

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for a Certificate of Public Good authorizing the construction of a second independent spent fuel storage installation storage pad and related improvements, including installation of a new diesel generator with an electrical rating of approximately 200 kW, at the Vermont Yankee Nuclear Power Station in the Town of Vernon, Vermont

May 10, 2016
Docket No. 8300

NEW ENGLAND COALITION'S MOTION FOR AN INTERIM ORDER

I. INTRODUCTION

New England Coalition ("NEC"), by and through its Pro Se Representatives, Clay Turnbull and Raymond Shadis, respectfully moves that the Vermont Public Service Board ("Board") shall, prior to the issuance of any final order in the above captioned matter, address issues of alleged false and misleading information provided to this tribunal by Entergy Nuclear Vermont Yankee ("ENVY") through its witnesses Harry Dodson and George Thomas. NEC contends that the submission of this alleged false and misleading information undermines the Board's ability to find facts required by 30 V.S.A. § 248 (b) (1) (5)¹ as a prerequisite to issuance of a CPG.

II. BACKGROUND

¹ 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);

A. Harry Dodson and George Thomas were presented and sworn as ENVY witnesses at a Technical Hearing in the above captioned matter on February 23, 2016.

B. On March 10, 2016, NEC submitted a Motion to Admit New Evidence based on its claim that the evidence that the NEC presented was "in response to alleged fraud or mistake of Entergy witnesses, [that] could not have been reasonably submitted earlier, is in all other ways admissible, and is material to a fair, informed decision." The proffered "new evidence" consisted of five attachments (exhibits): 1. A HOLTEC International webpage download, "HOLTEC International Underground Storage Module" showing that contrary to Mr. Thomas' testimony that radiation attenuation even with partial burial is extraordinary and that the presence of groundwater is no obstacle to installation or long term integrity of the 100U system. 2. and 3. are illustrations from the California Coastal Conservation Commission and HOLTEC respectively showing various configurations of the 100U system – either planned or in place. 4. An Eyewitness Declaration and Oath of Clay Turnbull offering that the proposed ISFSI site is visible from public access land and across abutting property to the North and West and at distances much closer than that form the basis for the Dodson aesthetic evaluation. 5. A Google Earth image showing lanes of visibility North and West of the proposed ISFSI site.

C. On March 15, 2016, NEC filed its Brief, Requested Findings and Proposed Order, in which NEC avers that "Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., ("petitioners"), have not presented testimony or other evidence regarding impacts of the proposed project sufficient to allow the Board to make findings required by 30 V.S.A 248 (b) ²

² Ibid

Such testimony as the Petitioners did present, notably that of witnesses George Thomas and Harry Dodson is tainted and unreliable for purposes of fact finding because of bias, error, self-contradictions and gross omissions. Plainly, the petitioners did not provide information that is both sufficient and sufficiently reliable so as to support positive findings on 30 V.S.R. 248 and/or Quechee Test criteria. In its Brief, NEC cites two Holtec statements under oath before the U.S. Nuclear Regulatory Commission that make it clear that Mr. Thomas is misstating time, engineering and space requirements for the 100U.

The site preparation of a 64 unit array is expected to take approximately six months to a year, with activity occurring generally during daylight hours. pg. 10

A 64 unit array would require a 6.72 m (22 ft) deep excavation of an area measuring approximately 45.8 m x 45.8 m (150 ft x 150 ft); a total of about 14,844 m³ (18,000 yd³). This material would be excavated using standard earthmoving and digging equipment and placed onsite in a spoils storage area. This material stockpiled to a height of 6.1 m (20 ft) with 3:1 slopes would occupy an area of about 76.4 m x 76.4 m (250 ft x 250 ft) or 0.57 ha (1.4 ac). Depending on the engineering properties of soils at a given site, some of it might be used as backfill during installation of the VVMs. Alternatively, it could be used for a surrounding berm or for final site contouring. Concrete for the foundation pad and surface support pad would be obtained from offsite sources. The finished in-ground VVM array, with dimensions of approximately 44 m x 44 m (144 ft x 144 ft) is designed to accommodate 64 storage casks.

At sites with a shallow water table, dewatering of the area to be excavated would be required to allow for construction and installation of the concrete support foundation, VVM cylinders and placement of engineered backfill. As sites with high water tables are usually located in areas with high levels of precipitation and recharge, groundwater would be expected to return to its previous levels within several months to a year following the cessation of dewatering activities. Pg. 11

Environmental Assessment for the Holtec International HI-STORM 100U
Underground Cask System.

<http://pbadupws.nrc.gov/docs/ML0910/ML091060766.pdf>

D. On March 28, 2016, NEC filed its Reply Brief. In its Reply Brief, NEC responded to DPS proposed finding 34, which is based on the testimony of Dodson and Thomas.

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).

In fact, NEC wrote, "There are no NRC "line of visibility security requirements pursuant to NRC regulations" to cover screening at unspecified distances. The applicable regulations [Part 73, which Thomas invoked at Tr.23] 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.

E. On April 8, 2016, NEC filed its Answer to the Opposition of the Vermont Department of Public Service and Entergy Nuclear Vermont Yankee to New England Coalition's Motion to Admit New Evidence. NEC's Answer contains the following significant statement regarding visibility and public access to areas of the site from the north and west:

Apr 13, 2009

Exhibit EN-12 April 13, 2009 Visual Analysis Proposed Vermont Yankee Perimeter Fence Harry L. Dodson, Dodson Associates, Ltd.

