitable for the Vermont Yankee site?

A. Again with enough – if we spent enough money, took enough time, it could be – it could be done.

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.

BOARD MEMBER HOFMANN: Thank you.

BY MR. SHADIS:

Q. The Holtec web site lists a number of advantages to using the 100U system. One of them is that decommissioning costs would be less than an above ground system. Does that make sense to you?

MR. BYRNE: Object. I don't think we have a foundation for this, and if he's got a copy of the web page, it would be helpful for the witness to have a copy of that. We don't have any of his cross exhibits at this point.

CHAIRMAN VOLZ: Does the witness feel he has enough knowledge to answer the question or do you feel that you need to see what he's referring to?

MR. THOMAS: We have not looked at the impact of 100U system on decommissioning. So I would be replying to Mr. Shadis with that response.

BY MR. SHADIS:

Q. In your estimation what are the advantages of the 100U as opposed to upright or HI-STORM or above ground HI-STORM?

A. The advantages would be as Holtec states, which if I recall it's lower radiation levels, possibly a lower – a lower – they claim its more – they claim the system is more secure, and how they draw that conclusion I'm not sure.

Q. The profile would be considerably lower, would it not? Something like 27 inches protruding above ground?

A. Not necessarily. If you were able to install a 100U system and put it all the way in the ground, it would be. 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.² 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 for the support pad were below ground water, they felt it could be designed and it could be.

Tr. 2/23/16 at 14:8-17:20.

That Mr. Thomas did not blindly accept Holtec's claims does not make his testimony uninformed, false or misleading. Mr. Thomas acknowledged Holtec's claimed advantages of its 100U system, but identified several site-specific concerns regarding installing a 100U system at Vermont Yankee. One such concern is the groundwater level on site and the resulting construction and operational challenges. When asked directly whether he discussed the groundwater issue with Holtec, Mr. Thomas expressly acknowledged Holtec's contrary view that "[t]hey feel that their system has been designed to prevent the potential from groundwater and leakage." Tr. 2/23/16 at 17:11-16.

Notwithstanding Mr. Thomas' acknowledgement of Holtec's claim and his disagreement with it, NEC asserts that a Holtec webpage describing "The HI-STORM 100U in a Nutshell", *see* NEC Motion to Admit New Evidence, Attachment One, "authoritatively and convincingly show that concerns with ground water are misplaced." NEC's Motion to Admit New Evidence at 3-4. NEC's unquestioning acceptance of Holtec's webpage assertions, however, stands in marked contrast to its earlier challenge to the validity of Holtec's statements to the NRC in support of an

² The transcript at page 17, line 9 says "below ground level." It should read "below ground water level."

amendment to its certificate of compliance for its dry cask system.³ NEC cannot have it both ways. It cannot challenge the validity of Holtec's statements to the NRC when it suits NEC's purposes, but accuse Mr. Thomas of being evasive, misleading and less than wholly truthful when he disagrees with one of Holtec's generalized claims on its webpage.

Mr. Thomas (as quoted above) explained his own views about the merits of the 100U system based upon his extensive knowledge about the specific characteristics of the Vermont Yankee site and his consultation with two other project managers at other plants that are installing the Holtec 100U system. He explained why he believed installing the 100U system at Vermont Yankee would be significantly more challenging, costly, and involve more schedule and cost risk than use of the above-ground HI-STORM 100 system.

NEC also claims that "Mr. Thomas is misstating time, engineering and space requirements for the 100U." Motion at 3. In support, NEC cites to a generic Environmental Assessment for the Holtec 100U system prepared by Holtec International, which states in part that "site preparation of a 64 unit array is expected to take approximately six months to a year, with activity occurring generally during daylight hours." *Id.* Holtec's estimated time for "site preparation" does not address any Vermont Yankee site-specific considerations, including the time necessary to reevaluate geotechnical characteristics, complete engineering designs and obtain all necessary permits and a certificate of public good, *before* beginning site preparation and construction. The estimate also excludes any time necessary to complete additional security

³ New England Coalition's May 10, 2005 news release, "New England Coalition Technical Comments Halt NRC Licensing of Holtec Dry Nuclear Fuel Caskets," available at <http://www.state.nv.us/nucwaste/news2005/pdf/nec050510holtec.pdf>. Mr. Shadis commented on Holtec's proposed amendment to its certificate of compliance with the NRC's regulations: "We do not credit that the referred-to inspection system or any inspection system that could be used expeditiously can detect flaws at the molecular level." *Id.* at *5. He also is quoted in the news release as saying "They [the NRC] spent over 1-1/2 years processing the Holtec application, but the applicants [sic] work was, in our view, technically indefensible."

infrastructure for an ISFSI located outside the existing Vermont Yankee protected area. Regarding the space required for the Holtec 100U system, Mr. Thomas's June 30, 2014 prefiled testimony stated that "it would be extremely difficult and expensive to excavate to depths required to build the underground facility within the existing Protected Area." Thomas pf. at 21:6-9. Similarly, during the technical hearing Mr. Thomas agreed that although difficult and costly, it would be possible to fit a 100U system at Vermont Yankee, explaining that "if we spent enough money, took enough time, it could be – it could be done." Tr. 2/23/16 at 15:3-15. Mr. Thomas estimated the additional cost in the range of \$30 million. *Id.* at 15:21-22. The general statements in Holtec's generic environmental assessment cited by NEC do not address or contradict Mr. Thomas's testimony related to Vermont Yankee-specific considerations.

Even though NEC takes issue with Mr. Thomas's testimony, his informed professional disagreement with Holtec's statements hardly makes that testimony "tainted and unreliable for purposes of fact finding because of bias, error, self-contradictions and gross omissions." Motion at 3.⁴ Mr. Thomas's testimony was truthful, reliable and complete. Nothing that NEC says in any of its many filings changes that fact. The Board should reject NEC's motion with a clear statement that its accusations against Mr. Thomas are baseless.

⁴ It is also worth noting that the objection to Mr. Shadis's examination was well founded. Had Mr. Shadis provided Mr. Thomas a copy of the webpage he referenced, Mr. Thomas could have responded in detail to the issues it raised. Whether because of a lack of preparation or deliberate strategic choice, NEC never provided the webpage until after the technical hearing concluded. The Board should not now hear NEC's complaints about incomplete testimony. If the testimony is "incomplete" on this point, it is due to NEC's failure to pursue the issue at hearing.

II. NEC'S INCORRECT ASSERTIONS ABOUT THE VERMONT YANKEE SECURITY PLAN LACKED ANY SUFFICIENT LEGAL BASIS WHEN MADE AND HAVE NOW BEEN DIRECTLY REFUTED BY THE NRC.

Entergy VY explained in prefiled testimony and at the technical hearing that certain aesthetic mitigation measures, such as planting vegetative screening or creating earthen berms, are restricted by Vermont Yankee security requirements, which requires visibility from the Protected Area. NEC has accused Entergy VY of hiding behind a false claim that the details of the security plan are safeguards information and cannot be revealed, claiming that based on its "diligent search" of NRC regulations "NEC is led to the conclusion that ENVY's demur on mitigation security 'requirements' is a complete fabrication." NEC's Reply to Motion for Judicial Notice at 9.

NEC's accusation was not only wrong, but also reckless. That is clear from NEC's "Disclosure of New Information Adverse to Previously Filed New England Coalition Positions" and its Amended Motion recasting its irresponsible claims that Mr. Thomas's testimony concerning "mitigation" was "misleading, inaccurate, and less than the whole truth." *See* Motion at 6. NEC's disclosure reveals that at the very time that it was accusing Entergy VY of making disingenuous claims about its security plan, NEC was asking the NRC to verify whether Entergy VY was correct. *See* NEC's Disclosure of New Information. NEC's accusation against Entergy VY could not have been made in good faith when it was simultaneously asking the NRC about the governing legal and regulatory requirements, having waited nearly two years to challenge a position taken by Entergy VY on June 14, 2014. *See* Dodson pf. at 25:13-14 ("I understand that many mitigation measures such as planting, creation of berms and screening are impossible or very restricted by security requirements.").

At the technical hearing, Mr. Thomas explained the security plan restrictions as follows:

BY MR. KISICKI:

...