1-5. What is the project's impact on open space in the area? The proposed fence will have

limited impacts on open space in the area. It will not reduce the amount of existing open space nor will it change the use of the space. The fence will function as a typical agricultural fence separating wooded areas from fields. In the few locations where it traverses the field, agricultural use will continue on both sides of the fence with access for tractors provided by a gate. Currently private property, public access to open space will not be affected by this state-mandated fence. Visual access to the site by the public from Governor Hunt Road will not be impaired by the fence. [Emphasis added]
Exhibit EN-12 Visual Analysis Proposed Vermont Yankee ...
psb.vermont.gov/.../7530 Vt Yankee Fence line Expansion

F. On April 14, 2016, NEC filed its Motion for Judicial Notice of Two Newly Published Documents featuring two newspaper articles with accompanying photographs. These are (1).a Keene Sentinel article with a photograph showing the proposed ISFSI site through three layers of fence and from a vantage point to the north and west of the site, thus impeaching Dodson who bases his visual analysis on the idea that the ISFSI will only be visible from a narrow "viewscape" to the east and at a distance of the open waters of the river and the New Hampshire shore; and (2) a Wiscasset (Maine) Newspaper with a Maine Yankee Atomic Power Company file photo with an aerial view of the Maine Yankee ISFSI showing a protective berm planted with screening foliage (as described in Shadis prefiled testimony) and apparently not at all ruled out, as ENVY would have it, by NRC regulation.

G. On May 2, 2016, NEC filed its Reply to Entergy VY's Opposition to New England Coalition's Motion for Judicial Notice of Two Newly Published . In its Reply, NEC states,

Both the photographs and the two news articles are susceptible to ready and authoritative verification. NEC, in order to demonstrate the verifiable nature of the Wiscasset Newspaper article and the accompanying Maine Yankee Atomic Power Company photograph searched for and promptly found a 3Yankee's webpage (homepage) featuring three photographs of each of three nuclear power station ISFSIs, including Yankee Rowe, Connecticut Yankee, and Maine Yankee. All three sites feature visibility screening foliage. Accompanying the photographs is text which includes the following statement, "The spent nuclear fuel and GTCC waste is stored and secured in accordance with Nuclear Regulatory Commission (NRC) licensing requirements at each sites Independent Spent Fuel Storage Installation (ISFSI)" Thus not just Maine Yankee, but all three shuttered New England plants (excepting VY) have ISFSI's screened by foliage while remaining compliant with NRC regulation. [Emphasis added]

III. DISCUSSION

A review of the above seven listed filings, which NEC wishes to here incorporate by reference, will show that NEC has adduced sufficient evidence to impeach the testimony of Harold Dodson regarding aesthetics and mitigation as inaccurate and misleading and the testimony of George Thomas regarding mitigation and mitigating alternatives as misleading, inaccurate, and less than the whole truth. The Board has been accorded broad discretion in its search for determinations of what will serve the public good, but it does not extend to basing the requisite V.S.A. § 248 findings of fact on false, inaccurate or misleading testimony. Therefore NEC is most respectfully and urgently asking the Board to investigate and to make a determination as to the accuracy of the Dodson and Thomas testimony in question before proceeding to a final order. There is precedent for such action. In Docket 7440, the Board acted on a single misstatement of less legal weight than anything considered here to require ENVY to comb all of its 7440 filings and testimony for any other inaccuracies and to report out the results of its search to the parties. ENVY was further required to devise a plan to prevent reoccurrence and to reimburse the parties legal expenses incurred as a result of the inaccuracy. ENVY vowed to no avail that it simply misunderstood the state's intention in the disputed information request because ENVY thought that "buried" pipes meant pipes buried directly in the soil of which it had none and not pipes interred below ground in conduit of which it had plenty. The testimony of Dodson and Thomas goes beyond any confusion of terms and conflicting opinions. There are blunt statements of "fact" that are not fact, invocations of federal regulation that does not exist, and misleading inferences upon which no reliance may be based.

NEC is conflicted about bringing these issues forward as NEC for reasons of safety and to speed

decommissioning wants to see the nuclear fuel at Vermont Yankee moved to dry cask storage as soon as possible. However, the specter of long term storage signals a stewardship call to provide the best practicable storage possible following near flawless review. The process should not go forward based on sketchy considerations, inaccurate testimony and wishful thinking.

III. CONCLUSION

For all of the above stated good reasons, NEC respectfully requests that the Board issue an Interim Order addressing NEC's allegations of false, misleading, and/or inaccurate testimony.

The Board should order an investigation as it did in Docket 7440.

In the alternative, the Board should move directly to order ENVY to revisit the V.S.A. § 248 (b) criteria, subject to public scrutiny and public input along the lines of the process suggested in NEC's Brief and Reply Brief:

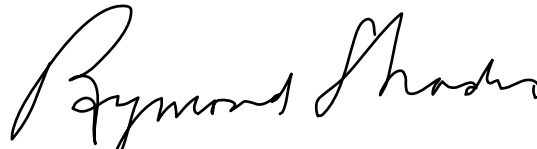
The petitioners shall cause to be undertaken a study of the project's impacts on site reuse, orderly development, regional planning, local environment, and aesthetics, with particular attention to mitigation and mitigating alternatives. The study is to be by professional measure thorough and undertaken 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.

Respectfully Submitted
on Behalf of New England Coalition
This Tenth Day of May, 2016



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A handwritten signature in black ink that reads "Raymond Shadis". The signature is written in a cursive style with a large, prominent initial 'R'.

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