Q. Are you familiar with Mr. Dodson's testimony, his prefiled testimony?

A. Yes, I am.

Q. Do you have a copy of that by chance?

A. I do not.

Q. Are you familiar with security requirements regarding the ISFSI?

A. Somewhat.

Q. Can I turn your attention to page 23 of Mr. Dodson's prefiled testimony question and answer number 23?

A. Yes.

Q. That testimony states, I understand that many mitigation measures such as planting, creation of berms and screening are impossible or very restricted by security requirements. Is that correct?

A. That is correct.

Q. Based on your familiarity with the security requirements can you explain what the basis of Mr. Dodson's understanding is?

A. We have, at Vermont Yankee, had to remove trees and other impediments to the security force's ability to have a good line of visibility for a potential threat, I'll use that term generally, in the past, and the basis of his statement is what is the basis of the existing Vermont Yankee security plan.

Q. Which is?

A. Which is that certain - - well, first of all, the security plan [is] safeguards information, but it restricts the - - restricts the placing of obstacles that prevent the security forces from having a good line of sight around the protected area.

Q. And that security plan is guided by NRC regulations?

A. Yes it is, and [10] CFR 73.

Tr. 2/23/16 at 21:21-23:4.

First, Mr. Thomas explained that Vermont Yankee's security plan is *guided* by NRC regulations. He did not testify that the NRC regulations themselves imposed the specific limitations at issue. He testified that it is Vermont Yankee's plant-specific security plan that restricts mitigation measures in this case, not any single NRC regulation. Accordingly, NEC's argument about the lack of NRC regulations against berms and foliage is irrelevant. *See* NEC's Reply to Motion for Judicial Notice at 8-9.

Second, as previously explained by Entergy VY, measures taken at Maine Yankee, apparently depicted in the photographs relied upon by NEC, are not pertinent to mitigation measures at Vermont Yankee because “a plant’s security plan must be tailored to the particular features of its site and is necessarily site-specific.” *See* Entergy VY’s Opposition to NEC’s Motion for Judicial Notice at 3.

Apparently after receiving Entergy VY’s April 19, 2016 opposition, NEC’s representative Raymond Shadis contacted the NRC to ask, in part, whether Maine Yankee and Vermont Yankee “are regulated by an identical set of rules with respect to ISFSI protection.” *See* Attachment to NEC’s Disclosure of New Information (Shadis e-mail dated April 22, 2016). Without waiting for a response, NEC launched yet another motion arguing that the photograph of Maine Yankee proves that Entergy VY and George Thomas were not truthful about the security requirements at Vermont Yankee. *See* Motion at 4-5. Two days later, the NRC responded to Mr. Shadis and confirmed that “[e]ach ISFSI may have site-specific security requirements and NRC security orders may impose Additional Security Measures (ASMs).” *See* Attachment to NEC’s Disclosure of New Information (Parrott e-mail dated May 12, 2016). The NRC also cautioned NEC that “one of the licensees is a standalone ISFSI that is not co-located with an operating power reactor and the other is on a site with other protected facilities which may result in site specific regulatory requirements.” *Id.*

Finally, in the same May 12, 2016 e-mail, the NRC confirmed that “[i]nformation on any site-specific differences imposed through the license would be for official use only and may also be designated as Safeguards information (SGI) which is subject to the 10 CFR 73.21 provisions for protecting against unauthorized disclosure.” *Id.* The NRC further stated that “[i]dentification of any site-specific security requirements imposed on a licensee would be for official use only

and may also be designated as SGI which is subject to the 10 CFR 73.21 provisions for protecting SGI against unauthorized disclosure; therefore not suitable for documentation in this e-mail,” *id.*, thus confirming Mr. Thomas’s testimony.

NEC disclosed the above information to the Board and the parties and recognized that it “contradict[s] or otherwise neutralize[s] NEC’s comments included in earlier filings. . . .” NEC’s Disclosure of New Information at 1. Despite discovering its obvious mistake, however, NEC does not back down. NEC continues its accusatory rhetoric, ignoring the NRC response just quoted stating that site-specific security requirements are for official use and may also be designated SGI, arguing that “[i]t would appear the [sic] Entergy Nuclear Vermont Yankee (“ENVY”) has neatly tucked away (out of sight, out of reach, beyond confirmation) the question of visual screening within the protected zone, that is, the area fenced and marked with security measures warning signs.” *Id.* at 2. NEC concludes by saying that it “alters its rating of Entergy testimony regarding mitigation from ‘false’ to simply disingenuous and misleading.” *Id.* at 3.

Instead of retracting its spurious accusations, NEC’s Amended Motion just puts a new twist on them. NEC continues to claim that Entergy VY’s testimony was misleading because it supposedly implied that specific security requirements were contained in NRC regulations, rather than in Entergy VY’s required plant specific physical security plan. NEC further suggests that Entergy VY “created a security plan that may or may not have had line-of-sight preservation considerations in it” and has concealed evidence under the protection of safeguards information. *See* NEC’s Amended Motion at 7. NEC continues this rhetoric despite acknowledging in the same pleading that “NRC Staff responses verify ENVY representations that NRC can require site specific security measures and that details of those requirements are deemed

‘safeguards’ information which under 10 CFR §73. 21 may not be released to the public.” *Id.* at 2.⁵

NEC should have known (or made reasonable inquiry to know) – *before* leveling its baseless charges and cannot now deny knowing from the NRC’s comments that Entergy VY’s representations about its security requirements are far from what NEC called a “complete fabrication.” *See* NEC’s Reply to Motion for Judicial Notice at 9. As the Board is aware, the NRC requires that each applicant for an operating license prepare a physical security plan meeting the requirements of 10 C.F.R. Part 73. *See* 10 C.F.R. § 50.34(c). Under 10 C.F.R. § 73.22, the “composite physical security plan for the facility or site” is required to be protected as Safeguards Information. *See* 10 C.F.R. § 73.22(a)(1)(i). “Except as the Commission [NRC] may

⁵ NEC’s inflected quotation of “*safeguards*” information appears intended to suggest that Safeguards Information is not legitimate classification under NRC regulations. To be clear, 10 C.F.R. § 73.2 defines Safeguards Information as:

information not classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed control and accounting procedures for the physical protection of special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; detailed security measures (including security plans, procedures, and equipment) for the physical protection of source, byproduct, or special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; security measures for the physical protection of and location of certain plant equipment vital to the safety of production or utilization facilities; and any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of sabotage or theft or diversion of source, byproduct, or special nuclear material.

otherwise authorize, no person may have access to Safeguards Information unless the person has an established 'need to know' for the information and has undergone a Federal Bureau of Investigation (FBI) criminal history records check using the procedures set forth in § 73.57." 10 C.F.R. § 73.22(b)(1). The regulations also require that "a person to be granted access to Safeguards Information must be trustworthy and reliable, based on a background check or other means approved by the Commission." 10 C.F.R. § 73.22(b)(2).

It is incredible that NEC has done anything short of completely withdrawing its accusations when faced with clearly contradicting information independently provided by the NRC, with which NEC recognizes it has "no basis for disagreeing." NEC's Disclosure of New Information at 3. NEC's disagreement with NRC's Safeguards protection requirements does not give it license to call Entergy VY disingenuous and misleading by not disclosing security information subject to those requirements.

Mr. Thomas's testimony about aesthetic mitigation measures and plant security requirements is entirely straightforward and accurate. NEC has no basis whatsoever to claim otherwise.

III. NEC'S PROFFERED EVIDENCE DOES NOT IMPEACH MR. DODSON.

NEC challenges Mr. Dodson's testimony concerning whether the second ISFSI will be visible from anywhere other than the Connecticut River and a hiking trail on the New Hampshire shoreline. NEC claims that Mr. Dodson's testimony is "tainted and unreliable for purposes of fact finding because of bias, error, self-contradiction and gross omissions" and that his testimony "leaves little to nothing upon which the Board may rely for positive findings on aesthetics." See NEC's Reply Brief at 4. NEC, however, has not provided any evidence sufficient to impeach Mr. Dodson, much less render his entire testimony unreliable.

The following is the complete exchange between NEC and Mr. Dodson regarding the visibility of the proposed second ISFSI:

BY MR. SHADIS:

Q. With the other buildings gone, are the casks visible from the fence line anywhere on site?

A. Which fence line?

Q. Well the property fence line. There's a property line, fence line, that runs between the site proper and the adjoining properties. What we usually refer to as fence line.

A. It would not be visible from the fence line.

Q. Nowhere?

A. Nowhere. The only location where it would be visible from would be the Connecticut River and the hiking trail along the New Hampshire shore.

Q. Okay. I mean I don't want to belabor the point, but the casks are – do you agree they are 19 feet in height?

A. Yes.

Q. On a pad somewhat elevated. So 20 something feet and they are not visible from the fence line anywhere; is that right?

MR. STERN: Objection. It's already been asked and answered.

CHAIRMAN VOLZ: What causes them to not be visible? Is there an obstruction between the fence line and the pad?

MR. DODSON: I'm assuming the fence line is mainly the line that exists on the western portions of this site as opposed to along the river.

CHAIRMAN VOLZ: Right.

MR. DODSON: The facility won't be visible from any of the areas in the western portion of this site.

BOARD MEMBER HOFMANN: Is that true whether it's summer or when there's foliage and when there's not foliage?

MR. DODSON: Yes because it's mainly evergreen screening and also you have an approximately 20-foot drop in elevation which screens out views from the west side of the site.

Tr. 2/23/16 at 50:13 - 52:1.

NEC claims that Mr. Dodson's statement 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" is false. See NEC's Reply to Entergy VY's Opposition to NEC's Motion for Judicial Notice at 3. NEC relies on an "Eyewitness Declaration" by Clay Turnbull stating that "the present ISFSI is highly visible from a number of offsite or perimeter vantage points." See NEC's Motion to Admit New Evidence at 4.⁶ NEC claims that satellite images from Google Earth show "numerous clear and open lanes of vision from the West of the perimeter fence as well as Northern vantage points on the Velco [sic] switchyard property and approaches from property now held by TransCanada." *Id.* at 4-5.

In NEC's April 14, 2016 Motion for Judicial Notice of Two Newly Published Documents, it sought to admit an article from *The Keene Sentinel* with a photograph that NEC claimed "plainly shows that the ISFSI is visible through the VELCO site. A North-West viewpoint." NEC's Motion for Judicial Notice at 3. Entergy VY has already explained that NEC's description of the photograph is wrong. See Entergy VY's Opposition to NEC's Motion for Judicial Notice at 2-3 (explaining that the photograph was taken well inside the Vermont Yankee site's fence line, inside the Main Parking Lot).⁷

⁶ It should be noted that the existing ISFSI is surrounded by a 22-foot tall visual barrier, which Mr. Dodson has stated has the effect of being more visible than the casks themselves. See tr. 2/23/16 at 57:18 – 58:24.

⁷ Despite Entergy VY's explanation, NEC continued to argue in its reply brief that the *Sentinel* photograph shows a view from VELCO property. NEC asserts that "[i]f, arguendo, ENVY's claim that the photo was shot from the vicinity of [and not inconsequentially through] the 345kV switchyard. It should be remembered that the 345kV switchyard was sold and the underlying real estate leased on a one-time payment to TRANSCO, LLC. [sic] in 2008. *VPSB Docket 7481, Order Entered December 18, 2008.* Thus, the photograph which clearly shows that it was taken through the three lines of fence was evidently taken through TRANSCO property and over leased land, presumably with all usage rights attached." NEC's Reply to Motion for Judicial Notice at 5 (sentence fragment in the original). NEC misses the point entirely. The 345 kV Switchyard and the VELCO Substation are *two different switchyards*. See Exhibit EN-JG-8

NEC's most recent effort to discredit Mr. Dodson relies on a photograph taken by NEC member Peter Van der Does. Mr. Van der Does affirmed that the photo was taken "at a point on a dirt road North of the Vermont Yankee fence . . . with a Nikon D50 at 1/1000 sec F4/185mm. Approximate location: 42. deg 47 01.0 North 72 deg 31 17.4 West." *See* NEC Reply Exhibit One. *Id.* The photograph does not impeach Mr. Dodson's testimony, as NEC claims.

Obviously, one cannot predict the visibility of a structure that has not yet been built without performing some modeling and analysis. Mr. Dodson offered expert testimony based on his preparation of a viewshed analysis of the proposed second ISFSI. His viewshed analysis was generated based on topographical data from Digital Elevation Models at 10-meter resolution recorded in 2010 and vegetation and forest coverage data from 2011 aerial imagery at 0.3 meter resolution. *See* Dodson pf. at 6:1-13. Mr. Dodson then prepared a terrain model using computer programs to model the site and surrounding area in three dimensions, creating a digital model of the proposed second ISFSI that could be "viewed from any location, height or viewpoint in order to precisely determine the extent and characteristics of the Project's future visual impacts." *Id.* at 6:14-18. Based on this analysis (which was available to NEC since June 30, 2014), Mr. Dodson concludes that the project will only be visible from "limited sections of the open water of the Connecticut River and portions of the banks of the river in Hinsdale, NH." Dodson pf. at 11:5-7. NEC has not challenged any aspect of Mr. Dodson's viewshed analysis or terrain model. Mr. Dodson's testimony at the technical hearing was entirely consistent with his prefiled testimony and viewshed analysis.

(depicting the VELCO, or "Vernon Substation" and the "345 kV Switchyard"). The *Sentinel* photograph was taken on the north side of the 345 kV Switchyard, *not* the VELCO Substation, both of which are located on Entergy VY's property.

Taken at face value, the photograph offered by NEC's representative Peter Van der Does indicates that the roof of the North Warehouse is visible from a location north of the Vermont Yankee property boundary fence, which appears to be on an adjacent private property of the Miller farm. But that does not mean that the second ISFSI will also be visible from that location. The full height of the North Warehouse is taller than the casks will be. The top of the North Warehouse roof is approximately 24 feet, 7 inches above grade and the low end of the roof is approximately 16 feet above grade. The casks will be 18 feet and will sit on a 2-foot above grade pad, resulting in a total height of 20 feet above grade. *See Dodson pf. at 3:14-15.* The diesel generator barrier wall will be approximately 16 feet high. *See Dodson supp. pf. at 2:6.* Additionally, the North Warehouse roof is a silver or white color with a reflective finish that stands out in the landscape. The casks will be a grey color with a flat finish, which will blend in better with the surrounding area. *See Dodson pf. at 14:6-8.* Visibility of the roof of the existing North Warehouse does not mean that shorter and duller structures will be visible at all or to any meaningful degree in the future.

Additionally, the photograph offered by Mr. Van der Does was taken with a 185mm telephoto lens. Telephoto lenses distort and flatten the perspective of a scene such that structures appear closer than they actually are. In order to replicate the view presented in the photograph, an individual would require binoculars or some other visual aid. As a result, the photograph offered by Mr. Van der Does cannot be relied upon for the purposes offered by NEC.

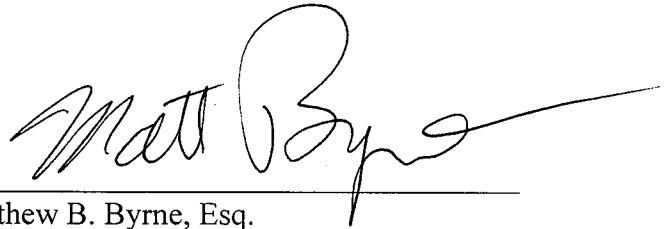
Mr. Dodson's testimony is consistent with the modeling and viewshed analysis he prepared to determine the visibility of the proposed ISFSI. NEC has not offered any credible evidence to impeach Mr. Dodson, much less render his testimony entirely unreliable. The Board

has a sufficient basis to determine the relevant credibility of the evidence before it on aesthetics and render a decision without issuing an interim order or undertaking further investigation.

Conclusion

NEC has blasted Entergy VY with repeated unfounded and scurrilous attacks on its witnesses' truthfulness. None of NEC's inflammatory accusations has any merit, and NEC has even been forced by the NRC's rejection of its assertions to retract at least one. The Board should deny NEC's most recent motion, make clear that NEC's accusations are baseless and conclude its review of this docket.

Dated: Burlington, Vermont
May 24, 2016



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For Petitioners

<1123803v5/MSS>

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)

Docket No. 8300

CERTIFICATE OF SERVICE

I, Matthew B. Byrne, Esq., attorney for Petitioners, certify that, on May 24, 2016, I served Entergy VY's Opposition To NEC's Motion For An Interim Order on the counsel of record as follows:

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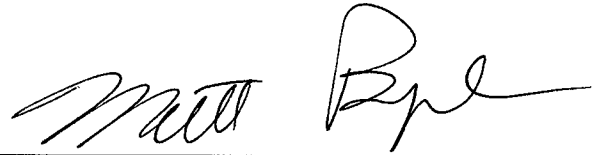
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